A

LALSAI KHUNTE

v.

NIRMAL SINHA AND ORS.

FEBRUARY 27, 2007

B

[A.K. MATHUR AND V.S. SIRPURKAR, JJ.]

Representation of the People Act, 1951:

C

S. 8(3)—Disqualification on conviction—Suspension of sentence while granting bail—Held, suspension does not amount to temporary stay of conviction—Conviction still remains—Specific order staying conviction has to be sought which was not done—Election rightly set aside by High Court—Code of Criminal Procedure, 1973—s.389—Penal Code, 1860—ss. 420/34, 468.

D

Appellant was elected as a Member of Legislative Assembly. His election was challenged in an election petition on the ground that he was convicted under ss. 420/34 and 468 IPC and was sentenced to two years rigorous imprisonment about 1 ½ years before his filing the nomination papers for the said election and, as such, he was disqualified under s.8(3) of the

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Representation of the People Act, 1951. The appellant resisted the challenge stating that execution of the judgment and the conviction was stayed by the appellate court. The single Judge of the High Court set aside the election of the appellant holding that his conviction was not stayed but suspended. Aggrieved, the returned candidate filed the appeal.

F

Dismissing the appeal, the Court

HELD: The appellate Court while granting the appellant bail only suspended the order of the trial court. Thus, suspension does not amount to temporarily washing out the conviction. The conviction still remains, only the

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operation of the order and the sentence remain suspended; that does not amount to temporary stay of the conviction. A specific order staying conviction has to be sought, which has not been done. The view taken by the single Judge of the High Court is correct and there is no ground to interfere with the same.

[Paras 14 and 15] [335-E, F]

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K. Prabhakaran **v.** *P. Jayarajan,* **[2005] 1 SCC 754;** *Ravikant S. Patil* **v.** *Sarvabhouma S. Bagali,* **(2006) 12 SCALE 295;** *Navjot Singh Sidhu* **v.** *State of Punjab,* **JT (2007) 2 SC 382 and** *Rama Narang* **v.** *Ramesh Narang and Ors.,* **[1995] 2 SCC 513, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4055 of 2006.

From the Final Judgment and Order dated 1.8.2006 of the High Court of Judicature of Chhattisgarh at Bilaspur in EP No. 9/2004.

Ravindra Shrivastava, Dharam Bir Raj Vohra, Rajkumar Gupta, Kunal Verma, M. Mannan, Arjun Garg and Rajul Shrivastava for the Appellant.

Satya Pal Jain, Vivek Goyal and Gopal Prasad for the Respondents.

The Judgment of the Court was delivered by

A.K. MATHUR, J. 1. This appeal is directed against the order dated 1.8.2006 passed by the learned Single Judge of the Chhattisgarh High Court at Bilaspur in Election Petition No. 9/2004 whereby the learned Single Judge has allowed the election petition in part and set aside the election of the appellant for Malkharaud Assembly Constituency No. 38 to the Chhattisgarh State Legislative Assembly. Aggrieved against the said order the present appeal was filed.

2. The Election Commission of India by Notification dated 7.11.2003, notified the election to the Legislative Assembly of the State of Chhattisgarh inviting persons to submit their nomination papers between 7.11.2003 to 14.11.2003 and 15.11.2003 was the date of scrutiny of the nomination papers & the last date for withdrawal of candidature was 17.11.2003. The election was fixed for 2nd December, 2003. Nine candidates filed their nominations. After scrutiny, petitioner along with respondents Nos. 1 to 7 remained in contest. The polling took place on 2nd December, 2003 and the result was declared on 4th December, 2003 declaring the appellant as elected for constituency. The appellant was convicted by the Court of Additional Chief Judicial Magistrate, Sakti in Criminal Case No. 208/91- State of Chhattisgarh Vs. Lal Sai and two others under Section 420 read with Sections 34 and 468 read with Section 34 of the IPC and punished for two years. , rigorous imprisonment on each count and convicted under section 471 of the IPC and punished with rigorous imprisonment for one year by judgment and order dated 9.5.2002. Aggrieved against this order appellant filed appeal before District Judge and

A learned Additional Sessions Judge by his order dated 31.5.2002 released appellant on furnishing Bond & Security & suspended judgment & Order of Addittional Chief Judicial Magistrate dated 9.5.2002. All candidates were required to submit their nomination alongwith their declaration and affidavit wherein they were required to disclose particulars of conviction for two years or more. The appellant Lalsai though he was convicted and was disqualified B but mislead the returning officer and concealed the vital information in the affidavit of his conviction. Therefore, the returning officer could not cancel his nomination.

