

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

+ **W.P. (Civil) No. 13048/2009**

% Reserved on: 12th November, 2009

Decided on: 21st December, 2009

SECRETARY (SERVICES) & ANR.

..... Petitioners

Through: Mr. Amiet Andlay, Advocate.

versus

ALPANA SINGH

..... Respondent

Through: Mr. Praduman Kumar Aggarwal,
Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

1. This is rather strange case of the Respondent being admittedly deserving of an appointment on compassionate grounds being driven to four rounds of litigation and yet not getting an appointment letter. The ostensible

ground of denial is that even though the Respondent is qualified to be appointed as a Trained Graduate Teacher (TGT) she cannot be appointed as a Lower Division Clerk (LDC). This is because of bureaucratic delays which, in our opinion, cannot be used to deny a deserving person of appointment on compassionate grounds.

2. The husband of the Respondent, late Shri Ashok Kumar died on 4th September, 1997 in a road accident while posted as TGT at the Senior Secondary Rajkiya Vidyalaya, Kalyanvas, Delhi leaving behind his mother, daughter and his widow, the Respondent herein.

3. The Respondent who was also qualified, holding Masters degree in Hindi Literature and Licentiate in Teaching (in short L.T.) degree, on 11th December, 1997 filed an application for appointment on compassionate grounds. Considering the Respondent's condition the Principal, Sarvodaya Bal Vidyalaya, Kalyanvas, Delhi forwarded and recommended her appointment on compassionate grounds for the post of TGT which was further forwarded by the Director and Head of the Department, Directorate of Education to the competent authority vide its note dated 14th December, 1998. The said recommendation was placed before the Screening Committee held on 28th January, 1999, which recommended the case of the Respondent for

appointment as the Assistant Teacher. Despite this, the Respondent was not given an appointment letter.

4. It is the case of the Petitioner herein that compassionate appointments are made only at the class 'D' or class 'C' level and that TGT being at the class 'B' level, the Screening Committee recommended the Respondent's case for appointment as Assistant Teacher and not as TGT. However, the said recommendation of the Screening Committee was turned down by the Deputy Secretary (Services) stating that the Respondent does not possess the necessary qualification that is two years JBT/ETE certificate/diploma of B. Ed./ B. El. Ed. from a recognized institute/university, for the post of Assistant Teacher (Primary). The Respondent represented against this but to no avail.

5. On 19th January, 2001 the case of the Respondent was again considered for appointment on compassionate grounds to the lower post of Grade-IV (DASS)/LDC by the Screening Committee, which recommended her for appointment as LDC by placing her at Serial No. 56A.

As the Respondent possessed the necessary qualifications even for being appointed as TGT, she requested the Petitioners for reconsideration of her case. The Respondent gave a number of representations to various authorities, however, she was not offered appointment even as LDC, awaiting

her turn. Eventually, on 4th October, 2005, the Lieutenant Governor of Delhi declined to appoint the Respondent as Assistant Teacher (Primary).

6. On 10th October, 2005 the decision of the Lieutenant Governor was duly intimated to the Respondent herein, pursuant to which the Respondent filed Original Application No. 2669/2005 before the Central Administrative Tribunal praying for directions for appointment as Assistant Teacher (Primary) on compassionate ground. In the O.A. the Respondent herein specifically mentioned that the qualification of L.T. is equivalent to B.Ed. for which she relied on the correspondence with the National Council for Teacher Education (NCTE) and Association of India Universities.

7. On 4th July, 2006 Original Application No. 2669/2005 was disposed of by remitting the case back to the Petitioners herein, to consider her qualification in the light of the letters written by NCTE and the Association of India Universities. Pursuant to the directions of the Tribunal an order was passed in consultation with the Directorate of Education dated 11th October, 2006 rejecting the case of the Respondent *inter-alia* the following grounds:

“(i) The Directorate of Education vide their letter dated 04.10.2006 stated that the essential qualification in terms of the Recruitment Rules for the post of Astd. Teacher (Primary) was two year JBT/ETE certificate/Diploma or B.Ed./B.El.Ed. from a recognized institute and Recruitment Rule in force at that time did not allow a candidate holding

qualification equivalent to B.Ed. to be appointed for the post of Assistant Teacher (Primary).

(ii) Further the information provided by NCTE to Directorate of Education, is that in case the degree has been obtained prior to the setting up of NCTE, the validity of the degree in question has to be obtained from the State Government concerned and as the Recruitment Rules of Assistant Teacher (Primary) do not specify the term any other qualification equivalent to B.Ed. further consultation with State Government was not carried out by Directorate of Education, Govt. of NCT of Delhi.

