

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.6421/2007**

% ***Date of Decision: 17.02.2011***

UOI & Ors. *Petitioners*

Through Mr.A.K.Bhardwaj & Ms. Jagrati Singh,
Advocates

Versus

Smt. Sudha Gupta *Respondent*

Through Mr. Vijay Singh Charak, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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|-----------|---|------------|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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CM No. 22036/2010

1. The above noted writ petition was disposed of by this Court by order dated 26th March, 2009. This is an application by the petitioners seeking permission to delete the name of the respondent from the wait list of the candidates for compassionate appointment.

2. Issue notice to the respondent. Mr. Vijay Singh Charak, Advocate appears for the respondent and accepts notice on her behalf.

3. The case of the applicants is that the husband of the respondent had died on 24th January, 2002, who was employed in the Govt. of India Press, Faridabad. The respondent/non-applicant had sought appointment on the compassionate ground. Since she was not given such appointment for almost three years, she preferred an original application before the Central Administrative Tribunal, Principal Bench in year 2005.

4. While contesting the pleas of the respondent about the compassionate appointment, it was contended that the respondent shall be considered on occurrence of vacancy under 5% quota and appointment letter shall be issued, however, the process of appointment shall be subject to OM dated 5th May, 2003 of DOP & T. While disposing of the application of the respondent, directions were also given to the petitioners to refer the case of the respondent to other Ministries/Departments for circulation for compassionate appointment in case the vacancies were not available in the Govt. of India Press.

5. Learned counsel for the applicants had contended that these directions were given on the basis of DOP & T OM which was issued in 1998 and the directions to refer the cases to other Ministries/Departments were withdrawn in 2001 and the case of the respondent is not to be governed as per DOP & T OM dated 22nd June, 2001.

6. Against the order of the Tribunal dated 28th November, 2005, above noted writ petition was filed by the petitioners, which was disposed of by this Court by order dated 26th March, 2009 whereby the directions of circulation of request to other Ministries/Departments were set aside. However, it was reiterated that the petitioners shall be bound by the assurance which had been given to the respondent to consider her case on occurrence of vacancies. While directing the petitioners that they will be bound by the assurance given to the respondent on occurrence of vacancies, it was not directed that pursuant to OM dated 5th May, 2003 her name will be liable to be deleted from the list of wait listed candidates for compassionate appointment after a particular time.

7. The petitioners/applicants have now contended that the compassionate appointment committee in its meeting held on 30th March, 2009 pursuant to OM dated 5th May, 2003 had decided that since the vacancies in 5% quota had not occurred for many years and as on 5th May, 2003 the number of wait listed candidates had risen to 308, it will be appropriate to delete the name of such candidates who were continuing in the list for more than three years. Consequent to the alleged decision of 30th March, 2009, the permission has been sought to delete the name of the respondent from the wait listed candidates, who was included as per her application dated 16th July, 2002. It was asserted that her name is continuing for more than six years.

8. The application of the petitioners herein is opposed by the learned counsel for the respondent contending, inter alia, that on 26th March, 2009 while disposing of the writ petition, it had not been observed by this Hon'ble High Court that pursuant to OM dated 5th May, 2003, the name of the respondent would be liable to be deleted after more than three years as on that date also pursuant to the said OM, three years had already expired from the date of her application. The learned counsel for the respondent has contended that the order dated 26th March, 2009 has become final and the tenor of the order could not be changed by the appointment committee by laying down another criteria to delete the names of those candidates who had been on the wait list for more than three years. The order dated 26th March, 2009 has not been challenged by the petitioners and by an executive order, the order passed by this Court and the assurance given by the petitioners to the respondent cannot be negated or circumvented in any manner. In the circumstances, the learned counsel has contended that the respondent is being harassed and put to unnecessary expenses and litigation without granting any relief to the respondent contrary to the assurance given by the petitioners, on account of which the writ petition was disposed of by order dated 26th March, 2009.

9. We have heard the learned counsel for the parties. The order dated 26th March, 2009 is categorical whereby the directions for circulation of the request of the respondent to other Ministries were set

aside, however, it was reiterated that the petitioners shall remain bound by the assurance given to the respondent that her case will be considered under 5% quota on occurrence of vacancy. Though it is stated that the process will be subject to DOP & T OM dated 5th May, 2003, however, the said OM does not stipulate that the candidates in the wait list shall be removed in case they do not get compassionate appointment within three years. In any case, while this Court disposed of the writ petition on 26th March, 2009, it was not held that the petitioners shall be entitled to delete the name of the respondent on completion of three years after the date of her application. In any case, even if the name of the respondent is to be deleted from the wait listed candidates seeking compassionate appointment, in the facts and circumstances, it ought to be after three years of 26th March, 2009 when the petition was disposed of and the direction to circulate request of the respondent to other Ministries/Departments was set aside. However, it was reiterated that the petitioners shall be bound by their assurance.

10. The decision of the committee, in any case, is after the decision was taken by this Court on 26th March, 2009 and by a subsequent decision by the officials of the petitioners, the tenor of the order dated 26th March, 2009 could neither be diluted nor negated in any manner. In any case if pursuant to the OM of 2003, the application of the respondent of 2002 was to be removed from the list of wait listed

candidates, the petitioners ought to have brought this to the knowledge of the Court and should have contended that the petitioners are not bound by their assurance as in terms of relevant order her name is liable to be deleted from the wait list.

11. In the circumstances, the application is misconceived and the petitioners are not entitled to delete the name of the respondent from the list of wait listed candidates for appointment on compassionate ground.

12. Considering the facts and circumstances, the application is dismissed with a cost of Rs.5,000/- payable to the respondent. Cost be paid to the respondent within two weeks.

ANIL KUMAR, J.

February 17, 2011.
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VEENA BIRBAL, J.