3. The lost candidate filed the present election petition raising the C question of disqualification of appellant under Section 8(3) of the Representation of People Act, 1951 (hereinafter referred as 'the R.P. Act'). The defence of the appellant was that the execution of judgment and conviction dated 9.5.2002 was stayed by the appellate Court by its order dated 31.5.2002. Therefore, the returning Officer rightly rejected the objection raised before him during the scrutiny and he was not disqualified and is not guilty of D suppression of the facts. He also took the plea that the election petitioner did not deposit the security amount within the prescribed time period, therefore, petition be dismissed being barred by time. The security deposit was made on 19.1.2004 whereas the election petition was filed on 17.1.2004. As such election petition is barred by time. However, it may be stated at the outset that so far as this objection is concerned we ourselves checked up the date E and we find that the election petition was filed on 19.1.2004 with security amount. Hence, this objection is factually incorrect and overruled.

4. The question before us is whether the order passed by the appellate Court in a Criminal Case on 9.5.2002 whereby the conviction and sentence of F the appellant was suspended, whether this amounts to staying the conviction or not? All other questions are not relevant except the aforesaid question. However, learned Single Judge after relying on decision of this Court in the case of *K. Prabhakaran* v. *P. Jayarajan* reported in [2005] 1 SCC 754, held that the returning officer committed an illegality in accepting the nomination of the appellant because the appellant's conviction was not stayed but G suspended. Therefore, incumbent was disqualified at the time of scrutiny and accordingly the learned Judge decided this issue in favour of the election petitioner and consequently the election petition was allowed and election was set aside. Hence, the present appeal.

H 5. We have heard learned counsel for the parties and perused the

record. A

6. The main question before us is whether the view taken by the learned single Judge of the High Court is correct or not?

7. Section 8(3) of the Representation of People Act, 1951 is reproduced hereunder: B

"8. *Disqualification on conviction for certain offences.*-

(1) .....

(2) C

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years (other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. D

(4) ....."

8. The legal position is already crystallized by this Court in the case of *K. Prabhakaran* (Supra) wherein it was held as under:

"42. What is relevant for the purpose of Section 8(3) is the actual E period of imprisonment which any person convicted shall have to undergo or would have undergone consequent upon the sentence of imprisonment pronounced by the court and that has to be seen by reference to the date of scrutiny of nominations or date of election. All other factors are irrelevant. A person convicted may have filed an F appeal. He may also have secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure, 1973. But that again would be of no consequence. A court of appeal is empowered under Section 389 to order that pending an appeal by a convicted person the execution of the sentence or order appealed against be suspended and also, if he G is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. It will be useful to refer in this context to a Constitution Bench judgment of this Court in *Sarat Chandra Rabha* v. H

A *Khagendranath Nath?* The convict had earned a remission and the period of imprisonment reduced by the period of remission would have had the effect of removing disqualification as the period of actual imprisonment would have been reduced to a period of less than two years. The Constitution Bench held that the remission of sentence
B under Section 401 of the Criminal Procedure Code (old) and his release from jail before two years of actual imprisonment would not reduce the sentence to one of a period of less than two years and save him from incurring the disqualification.

"An order of remission thus does not in any way interfere with the
C order of the court; it affects only the execution of the sentence passed by the court and free the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have
D of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court."