(iii) The Hon'ble High Court of Delhi vide judgment dated 17.08.2005 in the matter WPC no. 6934-36/2005 titled Sanjeev Kumar & Ors. Vs. Govt. of NCT of Delhi and others and WP (C) No. 6606-10/2005 titled Sandeep Kumar & Ors. Vs. UOI & Ors. has ordered that B.Ed. is an impermissible qualification for the post of Asstt. Teacher (Prim) and in compliance of the orders of Hon'ble High Court, Directorate of Education has amended the Recruitment Rules for the post of Asstt. Teacher (Prim) vide notification dated 8th May, 2006, wherein the qualification B.Ed. has been deleted from the education qualification required for the post of Asstt. Teacher (Primary)."

8. The Respondent again approached the Tribunal impugning the decision dated 11th October, 2006 which application was disposed of vide its order dated 28th March, 2007 by the Tribunal directing the Petitioners herein to reconsider the case of the Respondent in terms of the order dated 4th July, 2006 passed by the Tribunal in OA No.2669/2005 and also to communicate the decision with regard to the equivalence of the Respondent's qualification L.T. vis-à-vis JBT/ETE as well within a period of two months.

9. In compliance, the Petitioners again passed an order on 13th June, 2007 disposing of the application of the Respondent, stating that the Respondent possesses the qualification of Licentiate in Teaching (L.T.) and not the qualification as requisite for two years JBT/ETE Certificate/diploma or B.Ed./B.El.Ed and hence the Respondent was not eligible for appointment to the post of Assistant Teacher (Primary).

10. The Respondent filed a third application before the Tribunal being Original Application No. 1776/2007 challenging the decision of the Petitioners dated 13th June 2007. The said original application was partly allowed setting aside the order dated 13th June, 2007 with the following direction:

“Impugned order dated 13.6.2007 is set aside. Respondents are now specifically directed to undertake an exercise, in the light of the certificate issued by the Government of NCT of Delhi and associate Universities regarding equivalence of LT with B.Ed. and on its establishment, further methodology, as directed in O.A.-2669/2005, may be undertaken.....”

11. The Petitioners did not challenge any of the orders passed in the three original applications filed by the Respondent, before this Court and hence the said order have attained finality.

12. The Petitioners despite the directions by the Tribunal again rejected the case of the Respondent which compelled her to file the fourth Original Application No. 2598/2008 impugning the decision dated 28th August, 2008 before the Central Administrative Tribunal. After hearing the parties, the Central Administrative Tribunal allowed the original application vide its order dated 3rd June 2009 with a direction to consider the Respondent's case for appointment to the post of Assistant Teacher (Primary) within a period of three months by relaxing the requirement of age and offer her formal appointment within the stipulated time after such consideration. This order is impugned before us in the present petition.

13. The Petitioners have challenged before us the impugned order dated 3rd June, 2009 passed by the Central Administrative Tribunal primarily on the grounds that the Respondent did not qualify for being appointed as Assistant Teacher as her qualification of Licentiate in Teaching (L.T.) is not equivalent to two years JBT/ETE Certificate/diploma or B.Ed./B.El.Ed and thus was not fulfilling the eligibility criteria. They have also urged that since much time has lapsed now and as per the scheme of compassionate appointment, the appointment cannot be offered after three years, thus the Respondent cannot be offered appointment now, in terms of the order dated 3rd June 2009 passed by the Tribunal.

14. With regard to the first contention that the Respondent did not qualify for being appointed as Assistant Teacher, as her degree of L.T. was not equivalent to two years JBT/ETE Certificate/diploma or B.Ed./B.El.Ed learned counsel for the Petitioner places reliance on a decision rendered by this Court in the case of ***Sanjeev Kumar & Ors. Vs. Government of NCT of Delhi and Ors. W.P. (C) No. 6934-36/2005***. This Court in the said decision has held that the requisite teaching for B.Ed. and JBT/ETC are different. It held that the essential qualification, for the purpose of recruitment to the post of a primary/Assistant Teacher (Primary) is inter alia two years teacher's training certificate. Hence, other qualifications, such as B.Ed./one year's teacher's training certificate are not recognized qualifications.

15. In view of the decision rendered by this Court in the case of ***Sanjeev Kumar & Ors. (supra)*** the Respondent would not qualify for the post of Assistant Teacher. To this extent the directions of the Tribunal directing the Petitioner to consider her case for appointment to the post of Assistant Teacher (Primary) are set aside.

