

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

+ **Writ Petition (Civil) No.7347/2009**

Date of Decision : 15.4.2009

SHRI SUKHBIR SINGH & ANR.

.....Petitioners
Through : Mr.Anuj Aggarwal,
Advocate.

Versus

UNION OF INDIA & ANR.

..... Respondents
Through : Mr.O.P.Gaggar,
Advocate.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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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 ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J. (Oral)

1. The petitioner by the present writ petition has challenged the order dated 9th January, 2007 passed by the Ministry of Labour/Shram Mantralaya, Government of India by virtue of which the respondent no.1 has observed that prima facie the Ministry does not consider this a dispute fit for adjudication to be referred to the industrial tribunal on the ground that the request of compassionate appointment was duly considered by the respondent/Bank and in order to tide over the financial condition of the family, a lump sum financial relief of Rs.5,75,000/- was offered to the family of the deceased employee as per the policy of the respondent/Bank which was not accepted by the family. It was further observed in the said order that the compassionate

appointment is granted a welfare measure and cannot be said to be conferring a vested right in the dependency of the deceased employee and therefore, the dispute raised was found to be not maintainable.

2. The main contention of the learned counsel for the petitioner has been that the question as to whether the petitioner no.2 is entitled to be appointed on compassionate ground or not is a matter to be considered by the Industrial adjudicator and it cannot be preempted by respondent no.1 by refusing to refer the dispute for industrial adjudication.

3. The objection raised by the learned counsel for the respondent was regarding maintainability of the writ petition on the ground of inordinate delay in assailing the order dated 9th January, 2007 was sought to be answered by the learned counsel for the petitioner by placing reliance in case titled ***Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited & Anr.*** (1999) 6 SCC 82, wherein the Apex Court in the facts of that case had held that even the seven years long delay in seeking a reference of a dispute regarding termination of services could not be a ground for refusing to refer the dispute for the purpose of industrial adjudication. Reliance in this regard was also sought to be placed on Division Bench judgment of this Court in LPA No.384/2008 in case titled ***DDA Vs. Sudesh Kumar & Anr.*** It was also observed that the provisions of Article 137 of the Limitation Act, 1963 which prescribes a three years period of limitation is not applicable to

the proceedings under the Industrial Disputes Act. Before dealing with the submissions raised by the learned counsel for the petitioner, it would be pertinent to give the brief facts of the case.

4. Sh.Dharam Singh, son of Late Sh.Chottu Ram was working as a regular Safai Karamchari with the Union Bank of India-respondent no.2. It is alleged that he died on 23rd October, 2001 on account of cardiac arrest leaving behind his widow Smt.Darshi Devi aged 60 years and two sons namely Sh.Satbir and Sh.Sukhbir and two daughters namely Rakjumari aged 30 years and Nirmala aged 26 years. On 25th February, 2002, an application is purported to have been made by the petitioner No.2, Sh.Sukhbir Singh to the respondent no.2 for appointment on compassionate ground. On 18th August, 2003, the said application for appointment on compassionate ground was rejected by the respondent no.2/Union Bank of India and in lieu thereof the petitioner was offered a financial relief of Rs.5,75,000/-. It was alleged that since the respondent /Bank failed to consider the request of the petitioner favourably for appointment on compassionate ground, the Delhi Labour Union espoused the cause of the petitioner and served a legal demand notice upon the respondent no.2 on 13th January, 2005. As respondent no.2 did not respond favourably an industrial dispute was raised by filing a statement of claim in the month of March, 2005 before the Conciliation Officer. The Conciliation Officer in its report had observed that Delhi Labour Union has no locus

standi to raise the dispute and accordingly, submitted a report to the appropriate authority. After expiry of more than a year of the submission of the Conciliation report the impugned order dated 9th January, 2007 was passed rejecting the prayer of the petitioner to have the dispute referred to the industrial adjudicator and the reasons which were given in the said order by the bank were reproduced. The said reasons are reproduced as under:

“It is reported that the request for appointment on compassionate grounds was duly considered by the bank and in order to tide over the financial condition, a lump sum financial relief of Rs.5,75,000/- was offered to the family of the deceased employee as per the policy which was not accepted by his family. Since appointment on compassionate grounds under the scheme a welfare measure, this cannot be a vested right of a dependent of a deceased employee. In the circumstances, the dispute raised is found to be not maintainable.”