9. Recently this Court in the case of *Ravikant S. Patil* v. *Sarvabhouma*
E *S. Bagali* reported in (2006) 12 SCALE 295 has clearly held that the Court has enough power to stay the conviction. It was held as under:-'

"it deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the
F sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may, insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying
G that consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention
H of the respondent that the disqualification arising out of conviction

continues to operate even after stay of conviction." A

10. Again recently in the case of *Navjot Singh Sidhu* v. *State of Punjab,* reported in T (2007) 2 SC 382, Hon'ble Court while entertaining the appeal of accuse stayed the conviction. The relevant portion of the judgment reads as under:

B

> "13.1 The Act provides not only the eligibility and qualification for membership of House of People and Legislative Assembly but also for disqualification on conviction and other matters. The Parliament in its wisdom having made a specific provision for disqualification on conviction by enacting Section 8, it is not for the Court to abridge or expand the same. The decisions of this Court rendered in *Rama Narang V. Kant S. Patil* v. *Sarvabhouma S. Bagali* (Supra) having recognized the power possessed by the Court of appeal to suspend or stay an order of the conviction and having also laid down the parameters for exercise of such power, it is not possible to hold, as a matter of rule, or to lay down, that in order to prevent any person who has committed an offence from entering the Parliament or the Legislative Assembly the order of the conviction should not be suspended. The Courts have to interpret the law as it stands and not on considerations which may be perceived to be morally more correct or ethical."

C D E

11. Therefore, this Court in recent decisions held that the appellate Court has power to stay the execution of the conviction and if appellate Court has stayed the conviction then in that case, this will not operate as a disqualification. But simply order of suspension of the sentence will not operate as staying the conviction. It was specifically mentioned that the stay of order of the conviction will mean it is temporarily non-operative. F

12. As already mentioned above, in the present case it is clearly transpired that the appellate Court suspended the order of the trial court dt. 9th May, 2002 and granted the bail to the accused appellant. The suspension does not mean the stay of the conviction. We have ourselves seen the application for suspension of sentence. The said application is a routine application under Section 389 whereby the appellant sought for the suspension of sentence. There is nothing in that application to suggest that the applicant therein had sought the stay of conviction in contra-distinction to the suspension of sentence. In *Ravi Kant Patel's* case cited supra, it will be seen that an application for stay of conviction was specifically filed specifying the G H

A consequences if the conviction was not stayed. This Court had taken that fact into consideration while holding that in that case the conviction was specifically stayed. Such is not the case here. If the incumbent had been vigilant enough, he could have moved the court even later on after obtaining the stay of conviction particularly in view of the fact that he wanted to contest the election but that was not done.

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13. In the case of *Rama Narang* v. *Ramesh Narang and Ors.*, reported in [1995] 2 SCC 513 their Lordships were examining the effect of conviction under the Companies Act, 1956, that what is the effect of the conviction of Managing Director for an offence involving moral turpitude as disqualification and suspension of that conviction by the appellate court. This Court after C examining the question took the view that Section 389(1) of the CR.P.C. confers the power on appellate Court to stay the operation of the order of the conviction. If the order of conviction is to result to some disqualification of the type mentioned in Section 267 of the Companies act, a narrow meaning should not be given to Section 389(1) of the Code to bar the Court from D granting an order staying operation of order of conviction in a fit case. Therefore, their Lordships were very clear that Section 389(1) of the Code empowers the appellate court to stay the conviction also. But suspension will not amount to staying the conviction. It was held as under:

> E That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the F court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both G the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be H found in Section 389(1) of the Code. We are, therefore, of the opinion

that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of (sic or) suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company."

14. As already pointed out above that on 31st May, 2002, the appellate Court while granting him the bail only suspended the impugned order dated 9th May, 2002. Thus suspension does not amount to temporarily washing out the conviction. The conviction still remains, only the operation of the order and the sentence remain suspended that does not amount to temporary stay of the conviction. A specific order staying conviction has to be sought.

15. Hence, the view taken by the learned Single Judge of the Chhattisgarh High Court is correct and there is no ground to interfere. This appeal is dismissed with no order as to costs.

R.P. Appeal dismissed.

A FOOD CORPORATION OF INDIA AND ANR.

v.

RAM KESH YADAV AND ANR

FEBRUARY 27, 2007

B [TARUN CHATTERJEE AND R.V. RAVEENDRAN, JJ.]