16. With regard to the second contention of the Petitioner, the Petitioner refers to the policy of appointments on compassionate ground, which states that it should not be made beyond a period of three years. In this regard the

Petitioner has relied upon the office memorandum dated 5th May, 2003 the relevant portion of which reads as under:

“The undersigned is directed to refer to Department of Personnel & Training OM No. 14014/6/94-Estt (D) dated October 9, 1998 and OM No. 14014/23/99-Estt (D) dated December 3, 1999 on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% of direct recruitment quota.

2. It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.”

17. However, in the facts of the present case we note that the name of the Respondent was first recommended on 28th January, 1999 for appointment as Assistant Teacher and in view of the objection to the qualification was reconsidered by the Screening Committee and her name was kept in the merit list at Serial No. 56A for appointment as LDC on 19th January, 2001. On a specific query put by this Court as to why the Respondent was not given an offer of appointment as LDC till date it was stated by the learned counsel for the Petitioner that the Respondent declined to accept the appointment as LDC and sought reconsideration of her claim to be appointed as Assistant Teacher, and thus matter was repeatedly placed before the Screening Committee. We have perused the letter dated 29.3.2001 written by the Respondent seeking reconsideration of her claim for the post of Assistant Teacher. It is clear from the letter that she has not turned down the offer of appointment as LDC to her. As a matter of fact the Respondent has expressed her willingness to accept the offer of appointment as LDC even before this Court during the course of hearing and it is stated by the learned counsel for the Respondent that she had only asked for reconsideration of the case as is evident from the letter produced by learned counsel for the Petitioners themselves. It is not the case

of the Petitioners that the Respondent does not qualify for being appointed as LDC.

It may not be out of place to mention that the Petitioners have virtually sat over the matter over the years, taking their own time to decide the issue by moving the file between their department and the Screening Committees with no respite to the Respondent.

18. In the present case the fault if any is, on account of the delay caused by the Petitioners themselves. As enumerated above the Respondent had immediately filed an application after the death of her husband whereupon the Petitioners took their own time in consideration. The Screening Committee of the Petitioners in its meeting dated 28th January, 1999 proposed the Respondent's appointment to the post of Assistant Teacher. However, the services department sought clarification qua Respondent's qualification of Licentiate in Teaching from the Education Department, whereafter the Screening Committee in its meeting held on 28th June, 1999 proposed the Respondent's case for appointment to the post of grade IV (DASS)/LDC at Sr. No. 56A. It is the case of the Petitioners that the case of the Respondent was considered number of times. Thereafter, the Petitioners have made the Respondent unnecessarily face various rounds of litigation for the last more than four years.

19. It has been held in the case of *Smt. Sushma Gosain & others v. Union of India & others, 1989 (4) SCC 468* that in all claims of appointment on compassionate grounds, there should not be any delay in appointments. It was observed as follows:

“8. We heard counsel on both sides and gave our anxious consideration to the problem presented. It seems to us that the High Court has made the order in a mechanical way and if we may say so, the order lacks the sense of justice. Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid government memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.

9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.”

The said decision was also followed in the case of *Smt. Phoolwati vs. Union of India & others, 1991 Suppl (2) SCC 689*.

20. The Supreme Court in *Umesh Kumar Nagpal vs. State of Harayan, 1994 (4) SCC 138* had laid down the following important principles with regard to appointments on compassionate grounds:

“(i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.

(ii) The posts in Group ‘C’ and ‘D’ (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e. in the Group ‘A’ or Group ‘B’ category is expected or required to be given for this purpose as it is legally impermissible.

(iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crises and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

(iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

(v) Neither the qualification of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

(vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

(vii) Compassionate appointment cannot be offered by an individual functionary on an ad-hoc basis.”

21. Subsequent thereto the Supreme Court while dealing with the issue of compassionate appointment in the case of *Director of Education (Secondary) & Another vs. Pushpendra Kumar & others, 1998 (5) SCC 192* quashing the directions of the High Court for creation of supernumerary class III post held that if necessary supernumerary class-IV post can be created and observed:

“8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment of seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee. In *Umesh Kumar Nagpal v. State of Haryana* this Court has taken note of the

object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual and manual categories.”

22. Resultantly, the writ petition is partly allowed to the extent that the Petitioners will now consider the case of the Respondent for appointment to the post of LDC within a period of three months by relaxing the requirement of age and offer her a formal appointment within the stipulated time after such consideration.

23. We expect that the Petitioners will not drive the Respondent to a fifth round of litigation. The writ petition is disposed of as above.

MUKTA GUPTA, J

MADAN B. LOKUR, J

DECEMBER 21, 2009

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