

Government of Odisha
General Administration & Public Grievance Department

No. - 27414 ___/Gen.,
GAD-SC-GCS-0057-2021

Bhubaneswar, dated the 11th October, 2021

To

All Department of Government,
All Heads of Department,
All Collectors.

Sub: Consideration of appointment under OCS (RA) Rules, 2020 – matters regarding

Provisions have been prescribed under sub-rule (9) of rule 6 of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 issued vide GA & PG Department Notification No. 5651, dated 17.02.2020 that "all pending cases as on the date of publication of these Rules in the Odisha Gazette shall be dealt in accordance with the provision of these Rules". Subsequently, clarification have been issued vide this Department Circular letter No. 6999/Gen., dated 02.03.2021 that all the cases in which all formalities have been completed, but offer of appointment have not been issued under the provisions of superseded Rules prior to coming into force of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 will be considered as per the provisions of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 .

Instances have been brought to the notice of the Government by different Administrative Departments that, some of RA applicants, whose RA applications were pending before coming into force of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 have obtained orders from different Courts of Law to apply the RA rules prevailing at the time of submission of the application taking into consideration the rules prevailing at the time of date of death of the deceased and to decide the matter accordingly.

It is therefore, impressed upon all concerned that, if the RA applications were pending before coming into force of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 and the RA applicants have obtained orders from the court of Law for consideration of his /her applications as per Rules prevailing at the time of submission of

the application/ prevailing at the time of date of death of the deceased , the said order may be challenged before the higher forum on obtaining orders of the Government in their Department referring the latest judgment dated 04.03.2020 of the Hon"ble Apex Court reported in (2020) 7 SCC 617 (copy enclosed) and in consultation with the Law Department instead of referring the cases to the GA & PG Department soliciting views in the matter.

G. P. Singh
11.10.2021

Additional Secretary to Government

OFFICE OF THE ADVOCATE GENERAL, ODISHA, CUTTACK

Jyoti Prakash Patnaik
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No.-----

Date: 13.08.2020.

To

The Commissioner cum Secretary to
Govt., Revenue & Disaster Management
Department, Odisha, Bhubaneswar,
Dist-Khurda.

Fax No.0674-

The Collector & Dist. Magistrate,
Nabarangpur, Dist-Nabarangpur.

The Tahasildar, Nandahandi,
At/Po- Nandahandi, Dist-Nabarangpur.

Sub: W.P (c) No. 23402 of 2021: Ajaya Kumar Bissoyi -Vrs- State of
Odisha and others.

Sir,

This matter came up before the Hon'ble Justice Shri B.R.Saranghi on 13.08.2021 and Justice Shri B.R.Saranghi disposed of this writ petition with a direction to consider the application of the petitioner in the light of the order passed by this Hon'ble Court dtd. 29.07.2021 in W.P (c) No. 1871 of 2021 (Sujit Kumar Natia -Vrs- Stae of Odisha and others).

The short question in this case is that, the petitioner applied for appointment under Rehabilitation Assistance Scheme and by order dated 18.06.2020 the Collector & District Magistrate, Nabarangpur considered the case of the petitioner in the Evaluation Committee meeting dated 05.06.2020 and the Committee observed that the petitioner has not secured the requisite points in Para-1 of the Evaluation sheet, is required for selection laiddown in OCS (RA) Amendments Rules, 2020 and rejected his representation.

That, on being aggrieved, he filed the present writ application claiming that since the death of his father as per the certificate enclosed was on 31.08.2018 i.e. when the Odisha Civil Serevice (Rehabilitation Assistance) Rules, 1990 was in vogue may be considered under the old rule. The petitioner has annexed the order dtd. 29.07.2021 (Annexure-7) of the Hon'ble Court which is required to be looked into while considering

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the representation in which Hon'ble High Court has taken note of the judgment of the Hon'ble Apex Court in case of Canara Bank and another -Vrs- M.Mahesh Kumar reported in 2015 (7) SCC 412 wherein the ratio of the decision was that the date of death of the Govt. employees is relevant while considering the representation and the law which was there on the date of death is to be taken into consideration. This judgment was passed in 2015.