Service Law—Appointment—Compassionate appointment—Entitlement of -Employee voluntarily retired from service his but son was denied C *compassionate appointment since employee crossed age limit of 55 years when applied for retirement—Held: Compassionate appointment cannot be directed de hors the policy—But application was composite one, for conditional voluntary retirement on medical grounds subject to appointment of son in his place -Employer having accepted the offer unconditionally and retired the employee from service, it was implied that it accepted the* D *conditional offer in entirety—It could not avoid performance of condition subject to which offer was made—Direction for grant of employment by High Court upheld.*

In terms of the Circular benefit of compassionate appointment was extended to the dependants of departmental workers, who sought voluntary E **retirement on medical grounds at their own request, subject to certain conditions. Second Respondent-Departmental worker in appellant company, before attaining the age of superannuation made an application seeking compassionate appointment of his son on his voluntary retirement on medical grounds. At that time his age was more than 55 years. Respondent was retired** F **from service. However, the request for the compassionate appointment was rejected since second respondent was aged more than 55 years on the date of filing the application as against the maximum age of 55 years prescribed under the scheme. Respondents filed writ petition for quashing the order and sought direction to the appellant to appoint the first respondent-son in place of second respondent who had retired on medical grounds. Single Judge of High Court** G **dismissed the writ petition holding that the first respondent was not entitled to compassionate appointment, as the second respondent had already completed the age of 55 years when he made the application. Respondent filed an appeal. Division Bench allowed the same holding that once appellant accepted the request of an employee for retirement on medical grounds under the**

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compassionate appointment scheme, it was obliged to give appointment to the dependant of such employee and his request cannot be turned down on any technical ground. Hence the present appeal. A

Dismissing the appeal, the Court

HELD: 1.1. An employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed de hors the policy. [Para 7] [343-E] B

Life Insurance Corporation of India v. *Asha Ramchandra Ambedkar,* [1994] 2 SCC 718, referred to. C

1.2. The compassionate appointment scheme clearly bars compassionate appointment to the dependant of an employee who seeks voluntary retirement on medical grounds, after attaining the age of 55 years. There is a logical and valid object in providing that the benefit of compassionate appointment for a dependant of an employee voluntarily retiring on medical grounds, will be available only where the employee seeks such retirement before completing 55 years. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation, to take advantage of the scheme and seek voluntary retirement at the fag end of their service, on medical grounds, and thereby virtually creating employment by 'succession'. It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory. [Para 7] [343-A, F, G, H,] D E

1.3. The issue of voluntary retirement of an employee on medical grounds and the issue of compassionate appointment to a dependent of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is retired, an application for appointment of a dependant on compassionate grounds can be made. Compassionate appointment of a dependant is not an automatic consequence of acceptance of voluntary retirement. Firstly, all the conditions prescribed in the Scheme should be fulfilled. Even if all conditions as per guidelines are fulfilled, there is no 'right' to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. [Para 8] [344-B, C] F G H

A 1.4. The second respondent's application was a composite application for conditional voluntary retirement on medical grounds, subject to appointment of his son in his place. The application specifically stated that he desired to go on retirement on medical grounds *if his son was provided with employment in his place.* The second Respondent had thus clearly indicated that if employment on compassionate ground was not provided to his son, he B was not interested in pursuing his request for retirement on medical grounds. FCI ought to have informed the employee that he could not make such a conditional offer of retirement contrary to the scheme. But for reasons best known to itself, FCI did not choose to reject the conditional offer, but unconditionally accepted the conditional offer. [Para 9] [344-E, F, G]

C 1.5. When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counter offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by the offeror and then reject the condition subject to which the offer is made. [Para 10]

D 1.6. When FCI accepted the offer unconditionally and retired the second respondent from service, it was implied that it accepted the conditional offer in entirety, that is the offer made (voluntary retirement) as also the condition subject to which the offer was made (appointment of his dependant son on compassionate grounds). In his application, the second respondent made it E clear that he desired to retire voluntarily on medical grounds only if his son (first respondent herein) was provided with employment. If FCI felt that such a conditional application was contrary to the Scheme or not warranted, it ought to have rejected the application. Alternatively, it ought have informed the employee that the compassionate appointment could not be given to his son F because he (the employee) had already completed 55 years of age and that it will consider his request for retirement on medical grounds delinking the said issue of retirement, from the request for compassionate appointment. In that event, the employee would have had the option to withdraw his offer itself. Having denied him the opportunity to withdraw the offer, and having retired him by accepting the conditional offer, FCI cannot refuse to comply with the G condition subject to which the offer was made. [Para 11] [345-E, F, G, H, A]

