

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

+ **WP(C) No.3225/2010**

% **Date of Decision: 12.05.2010**

Sushila Devi & another Petitioners
Through Mr.D.N.Sharma, Advocate.

Versus

Union of India & others Respondents
Through Mr.D.S.Mahendru & Mr.Jayendra,
Advocates for respondent Nos.1 to 3.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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.

*

The petitioners, widow and son of Late Sh.Banwar Pal Singh, had sought compassionate appointment which was declined by the respondents, which order was challenged by them in O.A.No.417 of 2009, titled as 'Smt.Sushil Devi and another v. Union of India, through Secretary, Ministry of Urban Development and Poverty Alleviation,' which was dismissed by the Central Administrative Tribunal, Principal Bench, New Delhi by order dated 17th November, 2009, which is challenged by the petitioners in the present writ petition.

The petitioners had contended that petitioner No.1 is widow who has been put in considerable hardship after the death of her husband who was working in Government of India Press at Aligarh. It was contended that petitioner No.2 is son of the deceased who has his own family to support and in the circumstances, whatsoever money was received by petitioner No.1 as terminal dues were insufficient and she has a very modest and small house in the Village.

The petitioners contended that there are another 39 vacancies of Mazdoors, which can be taken into account to reconsider the petitioners' case instead of rejecting the same.

Before the Tribunal, the pleas and contentions of the petitioners were contested on the ground that a sum of Rs.4 lacs as lump sum payment was given to the petitioners. The petitioner No.1 is also getting a family pension at Rs.2500/- per month. It was also pleaded that petitioner No.1 has an immovable property in the form of a house and she also has some lands, therefore, the petitioners are not entitled for compassionate appointment. The claim of compassionate appointment was also contested on the ground that in the waiting list there are already 151 persons and even if the name of petitioner No.1 is put in the said list, her name would be at serial No.152 and there would not be any possibility of petitioner No.1 getting appointment to Group 'D'

post within a period of three years. In the circumstances, it was contended that the petitioners are not entitled for compassionate appointment.

The Tribunal considered all these facts and noticed that the petitioner no.1 was paid lump sum amount on demise of her husband and she is getting family pension, and she also owns an immovable property in the form of a house and some land and declined to interfere with the order of respondents declining compassionate appointment to petitioner No.1.

Learned counsel for the petitioners has raised the same pleas and contentions which were raised before the Tribunal. This cannot be disputed that compassionate appointment is not an alternative mode of appointment. Appointment on compassionate ground cannot be claimed as matter of right and such appointment cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. A claim for appointment on compassionate basis has been considered as reasonable and permissible keeping in view the sudden crisis occurring in the family of an employee who has served the state and died while in service. However the rules, regulations, administrative instructions and orders in this behalf must stand the test on the touchstone of Articles 14 and 16 of the Constitution of India. Appointment on compassionate basis is not another source of

recruitment but merely an exception to the aforesaid requirement taking into consideration the effect of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over the sudden financial crisis. But again such appointments on compassionate ground have to be made only in accordance with the rules, regulations or administrative instructions and taking into consideration the family condition of the family of the deceased. Appointment on compassionate ground cannot be claimed as matter of right and such appointment cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. A claim for appointment on compassionate basis has been considered as reasonable and permissible keeping in view the sudden crisis occurring in the family of an employee who has served the state and died while in service. However the rules, regulations, administrative instructions and orders in this behalf must stand the test on the touchstone of Articles [14](#) and [16](#) of the Constitution of India. Appointment on compassionate basis is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the effect of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over the sudden financial crisis. But again such appointments on compassionate ground have to be made only in accordance with the rules, regulations or administrative instructions and taking into

consideration the family condition of the family of the deceased. This is not the case of the petitioners that the compassionate appointment has been declined to them in violation of any rules, regulations or administrative instruction. While considering the case of compassionate employment, it is to be kept in mind that it is not unduly unfair to the rights of those other persons who are eligible to seek appointment against a post which would have been available but for the provision enabling appointment being made on compassionate grounds to the dependents of the deceased employee.

The petitioner no.1 was paid a lump sum amount on the demise of her husband. She is also getting family pension. Her son petitioner no.2 is also gainfully employed. The petitioner no.1 also has a house, though it is stated to be a modest house. She also has some land in her name. In the circumstances, petitioner no.1 cannot be construed to be in distress though she may be having inconveniences. The petitioner no.2 cannot absolve himself by alleging that he has his own family to look after them. In the totality of facts and circumstances, the petitioners have not been able to make out a case for compassionate appointment for petitioner no.1.

Considering the facts and circumstances and the status of the petitioners, the decision of the respondents not to offer compassionate appointment to the petitioners cannot be faulted, nor it can be held that

order of the Tribunal suffer from any illegality, irregularity, or such perversity which shall entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

MAY 12, 2010
'VK'

MOOL CHAND GARG, J.