That, in the later dates the judgment of Canara Bank case was the subject matter of a larger bench constituted on being referred by a Division Bench reported in (2014) 13 SCC 583 and (2019)5 SCC 600. The matter was referred for consideration by a larger bench so that the conflicting views can be reconciled.

That while the larger bench considered all the matters including the judgment reported in (2019) 3 SCC 653 headed by justice Dr. D.Y.Chandrachud and accepting the latest judgement supra by Justice Chandrachud, finally held that a dependant of Govt. employee in absence of any vested right accruing on the death of a Govt. employee, can only demand consideration of his application. However, he is disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee and finally the Hon'ble Supreme Court emphatically held that the consideration of compassionate appointment can not be considered under the unamended provisions.

That, in my humbly opinion, the ratio of this judgment is that, the consideration of the application of the legal heir of a employee dying in harness is required to be considered within the freame work of the existing rule on the date of consideration of the application.

In view of such matter, before disposing of the numerous order of the Hon'ble Court in different cases by the Govt. or its subordinates, the views of the Law Department as well as the learned Advocate General may be obtained and accordingly the orders of the Hon'ble Court directing consideration of the applications under the superceeded Odisha Civil Serevice (Rehabilitation Assistance) Rules, 1990 may be taken and in other hand if there are direct mandamus issued in some cases to appoint the petitioners under the old rule, the appropriate challenge be made in shape of writ appeal/Review which is permissible under law and in no cases the recent judgment of the Hon'ble Apex Court reported in (2020) 7 SCC 617 can be ignored, since on this

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aspect this judgment is the law of the land. Copy of the judgment dtd. 04.03.2020 of Hon'ble Apex Court is enclosed herewith for your ready reference.

Enclose: **As above.**

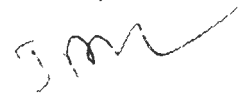
Yours faithfully



(J.P.Patnaik)
Addl.Govt.Advocate

Memo No. 32829 ^{① NE} /Dtd. ⁷⁸ 13.08.2021

Copy submitted to the Chief Secretary to Govt., Odisha, Secretariate Building, Bhubaneswar, Dist-Khurda/ Principal Secretary to Govt., Law Department, Odisha, Bhubaneswar, Dist-Khurda/ Principal Secretary to Govt., G.A.Department, Odisha, Bhubaneswar, Dist-Khurda/ Principal Secretary to Govt., School and Mass Education, Odisha, Bhubaneswar, Dist-Khurda for information and necessary action.



(J.P.Patnaik)
Addl.Govt.Advocate

N.C. SANTHOSH v. STATE OF KARNATAKA

617

(2020) 7 Supreme Court Cases 617

3-Judge
Bench
2020
March 4

(BEFORE R. BANUMATHI, A.S. BOPANNA AND HRISHIKESH ROY, JJ.)

a N.C. SANTHOSH .. Appellant;

Versus

STATE OF KARNATAKA AND OTHERS .. Respondents.

Civil Appeals Nos. 9280-81 of 2014[†] with Nos. 1996 of
2020[‡] and 1997 of 2020^{††}, decided on March 4, 2020

b A. Service Law — Appointment — Compassionate appointment —
Norms/Rules/Regulations applicable — Relevant date — R. 5 proviso (as
amended w.e.f. 1-4-1999) and R. 9(3) (as amended w.e.f. 28-5-2000) of
Karnataka Civil Services (Appointment on Compassionate Grounds) Rules,
1996 — Under amended provision minor dependant of deceased employee had
c to apply within one year of date of death of deceased employee and should have
attained age of 18 yrs on day of making application, while under unamended
provision minor dependant was entitled to apply till one year of attaining
majority — Held, norms prevailing on date of consideration of application
would be basis for considering claim for compassionate appointment