1.7. An employee is entitled to continue in service till the age of superannuation. Even if he is having some medical ailment, due to economic reasons, he may choose to continue up to 60 years. If the employer found that H the employee was physically unfit to carry on his work, the employer was at

liberty to refer his case to a Medical Board and on the basis of its opinion, compulsorily retire the employee on medical grounds. A compulsory retirement by the employer on medical grounds is different from a voluntary retirement by the employee on medical grounds. In fact the scheme earlier provided for compassionate appointment of a dependant, only when an employee was (compulsorily) retired by the employer, on medical grounds. The scheme was expanded on 3.7.1996, to provide for compassionate appointment for a dependant, when an employee voluntarily retired on medical grounds.

[Para 12] [346-B, C, D]

1.8. FCI having accepted the offer and accepted performance of the offer by the second Respondent, cannot avoid performance of the condition subject to which the offer was made. Nothing prevented FCI from rejecting the application of the employee outright, or inform the employee before accepting the offer of voluntary retirement that it could not accept the condition, so that the employee would have had the option to withdraw the offer itself. [Para 14] [346-A, G, H]

1.9. The denial of employment was not on the ground that the competent authority on considering the relevant circumstances, found that it was not a fit case for appointment on compassionate grounds. It is true that in the normal course, if the employee's son was found eligible for employment on compassionate grounds, the court ought to have directed consideration of his case in terms of the scheme instead of issuing a mandamus to give employment. But the conditional offer having been accepted, FCI could not thereafter refuse appointment. It is found that FCI did not dispute the fact that the first respondent was eligible and suitable for the post of handling labour. Nor did FCI contend that there was no vacancy. The employee had retired in 2000. For nearly 7 years, his son has been denied employment. On the peculiar facts, it is not appropriate to interfere with the direction given by the High Court to appoint the first respondent, though for different reasons. However, neither the retired employee nor his son will, be entitled to claim any monetary or other benefits on the ground of delay in issuing the offer of appointment.

[Paras 15 and 17] [347-C-E-G]

1.10. The direction for grant of employment is upheld only because of the acceptance of an inter-linked conditional offer. Where the offer to voluntarily retire and request for compassionate appointment are not inter-linked or conditional, FCI would be justified in considering and deciding each request independently, even if both requests are made in the same letter or application. [Para 16] [347-F]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3451 of 2006.

From the Judgment and final Order dated 19.9.2005 of the High Court of Judicature at Allahabad in Special Appeal No. 615 of 2005.

Ajit Pudussery for the Appellants.

B

Bharat Sangal, R.R. Kumar, Samyadip Chatterji and Suchita Sharma for the Respondents.

The Judgment of the Court was delivered by

C **RAVEENDRAN, J.** 1. This appeal by special leave is filed against the judgment dated 19.9.2005 of the Allahabad High Court in Special Appeal No. 615 of 2005 affirming the judgment dated 29.3.2005 of a learned Single Judge in CMWP No. 13032 of 2003.

2. The Appellant - Food Corporation of India (for short 'FCI'), introduced D a scheme for granting compassionate appointment to dependants of departmental workers, who died while in service or who were retired by FCI on medical grounds, vide Circular dated 2.2.1977. By a subsequent circular dated 3.7.1996, the said benefit of compassionate appointment was extended to dependants of departmental workers who sought voluntary retirement on medical grounds at their own request, subject to the conditions stipulated in E the said circular. The conditions, in brief, are:

(a) The worker should seek voluntary retirement on medical grounds before completing the age of 55 years.

(b) Such request should be accompanied by a medical certificate F issued by an Authorised Medical Officer, subject to verification by FCI.

(c) The benefit of compassionate appointment shall be given only to a male dependant, (of the age group between 18 years and 30 years), that too in the handling labour category, subject to an G Authorised Medical Officer confirming the medical fitness of such dependant to handle/carry bags of big size.

(d) The application for compassionate appointment shall be made in the prescribed form, within three months from the date of retirement.

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(e) Compassionate appointment will be given only in deserving cases, that is, where there is no earning member in the family of the retired worker, or where it is found that the financial benefits which are available to the worker on retirement will not be sufficient to meet the needs for running the family.