5. Though the impugned order was passed on 9th January, 2007 but it was alleged that the said order could not be challenged on account of extreme financial distress and poverty of the petitioner and the same could be done now in the month of January, 2009 i.e. after expiry of almost two years.

6. I have considered the submissions made by the learned counsel for the petitioner and gone through the record. The first point which comes in the way of the petitioner is inordinate delay and laches. There is no dispute about the fact that the Apex Court has repeatedly held that although there is no specific period of limitation prescribed for invoking the writ jurisdiction of the Court but at the same time it must be done as expeditiously

as possible. No straight jacket formula or time frame can be prescribed for assailing an order before the High Court which may constitute inordinate delay. Reliance in this regard is placed on ***State of M.P. Vs. Bhailal Bhai*** AIR 1964 SC 1006 in which it observed as under:

“the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the Legislature as the time within which the relief by a suit in the Civil Court must be brought may ordinarily be taken to be a reasonable standard by which the delay is seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a Civil action for the remedy but where the delay is more than the period it will almost always be proper for the Court to hold that it is unreasonable.”

7. Coming back to the facts of the case, there is no dispute about the fact that the impugned order is passed on 9th January, 2007 and the same is assailed only after expiry of two years in 2009. The reasons given by the petitioner for not challenging the order earlier is the financial distress. The petitioner has not given the details of the fact that in case he was unable to challenge the order earlier on account of financial distress as to how he suddenly after expiry of two years he overcame that disability and challenged this order.

8. The learned counsel for the petitioner has placed strenuous reliance on the judgment of the Apex Court in Ajaib Singh's case (supra) wherein it has been held that Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under

Industrial Disputes Act and accordingly, in the facts of the said case a long delay of seven years was held not to be a ground for refusing to refer the dispute to the industrial adjudicator by the appropriate Government. I have gone through the said authority. The facts of the case were totally distinguishable from the facts of the present case.

9. In the instant case, the petitioner is claiming appointment on compassionate ground which repeatedly the Apex Court has held is not as a matter of right and that the appointment on compassionate ground is not a normal course of the recruitment. In the case reported, the services of the petitioner were terminated in 1974 and notice of demand was issued in 1981 whereupon a reference to the industrial adjudication was sought. The dispute was not referred by the appropriate Government to the industrial adjudicator and the High Court also did not agree to the submission of the petitioner in the said case to have the matter referred to the industrial adjudicator on account of delay of nearly seven years. It was in this background of the facts of the case that the Apex Court had observed that Article 137 of the Limitation Act does not apply to the industrial proceedings and further it was observed that even though there may be delay in having the dispute referred to the industrial adjudicator, the learned Labour Court or the Industrial Tribunal, as the case may be, is well within its power to mould the relief and deny the benefit of back wages to the aggrieved workman in case it comes to a finding that his termination is illegal or unjustified.

Therefore, the facts of the reported case are totally distinguishable from the facts of the present case and merely because the delay of 7 years in the said case was not considered to be inordinate cannot be said to be a yard stick which can be applied to the facts of the present case.

10. On the contrary, if the delay is condoned in the present case, it will have another dimension of the matter. This is that there is another string of authorities by the Apex Court that the compassionate appointment is granted as a succour to the family of the deceased in time of need. Reliance in this regard is placed on ***Umesh Kumar Nagpal Vs. State of Haryana*** 1994 (4) SCC 138 and ***State of Haryana Vs. Hakim Singh*** 1997 (8) SCC 85.