— Dependant of government employee, in absence of any vested right
d accruing on death of government employee, can only demand consideration
of his/her application but is disentitled to seek consideration in accordance
with norms as applicable on day of death of deceased employee — In
instant case, appellants were minors at time of death of government employee
and had attained 18 yrs of age beyond stipulated one year — Hence,
e appellants were undeserved beneficiaries of compassionate appointment and
their appointments were rightly cancelled — Furthermore, appellants would
not be covered by transitory provision of R. 9(3) granting extension of time
for applying for compassionate appointment since it excludes application
f filed in contravention of R. 5 as amended in 1999 — Karnataka Civil
Services (Appointment on Compassionate Grounds) Rules, 1996 — R. 5
proviso (as amended w.e.f. 1-4-1999) and R. 9(3) (as amended w.e.f.
28-5-2000) (Paras 9 to 20)

f *Commr. of Public Instructions v. K.R. Vishwanath*, (2005) 7 SCC 206 : 2005 SCC (L&S) 927;
SBI v. Raj Kumar, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150; *MGB Gramin Bank v.*
Chakrawarti Singh, (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442; *N.C. Santhosh v. State*
of Karnataka, 2012 SCC OnLine Kar 7396; *Sayeda Farheen Banao v. State of Karnataka*,
2013 SCC OnLine Kar 6616; *Santosh v. Revenue Deptt.*, WP No. 28738 of 2011, order
dated 2-12-2011 (Kar), *affirmed*
g *Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539, *considered*

g † Arising from the Judgment and Order in *N.C. Santhosh v. State of Karnataka*, 2012 SCC OnLine
Kar 7396 (Karnataka High Court, WP No. 43199 of 2011, dt. 22-5-2012) and *N.C. Santhosh v.*
State of Karnataka, 2012 SCC OnLine Kar 9217 (Karnataka High Court, RP No. 750 of 2012,
dt. 9-11-2012)

h ‡ Arising out of SLP (C) No. 34878 of 2013. Arising from the Judgment and Order in *Sayeda*
Farheen Banao v. State of Karnataka, 2013 SCC OnLine Kar 6616 (Karnataka High Court, WP
No. 17004 of 2010, dt. 14-8-2013)

h †† Arising out of SLP (C) No. 24169 of 2015. Arising from the Judgment and Order in *Santosh v.*
Revenue Deptt. (Karnataka High Court, WP No. 28738 of 2011, dt. 2-12-2011)

N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 9217; *SBI v. Sheo Shankar Tewari*, (2019) 5 SCC 600 : (2019) 2 SCC (L&S) 71; *Uday Krishna Naik v. State of Karnataka*, 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648, referred to

B. Service Law — Appointment — Compassionate appointment — Generally — Reiterated that for all government vacancies equal opportunity should be provided to all aspirants as mandated under Arts. 14 and 16 of the Constitution — Compassionate appointment is exception to aforesaid rule whereby dependants of deceased employee are made eligible by virtue of policy subject to their fulfilling norms laid down by policy — Constitution of India, Arts. 14 and 16 (Paras 13 and 18)

SAIL v. Madhusudan Das, (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378; *State of H.P. v. Shashi Kumar*, (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542, affirmed

Appeals dismissed

P-D/63802/CL

Advocates who appeared in this case :

Ms Kiran Suri, Senior Advocate (Shanthkumar V. Mahale, Advocate), for the Appellant;
V.N. Raghupathy and S. Padhi, Advocates, for the Respondents.