The Scheme designated the Senior Regional Manager/Regional Manager as the competent authority and made it clear that compassionate appointment is discretionary. The Scheme stated :

> "Notwithstanding anything contained in the above, the compassionate ground appointment is not as a matter of right but purely at the discretion of the competent authority taking into the account the circumstances and conditions of the family of the medically retired workers and also subject to availability of the vacancy."

3. The Second Respondent was working as a Departmental worker (Handling Labour) in the Azamgarh Food Storage Depot of the appellant. The date of birth of second respondent was 6.2.1944. In the usual course, he would have attained the age of superannuation on 6.2.2004. The second respondent made a composite application dated 26.4.1999 seeking compassionate appointment to his son (the first respondent) on his voluntary retirement on medical grounds, stating thus :

> "Sub: Appointment of my son Sri Ram Kesh in consideration of my retirement on medical ground
>
> .....as I am unable to do handling work of loading due to inability of carrying bags, *I desire to go on retirement on medical ground, if my above-named son would be provided with an employment in my place as handling labour.* Further I am the only earning member of my family and on my retirement if none of my family is employed, the entire family would be put to suffer hardship. .....Kindly allow me to go on retirement on medical ground and provide employment to my above named son in my place as handling labour....."
>
> [Emphasis supplied]

As on the date of the said application (26.4.1999), his age was 55 years 2 months and 20 days. In pursuance of the said application, the second respondent was retired from service as on 31.7.2000, vide office order dated 29.7.2000. Before that date, the Azamgarh Branch of FCI had also forwarded

A a proposal dated 26.5.2000 to its Lucknow Regional Office, for appointing the second respondent's son (first respondent) on compassionate grounds. The Regional Office rejected the said request for compassionate appointment vide letter dated 19/21.12.2001 addressed to the Azamgarh Office on the ground that second respondent was aged 55 years 2 months and 20 days as on the date of his application as against the maximum age of 55 years prescribed B under the scheme. As the said rejection was not communicated to the respondents, they went on approaching the Azamgarh Office for first Respondent's appointment. Ultimately, they took up the matter through the Vice-President of the Employees' Union on 10.3.2003. Only thereafter, that is on 21.3.2003, a copy of the said order of rejection dated 19/21.12.2001 was C made available to the Respondents. Immediately, the respondents filed CMWP No. 13032 of 2003 for quashing the order dated 19/21.12.2001 and seeking a direction to FCI to appoint the first respondent to the post of handling labour in place of second respondent who had retired on medical grounds.

4. The said writ petition was resisted by FCI on the ground that the first D respondent was not entitled to appointment on compassionate grounds, as the second respondent had already crossed the age limit of 55 years when he made the application on 26.4.1999.

5. A learned Single Judge accepted the contention of the FCI and held that the first respondent was not entitled to compassionate appointment, as E the second respondent had already completed the age of 55 years when he made the application. Consequently, the writ petition was rejected on 29.3.2005. The appeal filed by the respondents against the said order was allowed by a Division Bench of the High Court by order dated 19.9.2005. The Division Bench was of the view that once FCI accepted the request of an employee F for retirement on medical grounds under the compassionate appointment scheme, it was obliged to give appointment to the dependant of such employee and his request cannot be turned down on any technical ground. It followed the decision of another Division Bench (*Nizamuddin* v. *The District Manager,* FCI Special Appeal No. 579/2005 decided on 11.5.2005) which took the view that FCI cannot take an inconsistent stand by 'allowing medical retirement for G the father, and disallowing compassionate appointment for the son'. The said order is challenged by FCI in this appeal by special leave.

