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

+ **W. P. (C) 8865/2009**

% **22nd July, 2013**

MADHU DEVI

..... Petitioner

Through: Mr. Tarun Khawal, Advocate.

Versus

NATIONAL SCHEDULED CASTE FINANCE & DEVELOPMENT
CORPORATION & ANR.

..... Respondents

Through: Mr. Jagat Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, compassionate appointment is sought by the petitioner with the respondent No. 1/National Scheduled Caste Finance & Development Corporation. Erstwhile petitioner was Ms. Madhu Devi, wife of the late Sh. Amar Singh, who died in harness. Ms. Jyoti, the daughter, was subsequently substituted as a petitioner by the order of this Court dated 12.02.2013.

2. Admittedly, there is a policy for the compassionate appointment of

the respondent No. 1 and the relevant extract of this policy reads as under :

**“EMPLOYMENT OF DEPENDENT FAMILY MEMBERS
OF EMPLOYEE WHO DIES IN HARNESS**

A dependent (wife/son/unmarried daughter) of a regular employee who dies in harness leaving behind his family in extreme economic distress and without any other earning member, will be eligible for compassionate appointment against direct recruitment quota posts in group C or group D subject to therebeing suitable vacancies and their eligibility for the post in all respects under the provision of these rules.

In exceptional circumstances and at the sole discretion of the Management, educational qualifications and age may be relaxed provided the duties of the respective post can be satisfactorily performed without compromising requirements of minimum standards of efficiency.

In case where they only dependent of the deceased employee available for employment is below 18 years of age, he/she would be considered for compassionate appointment only after he attains the age of 18 years subject to all other provisions of this scheme.”

3. A reference to the aforesaid shows that educational qualifications can be relaxed in certain exceptional cases.
4. Learned counsel for the petitioner on instructions states that the petitioner is ready to be employed as a Sweeper or Cleaner etc and for which the qualification of 8th class passed of Ms. Jyoti should be considered sufficient and the clause of exceptional circumstances should apply to the facts of the present case. I agree.

5. Learned counsel for the respondent No. 1 has drawn my attention to the Rule 9(iv) of the Government of India for compassionate appointment which applies to the respondent No. 1 and which reads as under :

“9 (iv) No consideration if compassionate appointment not provided within three years- If compassionate appointment to genuine and deserving cases 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 ensure that the family still requires a compassionate appointment, subject to availability of a clear vacancy within the prescribed 5% quota. A candidate’s name can be kept under consideration for compassionate appointment for three years and the committee will review the penurious conditions of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible, his case will be finally closed and will not be considered against-OM, dated 5-5-2003-Section 6.”

6. In view of the aforesaid Rule 9 (iv) ordinarily after three years appointment cannot be granted, however, when we look on the policy for compassionate appointment of the respondent No. 1, which is reproduced above, the same does not bring about this restriction. In fact, the last para of the scheme of respondent No. 1 provides that a dependent, who subsequently reaches the age of 18, is thereafter, entitled to apply and it can be even beyond three years as specified in Rule 9(iv). Once the relevant Rule of the Central Government stands modified as regards the respondent No. 1, then, it is the compassionate

appointment policy of the respondent No. 1 as extant will apply.

7. Thus, the only issue that will now remain is whether there is vacancy and that too within the 5% quota as permissible for compassionate appointment. There is nothing on record in this regard in the writ petition or in the counter affidavit to show whether any vacancy for compassionate appointment is available.

8. In view of the above, this writ petition is disposed of with the directions that the facts of the present case require that the respondent No. 1 should exercise his powers of exceptional circumstances in the facts of the present case as provided in its compassionate appointment policy to overlook qualifications, and if Ms. Jyoti is found to be otherwise suitable for a group C or group D post, including the post of Sweeper or Cleaner etc (and which job surely can be performed by a 8th class passed student), the respondent No.1, if it has vacancy available within the 5% quota in this financial year, will appoint the petitioner in accordance with the Rules. If there is no suitable vacancy available, in any group C or group D post to which Ms. Jyoti was to be appointed even after relaxation of the rules, then in that case, writ petition will stand dismissed because without existence of

vacancy there cannot be any appointment. Parties to bear their own costs.

VALMIKI J. MEHTA, J

JULY22, 2013
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