Chronological list of cases cited

- | | <i>on page(s)</i> |
|--|------------------------------------|
| 1. (2019) 5 SCC 600 : (2019) 2 SCC (L&S) 71, <i>SBI v. Sheo Shankar Tewari</i> | 624d-e |
| 2. (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542, <i>State of H.P. v. Shashi Kumar</i> | 624f-g |
| 3. (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539, <i>Canara Bank v. M. Mahesh Kumar</i> | 624b, 624d, 624e, 624e-f |
| 4. (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442, <i>MGB Gramin Bank v. Chakrawarti Singh</i> | 624a-b, 624d |
| 5. 2013 SCC OnLine Kar 6616, <i>Sayeda Farheen Banao v. State of Karnataka</i> | 620f-g, 621f, 625c-d |
| 6. 2012 SCC OnLine Kar 9217, <i>N.C. Santhosh v. State of Karnataka</i> | 620f-g |
| 7. 2012 SCC OnLine Kar 7396, <i>N.C. Santhosh v. State of Karnataka</i> | 619a-b, 619c, 620f-g, 625c, 625c-d |
| 8. WP No. 28738 of 2011, order dated 2-12-2011 (Kar), <i>Santosh v. Revenue Deptt.</i> | 620f-g, 625c-d |
| 9. (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150, <i>SBI v. Raj Kumar</i> | 624a, 624c-d |
| 10. (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378, <i>SAIL v. Madhusudan Das</i> | 623g |
| 11. (2005) 7 SCC 206 : 2005 SCC (L&S) 927, <i>Commr. of Public Instructions v. K.R. Vishwanath</i> | 623c-d |
| 12. 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648, <i>Uday Krishna Naik v. State of Karnataka</i> | 624f |

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.— Leave granted in SLP (C) No. 34878 of 2013 and SLP (C) No. 24169 of 2015. The appellants here were the beneficiaries of compassionate appointments. But on the discovery that their appointments were made dehors the provisions of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 as amended w.e.f. 1-4-1999, (hereinafter referred to as “the Rules”), those appointments came to be cancelled. The amendment to the proviso to Rule 5 stipulated that in case of a minor dependant of the deceased government employee, he/she must apply within one year from the date of death of the government servant and he must have attained the age of eighteen years on the day of making the application. Before amendment, the minor dependant was entitled to apply till one year of attaining majority.

N.C. SANTHOSH v. STATE OF KARNATAKA (*Hrishikesh Roy, J.*) 619

a 2. When their service was terminated, the aggrieved appointees approached the Karnataka Administrative Tribunal at Bangalore (hereinafter referred to as “the Tribunal”). But the Tribunal found that the appellants were ineligible for appointment under the Rules and accordingly dismissed the related applications. The resultant writ petitions were dismissed¹ by the High Court of Karnataka at Bangalore, leading to the present appeals.

b 3. We have heard Ms Kiran Suri, learned Senior Counsel appearing for the appellant in the appeal arising from SLP (C) No. 34878 of 2013, Mr Shanthkumar V. Mahale, learned counsel appearing in CAs Nos. 9280-81 of 2014 and in the appeal arising out of SLP (C) No. 24169 of 2015. The State of Karnataka is represented by Mr V.N. Raghupathy and Mr S. Padhi, the learned counsel in the respective appeals.

c 4. Assailing the adverse decision of the Tribunal, as affirmed¹ by the High Court, the appellants contend that they have been legitimately appointed on compassionate basis and have rendered service without any blemish and therefore, the authority should not be permitted to apply the amended provisions and cancel the appointment on the ground that the appointees were ineligible to apply for compassionate appointment. Ms Kiran Suri, the learned Senior Counsel argues that Rule 5 is only procedural and is not mandatory and therefore, compassionate appointment of the dependent children who attained majority beyond one year of death of the government employee, should not be construed to be invalid. According to the appellants, their cases have to be considered under the unamended Rules which permits a minor dependant to apply for compassionate appointment within one year of attaining majority. Describing Rule 9 as a transitional provision whereunder the period for making application has been changed through various amendments, the counsel for the appellants argue that retrospective application of the amended provisions should not lead to cancellation of appointment. Moreover, since compassionate appointment was offered without any misrepresentation by the beneficiary, the appellants should not be rendered jobless now on the ground of non-eligibility of the appointees.