6. The appellant contends that under the scheme, appointment of a dependant on compassionate grounds can be sought only where a worker seeking voluntary retirement on medical grounds, has not crossed the age H

limit of 55 years, in addition to fulfilling the other conditions of the scheme. As the second respondent had exceeded the said age limit of 55 years, by 2 months and 20 days, as on the date of the application for voluntary retirement, the Appellant had to refuse compassionate appointment to first Respondent. It is contended that a direction to appoint first respondent on compassionate grounds, has the effect of requiring the employer to act contrary to its rules (scheme), which is impermissible. The appellant also contends that the issue relating to retirement on medical grounds and the issue relating to compassionate appointment of a dependent, are distinct and different issues. It is submitted that if the conditions necessary for retirement on medical grounds are found to exist, the employee will be permitted to retire on medical grounds. The request for compassionate appointment would, thereafter, be examined separately and independently to find out whether the dependant was eligible and the conditions for such appointment are satisfied. It is pointed out that even if the retired employee and his dependant fulfilled all the conditions, compassionate appointment could not be claimed as a matter of right and the competent authority still had the discretion either to grant or refuse compassionate appointment, taking into account the circumstance and condition of the family of the retired employee and the availability of vacancy.

7. There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed de hors the policy. In *Life Insurance Corporation of India* v. *Asha Ramchandra Ambedkar,* [1994] 2 SCC 718, this Court stressed the need to examine the terms of the Rules/Scheme governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment. In this case, the scheme clearly bars compassionate appointment to the dependant of an employee who seeks voluntary retirement on medical grounds, after attaining the age of 55 years. There is a logical and valid object in providing that the benefit of compassionate appointment for a dependant of an employee voluntarily retiring on medical grounds, will be available only where the employee seeks such retirement before completing 55 years. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation, to take advantage of the scheme and seek voluntary retirement at the fag end of their service, on medical grounds, and thereby virtually creating employment by 'succession'. It is not permissible for the court to relax the said condition relating to age of the employee. Whenever

A a cut off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory.

8. As rightly contended by FCI, the issue of voluntary retirement of an employee on medical grounds and the issue of compassionate appointment B to a dependent of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is retired, an application for appointment of a dependant on compassionate grounds can be made. Compassionate appointment of a dependant is not an automatic consequence of acceptance C of voluntary retirement. Firstly, all the conditions prescribed in the Scheme dated 3.7.1996 should be fulfilled. Even if all conditions as per guidelines are fulfilled, there is no 'right' to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. D Therefore, the observation of the High Court in *Nizamuddin* (supra) that allowing the request of the employee for voluntary retirement on medical grounds and rejecting the application of the dependant for compassionate appointment on the ground of non-fulfilment of conditions of scheme would amount to taking inconsistent stands, is clearly erroneous.

E 9. But on facts, this case is different. The second respondent's application dated 26.4.1999 was a composite application for conditional voluntary retirement on medical grounds, subject to appointment of his son in his place. The application specifically stated that he desired to go on retirement on medical grounds *if his son was provided with employment in* F *his place.* The second Respondent had thus clearly indicated that if employment on compassionate ground was not provided to his son, he was not interested in pursuing his request for retirement on medical grounds. FCI ought to have informed the employee that he could not make such a conditional offer of retirement contrary to the scheme. But for reasons best known to itself, FCI did not choose to reject the conditional offer, but unconditionally accepted G the conditional offer. There lies the catch.

10. When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counter offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by the offeror H

and then reject the condition subject to which the offer is made. A

11. In the context of second Respondent's conditional offer of voluntary retirement contained in the letter dated 26.4.1999, FCI had, therefore, the following options:

(a) Reject the request for voluntary retirement on the ground that a conditional offer was contrary to the Scheme and it was not willing to consider any conditional offer. B

(b) Reject the request for compassionate appointment on the ground that the employee was more than 55 years of age or on the ground that it was not a deserving case or because there was no vacancy, and then refer the employee to a Medical Board for compulsory retirement on medical grounds. C

(c) Require the employee to make separate applications for voluntary retirement on medical grounds and for compassionate appointment strictly as per rules and the scheme. D

(d) Accept the request of the employee for voluntary retirement on medical grounds subject to the condition stipulated by the employee and provide appointment to his son on compassionate grounds;

When FCI accepted the offer unconditionally and retired the second respondent E from service by office order dated 29.7.2000, it was implied that it accepted the conditional offer in entirety, that is the offer made (voluntary retirement) as also the condition subject to which the offer was made (appointment of his dependant son on compassionate grounds). In his application, the second respondent made it clear that he desired to retire voluntarily on medical F grounds only if his son (first respondent herein) was provided with employment. If FCI felt that such a conditional application was contrary to the Scheme or not warranted, it ought to have rejected the application. Alternatively, it ought have informed the employee that the compassionate appointment could not be given to his son because he (the employee) had already completed 55 years of age and that it will consider his request for G retirement on medical grounds delinking the said issue of retirement, from the request for compassionate appointment. In that event, the employee would have had the option to withdraw his offer itself. Having denied him the opportunity to withdraw the offer, and having retired him by accepting the conditional offer, FCI cannot refuse to comply with the condition subject to H

A which the offer was made.

