

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

+ WP(C) 1564/2007

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Date of Decision: July 26, 2013

**THE MANAGEMENT OF FEDERATION
OF INDIAN CHAMBERS OF COMMERCE
AND INDUSTRY (FICCI)**

... Petitioner

Through : Mr.Siddharth Dias, Advocate

versus

THE GOVERNMENT OF NCT OF DELHI & ANR Respondent

Through : Ms.Rohini Musa, Advocate for
respondent no.2

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

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1. By way of this petition, a challenge has been made to the award dated 6th September, 2006 passed by the Presiding Officer, Labour Court-II, Karkardooma Courts, Delhi whereby directions have been issued to the petitioner-management to appoint respondent no.2 on compassionate grounds to the post of Computer Operator or any equivalent clerical post w.e.f. June, 2002.

2. Briefly the facts relevant for the disposal of the present petition are as under:-

The husband of respondent no.2 i.e. late Ashok Kumar was working

as a Computer Operator with petitioner/management since June, 1980. After working for about 19 years, he had met with an accident as a result of which, he died in the month of May, 1999 leaving behind his wife i.e., respondent no.2 and two daughters. After his death, petitioner/management paid a amount of ₹ 5,23,824/- towards dues of late Ashok Kumar. Besides the aforesaid amount, she was also given voluntary contribution of ₹ 1 lac. She was also granted pension of ₹ 2700/- per month. On 24th June, 1999 a demand notice was served upon the petitioner/management with the request to consider respondent no.2 on compassionate ground for appointment to the post of 'clerical nature' such as Computer Operator, Telephone Operator etc as she had completed 10+2 education. Again similar request was made vide a demand notice dated 19th July, 2000. Thereafter, vide letter dated 12th September, 2000, respondent no.2 again requested for appointment on compassionate grounds. Petitioner/management also paid ₹ 8000/- to respondent no.2 to enable her to learn the basics of computer for the job of clerical nature with the management. Respondent no.2 learnt the same and submitted a certificate also. Despite that petitioner did not provide her a job on compassionate grounds. Thereafter, respondent no.2 approached the conciliation machinery and conciliation proceedings were initiated. On 26th June, 2002, on the failure of conciliation, an industrial dispute was referred to the Labour Court-II, Delhi vide reference no.F.24(870)/2002-Lab.12095-99 dated 26.06.2002 in the following terms:-

“Whether Smt.Anita w/o late Ashok Kumar, is entitled to be appointed on compassionate grounds with the Management, if so, what directions are necessary in this respect?”

3. Pursuant thereto respondent no.2 had filed a statement of claim giving the background of employment of her husband with the petitioner/management. Respondent no.2 stated that she has two minor daughters and with meager pension of Rs.2700/- per month, she cannot survive and requested for considering her claim on compassionate grounds. In the statement of claim, respondent no.2 mentioned that in the past petitioner/management had given job on compassionate grounds to Mrs.Hema Mishra, Ms.Sushila Bisht, Ms.som Kali, Ms.Kamlesh Devi, Mr.Parvat Singh, Mr.Pawan Kumar, Mr.Rajinder Singh and Mr.Vinod Kumar. Respondent no.2 also alleged that as per agreement with the Union, petitioner/management agreed to provide jobs to the dependents on the death of an employee while on service and that she was also entitled for the job on compassionate ground and prayed that award be passed in her favour.

4. Petitioner/management opposed her claim by filing written statement wherein it was contended that respondent no.2 was not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act and has no locus standi to file statement of claim as it was not a dispute between the employee and the employer. Petitioner/management further took a stand that on the death of Ashok Kumar i.e., deceased workman on 26th May, 1999, respondent no.2 was paid an amount of ₹ 5,23,824/- in full and final settlement in respect of dues of her husband. It was further stated that she was also given voluntary contribution of ₹ 1 lac and that she is also getting pension of ₹ 2700/- per month. Petitioner/management had also given her ₹ 8000/- for learning basics of computer. Petitioner/management also took a stand that there was no suitable vacancy with the management and considering their requirement, it was not possible to give her a job and requested for

rejection of her claim.

5. On the basis of the pleadings of the parties, following issues were framed:-

“1.To what relief, if any, is the Workman entitled against the Management as in terms of reference? OPW

2.Whether the Claimant is not covered within the definition of Workman as defined in Section 2(s) of the I.D.Act?”

6. Respondent no.2 examined herself as WW-1 and petitioner/management examined Alop K Mittal as MW-1.

7. After hearing, learned counsel for both the parties, both the issues were decided in favour of respondent no.2 vide impugned award dated 6th September, 2006 and petitioner/management was directed to appoint respondent no.2 on compassionate ground to the post of Computer Operator or any other equivalent clerical post w.e.f. June, 2002.

8. Aggrieved with the same, present petition is filed.

9. Learned counsel for the petitioner has contended that present is not an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, as such, the Labour Court was not competent to decide the same. It is further contended that whatever possible could have been done by the petitioner/management, the same has been done. Respondent no.2 has been given sufficient amount to look after herself and two daughters very well. It is further submitted that there is no vacancy with the petitioner management. Further, respondent no.2 was not found suitable, as such, employment was not given to her. It is further contended that respondent no.2 cannot seek appointment on compassionate ground as a matter of right. Learned counsel for the petitioner has contended that Memorandum of

Agreement Ex.WW 1/3 confers a discretion on the petitioner/management to consider providing employment keeping in view the suitability of spouse/dependent child of the deceased employee, as such, on the basis of Memorandum of Agreement Ex.WW1/3, respondent no.2 cannot claim the appointment on compassionate ground as a matter of right.