f 5. The respondents, on the other hand, argue that the norms applicable at the stage of consideration is relevant and here as the appellants had not attained majority within one year from the death of the government employee, they were ineligible to seek compassionate appointment under the amended provisions of the compassionate Rules. The Government Counsel contend that since compassionate appointment is an exception to the general rule governing appointment in the service of the State, the same has to be in conformity with the prescribed rules and those ineligible under the rules cannot ask for continuation of the illegal appointment. The respondents also argue that the Government has the power to rectify the mistake and to recall the illegal appointment orders as the appellants were appointed erroneously, despite their ineligibility.

h
1 N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396

6. The essential details of the appellants can be seen in the following chart:

Case	CAs Nos. 9280-81 of 2014 (N.C. Santhosh)	CA @ SLP (C) No. 34878 of 2013 (Sayeda F. Banao)	CA @ SLP (C) No. 24169 of 2015 (Sri Santosh)
Deceased government servant	N.H. Chandra Gowda	Shakila Jabeena Ara Begum	M. Indranna Reddy
Dependant/Appointee	N.C. Santhosh	Sayeda Farheen Banao	Sri Santosh
Date of birth	25-6-1982	12-5-1982	24-3-1983
Parent's death	25-1-1998	24-5-1994	11-11-1998
Minor's majority	25-6-2000	12-5-2000	24-3-2001
Application for compassionate appointment	First, mother applied on 28-2-1998. Then after attaining majority appellant applied on 29-6-2000.	First, father applied but was rejected on 12-6-1997. Then after attaining majority, the appellant applied on 25-9-2000.	1-7-2001
Appointment	25-8-2000	20-9-2001	14-12-2004
Removal	4-11-2003	I. 15-6-2005 but reinstated on 4-1-2006 on the Tribunal's order. II. Removed again on 28-12-2006 and relieved on 2-1-2007 on disciplinary ground	18-2-2007
Karnataka Administrative Tribunal	2-7-2008	21-4-2009 — Disciplinary action not warranted but termination upheld for unmerited appointment.	15-6-2011
Bangalore High Court	22-5-2012 ¹ (WP) and 9-11-2012 ² (Review)	14-8-2013 ³	2-12-2011 ⁴

7. Some additional aspect needs to be noticed to complete the factual details pertaining to the appeal arising out of SLP (C) No. 34878 of 2013 filed by Sayeda F. Banao. In this case, on the death of the appellant's mother on 24-5-1994, first, a request was made by the appellant's father to provide him

1 N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 7396
2 N.C. Santhosh v. State of Karnataka, 2012 SCC OnLine Kar 9217
3 Sayeda Farheen Banao v. State of Karnataka, 2013 SCC OnLine Kar 6616
4 Santosh v. Revenue Deptt., WP No. 28738 of 2011, order dated 2-12-2011 (Kar)

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a appointment on compassionate ground which, however, was rejected by the authorities on 12-6-1997. Thereafter, the appellant after attaining majority on 12-5-2000 made an application for compassionate appointment on 25-9-2000 and was appointed as a Second Division Assistant on 20-9-2001. She was served with a show-cause notice dated 2-6-2005 on the ground that she had not attained the age of 18 years within one year from the date of death of the government servant and accordingly, her service was terminated vide the order dated 15-6-2005.

b 7.1. Challenging the order of termination, the appellant filed application before the Tribunal. The Tribunal vide order dated 20-10-2005 set aside the termination order holding that the service of the appellant was terminated without holding proper enquiry under Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 and directed her reinstatement, reserving liberty to the State in accordance with law.