12. The appellant next contended that when the employee stated in his application that he was medically unfit to continue his work as a handling labour and also produced a medical certificate from the concerned authority declaring that he was medically unfit for the work, obviously he could not be B continued up to the age of superannuation and therefore, acceptance of his request for retirement of the second respondent by order dated 29.7.2000 could not in any event be faulted. This contention would have merited acceptance, if the employee's offer to voluntarily retire was unconditional. An employee is entitled to continue in service till the age of superannuation. C Even if he is having some medical ailment, due to economic reasons, he may choose to continue up to 60 years. If the employer found that the employee was physically unfit to carry on his work, the employer was at liberty to refer his case to a Medical Board and on the basis of its opinion, compulsorily retire the employee on medical grounds. A compulsory retirement by the employer on medical grounds is different from a voluntary retirement by the D employee on medical grounds. In fact the scheme earlier provided for compassionate appointment of a dependant, only when an employee was (compulsorily) retired by the employer, on medical grounds. The scheme was expanded on 3.7.1996, to provide for compassionate appointment for a dependant, when an employee voluntarily retired on medical grounds.

E

13. The appellant next contended that even if its action was found to suffer from some infirmity, the employee could at best contend that the action retiring him from service with effect from 31.7.2000 was illegal, but it could not be foisted with the obligation to offer employment to the son of the employee. It is, therefore, submitted that even if any relief was to be given, it ought to F have been restricted to some nominal compensation for premature retirement as at the end of 31.7.2000.

14. The question in this case is not whether the request of the respondents was contrary to the scheme. Nor is it the question, whether the scheme would be violated if the first respondent is appointed on compassionate G grounds. The limited question is whether FCI, having accepted the offer and accepted performance of the offer by the second Respondent, can refuse to perform or comply with the condition subject to which such offer was made. The answer is obviously in the negative. Having accepted the offer, FCI cannot avoid performance of the condition subject to which the offer was H made. As noticed earlier, nothing prevented FCI from rejecting the application

of the employee outright, or inform the employee before accepting the offer of voluntary retirement that it could not accept the condition, so that the employee would have had the option to withdraw the offer itself. A

15. Lastly, it was pointed out that under the scheme, the competent authority had the discretion to deny compassionate appointment even if all the conditions were fulfilled; and that, therefore, the High Court ought to have merely directed consideration of the application for compassionate appointment, instead of directing appointment. But the denial of employment was not on the ground that the competent authority on considering the relevant circumstances, found that it was not a fit case for appointment on compassionate grounds. It is true that in the normal course, if the employee's son was found eligible for employment on compassionate grounds, the court ought to have directed consideration of his case in terms of the scheme instead of issuing a mandamus to give employment. But as already observed, the conditional offer having been accepted, FCI could not thereafter refuse appointment. We also find that FCI did not dispute the fact that the first respondent was eligible and suitable for the post of handling labour. Nor did FCI contend that there was no vacancy. The employee had retired in 2000. For nearly 7 years, his son has been denied employment. On the peculiar facts, we do not find it appropriate to interfere with the direction given by the High Court to appoint the first respondent, though for different reasons. B C D E

16. We have upheld the direction for grant of employment only because of the acceptance of an inter-linked conditional offer. Where the offer to voluntarily retire and request for compassionate appointment are not inter-linked or conditional, FCI would be justified in considering and deciding each request independently, even if both requests are made in the same letter or application. Be that as it may. F

17. In view of the above, the appeal is dismissed. But neither the retired employee nor his son will, however, be entitled to claim any monetary or other benefits on the ground of delay in issuing the offer of appointment. The appellant is given two months' time from today to appoint first respondent as per High Court's order. Parties to bear their respective costs. G

N.J. Appeal dismissed.