10. Learned counsel for respondent no.2 has submitted that as per Memorandum of Agreement between petitioner/management and the Union, relied upon by the respondent no.2 before the Labour Court, the petitioner/management has to provide appointment to her on compassionate ground. Further, it is submitted that respondent no.2 had passed 10+2 examination. Petitioner/management has also given her ₹ 8000/- to learn basics of computer and thereafter has never considered her. It is further contended that in the past, based on the Memorandum of Agreement, petitioner/management had given appointment on compassionate ground to various dependants of the employees, details of which are given in the statement of claim and same has not been denied in the written statement. It is contended that the Labour Court after considering the contention of the parties has examined the evidence on record and there is no illegality in the finding of the Labour Court nor there is any perversity, as such, writ petition is liable to be dismissed.

11. I have considered the submissions made and perused the material on record including the trial court record.

12. Learned counsel for the petitioner has contended that present is not an 'industrial dispute' as defined under section 2(k) of the Industrial Disputes Act and nor is there any dispute between the employer and the workman, as such, the Labour Court ought not have decided the same.

13. On the other hand, learned counsel for respondent no.2 has referred to the judgment of this court in **Delhi Municipal Worker Union vs. The Management of M.C.D. and ors: 1999 IV AD (Delhi) 608** to substantiate her stand that present is an 'industrial dispute'. The relevant para of the judgment is as under:-

“6. The expression 'Industrial dispute' is defined in Section 2(k) of the Industrial Dispute Act which is extracted below:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

From the above definition of 'industrial dispute' it is clear that even a dispute between an employer and his workmen which is connected with the non-employment of any person can be an industrial dispute. The beneficiary of the claim need not be a workmen of the employer at the time of raising the dispute. A dispute can be raised by the workmen of the employer even in respect of the non employment of any person who is not his workmen at the material time. “

The Division Bench of this Court in **Delhi Development Authority vs. Sudesh Kumar & anr: 2009(3)AD(Delhi)96** after referring the judgments in (1) Workmen of Dimakuchi Tea Estate vs. Management of Dimakuchi Tea Estate: AIR 1958SC 353 and (2) Kyas Construction Company (Pvt.) Limited vs. Its Workmen: (1958)2LLJ660 and various other judgments on the subject, has held that dispute relating to compassionate

appointment of a son of deceased employee would be clearly covered by the definition of **“industrial dispute”**.

14. In view of the above discussion, respondent no.2 being the wife of deceased has raised a dispute relating to compassionate appointment which is an industrial dispute within the meaning of section 2(k) of the Act. The contention raised by the petitioner in this regard has no force and is rejected.

15. As regards the contention that respondent no.2 has no legal right for compassionate appointment, it may be noted that respondent no.2 is basing her claim on Memorandum of Agreement dated 11th January, 1999 Ex.WW 1/3. The trial court record shows that respondent no.2 has placed on record two MOUs as Annexure C (colly) with statement of claim. The same were proved before the Labour Court as Ex.WW 1/C. The relevant Memorandum of Agreement applicable is dated 11th January, 1999. The said Memorandum of Agreement is signed by the petitioner/management and the Union of the staff. The aforesaid Memorandum of Agreement is not challenged by the petitioner/management in the pleadings as well as in the evidence led before the Labour Court. The relevant clause of the Agreement is as under:-

“(5) APPOINTMENT OF DEPENDENTS ON THE DEATH/DISABLEMENT OF THE EMPLOYEES IN SERVICE.”

The above will be followed effectively.”

16. Further based on the aforesaid specific clause in the Memorandum of Agreement Ex.WW-1/3, the stand of respondent no.2 is that there is no discretion with the petitioner/management in denying her the job.

17. Learned counsel for the petitioner/management has contended that there is no vacancy with the petitioner as well as respondent no.2 is not suitable for the clerical job as she has no skills for the clerical job.

18. It may be noted that the stand in the written statement of petitioner/management is that there is no suitable vacancy. No such stand is taken that respondent no.2 is not suitable for clerical job as is contended now.

19. It may be noticed that the Labour Court has noted that the petitioner/management has not produced any record about the non availability of vacancy. Rather in the evidence before the Labour Court, petitioner has admitted that since 1981, it has provided jobs to dependents of deceased employees on compassionate ground as is stated by Shri Alok K Mittal, the witness of the management in his affidavit Ex.MW-1/A. The details of persons having been given jobs are also stated in the said affidavit. No explanation has been given by the petitioner/management as to why record was not produced before the Labour Court. No material has been produced as regards non availability of vacancies even before this court. The petitioner/management had also provided ₹ 8000/- to respondent no.2 to enable her for learning basics of computer.

20. Learned counsel for the petitioner/management has placed reliance upon State of J and K and ors Vs. Sajad Ahmed Mir: AIR 2006SC2743 and

Bhawani Prasad Sonkar Vs. Union of India (UOI) and Ors: JT2011(3)SC293. None of the judgments have no applicability to the facts of the present case. In the said cases, no settlement agreement was involved as is there in the present case.

21. Based on the evidence, the Labour Court has held that respondent no.2 is entitled for appointment with the petitioner/management on compassionate ground.

No illegality or perversity is seen in the impugned award which calls for interference of this court. Writ petition stands dismissed. There is no order as to costs.

VEENA BIRBAL, J

July 26, 2013
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