c 7.2. Pursuant to the order of the Tribunal, the appellant was reinstated in service on 4-1-2006. Thereafter, an enquiry was initiated against her under Rule 11 of the said Rules alleging misconduct and misrepresentation of her age at the time of submission of her application seeking appointment on compassionate ground. The appellant was then removed from the service by order dated 28-12-2006 and when her appeal was rejected by the appellate authority on 30-8-2007, she again approached the Tribunal. In her OA No. 4901 of 2007, the Tribunal vide its order dated 21-4-2009 found that there was no misconduct on the part of the appellant. Nevertheless, the Tribunal affirmed the cancellation of the appointment with the finding that the appointment was made de hors the amended Rule 5 of the KCS (Appointment on Compassionate Grounds) Rules and thus, the cancellation of appointment was found to be justified by the Tribunal. The appellant's review petition was also dismissed by the order dated 3-12-2009. The resultant writ petition filed by the appellant challenging cancellation of her appointment and the order of the Tribunal were dismissed, by the High Court under the impugned judgment dated 14-8-2013³.

f 7.3. Though, certain additional factual details are seen in the appeal relating to Sayeda Farheen Banao, but core issue is no different from the other cases. The question here too is whether her appointment on compassionate ground, was in violation of the Karnataka Civil Services (Appointment on Compassionate Ground) Rules, 1998.

g 8. The action taken by the respondents in cancellation of appointment is under the provisions of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 and therefore the relevant Rules are extracted hereinbelow:

h

³ *Sayeda Farheen Banao v. State of Karnataka*, 2013 SCC OnLine Kar 6616

8.1. Unamended Rule 5:

“5. Application for appointment.—Every dependant of a deceased government servant, seeking appointment under these Rules shall make an application within one year from the date of death of the government servant, in such form, as may be notified by the Government, from time to time, to the Head of the Department under whom the deceased government servant was working:

Provided that in the case of a minor, application shall be made within a period of one year after attaining majority.”

8.2. Following the amendment w.e.f. 1-4-1999, the proviso to Rule 5 reads:

“Provided that in the case of a minor, he must make an application within one year from the date of death of the government servant and he must have attained the age of eighteen years on the date of making the application:

Provided further that nothing in the first proviso shall apply to an application made by the dependant of a deceased government servant, after attaining majority and which was pending for consideration on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998.”

8.3. Following the 28-5-2002 amendment, Rule 9(3) reads as under:

“9. (3) All applications for appointment on compassionate grounds made between the 13th day of September, 1996 and the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) 3rd Amendment Rules, 2002 by the dependants of government servants who died on or after 20-10-1989 (other than the applications made by such dependants after the first day of April, 1999 and till the date of such commencement in contravention of the first proviso to Rule 5 which are:

(i) rejected on the ground that they were not made within the period specified in Rule 5, or

(ii) pending on such date of commencement, shall be deemed to have been made within the period specified under Rule 5 and shall be reconsidered or as the case may be considered for appointment subject to other provisions of these Rules.”

9. While Rule 5, as it originally stood, enabled a minor dependant to apply within one year after attaining majority, the rule-making authority with the amendment effected from 1-4-1999 stipulated an outer limit of one year from the date of death of the government servant for making application for compassionate appointment. The validity of the amended Rules is not challenged in any of the present proceedings. Following the amendment, the norms clearly suggest that the earlier provision which enabled a minor dependant to apply on attaining majority (may be years after the death of the government servant), has been done away with. The object of the amended provision is to ensure that no application is filed beyond one year of the death of the government employee. The consequence of prohibiting application by a minor beyond one year from the date of death of the parent can only mean that

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a the appellants were undeserving beneficiaries of compassionate appointment as they attained majority well beyond one year of the death of their respective parents.

b 10. In all these cases, when the government employee died, the appellants were minor and they had turned 18, well beyond one year of death of the parent. As can be seen from the details in the chart, the dependants attained majority after a gap of 2-6 years from the respective date of death of their parents and then they applied for appointment. By the time, the dependant children turned 18, the amended provisions became operational w.e.f. 1-4-1999. As such their belated application for compassionate appointment should have been rejected at the threshold as being not in conformity with proviso to Rule 5. The appellants applied for compassionate appointment (after attainment of majority), well beyond the stipulated period of one year from the date of death of the parent, and therefore, those applications should not have been entertained being in contravention of the Rules.