11. In the instant case, the father of the petitioner died in the year 2001 while as the petition has been filed after a gap of almost eight years and in case they have been able to tide over initial period of eight years, there is no justification for granting this appointment on compassionate ground to the petitioner at that late stage. In addition to this, the petitioner has of his own stated that he has a brother, namely Sh.Satbir Singh, but it has not been stated as to what Sh.Satbir Singh was doing and what his source of income. Similarly, about the two daughters aged 26 years and 30 years, it is also not stated whether they are married or unmarried. Therefore, all these aspects have been kept under wraps by the petitioner deliberately only to get a reference made to seek compassionate appointment.

12. For these reasons, I am satisfied that the present writ petition itself is hit of inordinate delay and laches and does not deserve to be entertained. Even on merits as has been observed hereinabove, the facts of the case are such that the petitioner cannot claim the reference of the dispute to the industrial adjudicator for adjudication as ex facie facts are so apparent that in a case of this nature, compassionate appointment cannot be granted and especially when the petitioner has been offered a sum of Rs.5,75,000/- which he has refused to accept only in way and vain hope of getting compassionate appointment. The aforesaid amount by any stretch of imagination cannot be said to be a small amount to take over the family distress even if it is assumed to be there.

13. The second point which has been raised by the learned counsel for the petitioner is that it is only the industrial adjudicator which can decide the question of compassionate appointment and not the appropriate Government by refusing to refer the same to the industrial adjudicator. Reliance in this regard is placed on observations passed in case **DDA Vs. Sh.Sudesh Kumar & Anr.** in LPA No.384/2008 of this Court. I have gone through the said authority also. There is no proportion of law laid down in the said case that it is only the industrial adjudicator which can decide the question of appointment on compassionate ground. The facts of that case clearly show that a reference was made to the industrial adjudicator as to whether Sh.Sukhbir Kumar in the said case is

entitled to appointment on compassionate ground and if so, what directions are necessary. The learned Labour Court passed an order for appointment of Sh.Sukhbir Kumar on compassionate ground, which was challenged by the DDA before the learned Single Judge which dismissed the writ petition against the Industrial Tribunal award dated 30.7.1998. It was in this background that the Division Bench had observed that in the interest of maintaining the industrial peace, the industrial adjudicator had directed appointment of a candidate on compassionate basis on industrial dispute being espoused by the Trade Union and no infirmity in the judgment of the learned Single Judge was found and accordingly, the case was dismissed. There is admittedly no proportion of law laid down that the appropriate Government cannot refuse to refer the dispute to the industrial adjudicator in case the respondents have given cogent, reasonable, just and fair ground for refusing the appointment on compassionate ground. A perusal of the reasons given by the respondent no.2 coupled with the facts as detailed hereinabove namely lapse of time in approaching the Court, lack of details of the family members, factum of having overcome the initial shock of death of Sh.Dharam Singh coupled with the factum of offer to provide a financial relief of Rs.5,75,000/- to the family in lieu of employment in terms of the policy, were valid ground for refusing to refer the dispute.

14. For these reasons mentioned above, I do not find any merit in the present writ petition. Accordingly, the same is

dismissed however, as the respondent/Bank had offered a lump sum financial relief of Rs.5,75,000/- to the family of the deceased employee in terms of the policy was not availed of by the petitioners. It is directed that respondent no.2 shall release the aforesaid amount to the family of the deceased employee after getting the necessary formalities completed from them within four weeks from the date of completion of such formalities.

15. Accordingly, the respondent no.2 is directed to sent a letter to the family of the deceased employee within two weeks requiring them to complete the formalities and release the aforesaid amount within four weeks after completion of the said requirement. With these directions, the writ petition is dismissed as not having any merit.

No order as to costs.

V.K. SHALI, J.

APRIL 15, 2009

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