c 11. The provision of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 was considered in *Commr. of Public Instructions v. K.R. Vishwanath*⁵. Speaking for the Division Bench, Dr Arijit Pasayat, J. noted that the effect of the amended second proviso is that, unless the application is pending at the time of commencement of the Amendment Rules, the same can have no bearing on the claim for compassionate appointment. Thus, belated application filed by the dependant on attaining majority beyond one year from the date of death of the government employee would not be a valid application, consistent with the provisions of the Rules.

d 12. Insofar as the appellant's claim to legitimacy of appointment on the basis of Rule 9(3) of the Rules is concerned, a reading of Rule 9(3) suggests that it is a transitory provision granting extension of time for applying for compassionate appointment. But, the transitory provision excludes application filed in contravention of Rule 5, as amended in 1999. In other words, the applications filed by the minor dependants who had not attained majority within one year from the date of death of the government servants will be in contravention of Rule 5. Therefore, we are of the considered view that the cases of the appellants are not covered by the transitory provision of Rule 9(3) introduced by the Notification dated 28-5-2002.

e 13. It is well settled that for all the government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In *SAIL v. Madhusudan Das*⁶ it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

f h
5 (2005) 7 SCC 206 : 2005 SCC (L&S) 927

6 (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378

14. This Court in *SBI v. Raj Kumar*⁷ while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognised in this judgment. Similarly, in *MGB Gramin Bank v. Chakrawarti Singh*⁸ this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per the scheme existing on the date of death of the government employee.

15. However, in *Canara Bank v. M. Mahesh Kumar*⁹ in the context of major shift in policy, whereunder, instead of compassionate appointment (envisaged by the scheme dated 8-5-1993), ex gratia payment was proposed (under the Circular dated 14-2-2005), the Court adopted a different approach. Noticing the extinguishment of the right to claim appointment, this Court held the "dying in harness scheme" which was prevalent on the death of the employee, be the basis for consideration.

16. A two-Judge Bench headed by Uday U. Lalit, J. noticed the Supreme Court's view in *SBI v. Raj Kumar*⁷ and *MGB Gramin Bank v. Chakrawarti Singh*⁸ on one side and the contrary view in *Canara Bank v. M. Mahesh Kumar*⁹ and felt the necessity of resolution of the conflicting question on whether the norms applicable on the date of death or on the date of consideration of application should apply. Accordingly, in *SBI v. Sheo Shankar Tewari*¹⁰, the Court referred the matter for consideration by a larger Bench so that the conflicting views could be reconciled.

17. The above discussion suggest that the view taken in *Canara Bank v. M. Mahesh Kumar*⁹ is to be reconciled with the contrary view of the coordinate Bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on *Canara Bank v. M. Mahesh Kumar*⁹ as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik v. State of Karnataka*¹¹, it can not be said that the appellant's claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the government employee.

18. In the most recent judgment in *State of H.P. v. Shashi Kumar*¹² the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of

7 (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150

8 (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442

9 (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539

10 (2019) 5 SCC 600 : (2019) 2 SCC (L&S) 71

11 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648

12 (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542

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a the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.

b 19. Applying the law governing compassionate appointment culled out from the abovesited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

c 20. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed¹ by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments^{1, 3, 4}, the appeals are found devoid of merit and the same are dismissed.

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h ¹ *N.C. Santhosh v. State of Karnataka*, 2012 SCC OnLine Kar 7396
³ *Sayeda Farheen Banao v. State of Karnataka*, 2013 SCC OnLine Kar 6616
⁴ *Santosh v. Revenue Deptt.*, WP No. 28738 of 2011, order dated 2-12-2011 (Kar)