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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3374/2016**
SAKUNTALA AND ANR

..... Petitioner

Through: Mr.K.Prabhakara, Adv.

versus

THE HON'BLE DISTRICT JUDGE & SESSIONS JUDGE

..... Respondent

Through: Mr.Santosh Kumar Tripathi, ASC for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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29.07.2016

1. This writ petition has been filed by the petitioners challenging the letter dated May 19, 2015 passed by the office of the District and Sessions Judge (Headquarters), Delhi, whereby the request of the petitioner No. 1 for appointment of her son Ravi Kumar (petitioner No. 2) as Clerk on compassionate ground due to the demise of Daya Chand, a Driver of the office of the District and Sessions Judge, was rejected.
2. This writ petition is the second round of litigation inasmuch as the petitioners having earlier filed the writ petition being W.P.(C) 3751/2015 was disposed of by this Court, directing the respondent to pass speaking order as to why the petitioner No. 2 cannot be granted compassionate

appointment under the Compassionate Appointment Scheme. It is pursuant thereto, the impugned letter dated May 19, 2015 was issued to the petitioner No. 1.

3. It is the contention of the learned counsel for the petitioner that the letter dated May 19, 2015 is bereft of any reasons. According to him, the letter only conveys the decision of the members of the Committee that the family of the deceased official is not indigent and does not require any immediate financial assistance. It is also stated, the son of the deceased Ravi Kumar is not adequately qualified. Learned counsel would contest the later part of the decision that Ravi Kumar is not adequately qualified. According to him, he is a Matriculate and possesses a driving licence. That apart, learned counsel for the petitioner would also draw my attention to the Scheme of the compassionate appointment framed by the District Courts of Delhi, to submit that a compassionate appointment shall not be rejected merely on the ground that family of the Court officer/official has received retiral benefits and other benefits under various welfare schemes. While considering a request for appointment on compassionate ground, an objective assessment of the financial condition of the family shall be made to find out if it is facing condition of penury, indigence, emergent financial

destitution or distress taking into account its income, assets (including the benefits received under the various welfare schemes such as GPF, gratuity, leave encashment, family pension) and liabilities and all other relevant factors such as the presence of an earning member, size of the family, age and qualifications of the children, family obligations and essential needs of the family etc. According to him, the case of the petitioners is one such case where they are facing penury, indigence and emergent financial destitution and the petitioner No. 2 need to be given the compassionate appointment.

4. Having heard the learned counsel for the petitioner and on a perusal of the impugned letter dated May 19, 2015, would reveal the following:

** That they reside in their own property in an area of 100 sq. Yard on the ground floor,*

** That they have no agricultural land,*

** That they have only a cow which gives milk about 4-5 litres a day, which is sold @ Rs. 35 per litre. Her son, Ravi Kumar deals in the business of cow's milk and was married 3 years before the death of late Daya Chand and has a son*

** She states that she gets pension of Rs. 7500/- per month,*

** That on the death of the deceased they got a sum of Rs.12-13 lacs, from the department. They purchased a property with this money measuring 100 sq. Yard at Mahipal Pur village and the cow is tethered in that land and is close to their residence.*

** She states that her elder son, named, Rakesh aged 30 years, is weak and does nothing.*

** That he is married and has two daughters and one son.*

** That he earns his livelihood by selling the cow's milk.*

** That he also depends upon the pension of his late father.*

**She herself stays at home and is not employed. Further states that her daughter got married 11 years ago. It is stated by Ravi Kumar, the son of the deceased that he is 28 years of age, hardly earns about 4000-5000/- per month by selling cow milk @ Rs. 45 per litre,*

** They got a sum of rupees 1012 lacs from the department.*

** They had purchased a land with this amount six months ago.*

** Earlier he was working in a courier company but left the job on his father's death because it was night duty job and he had to bring his mother for signing cheques in the court.*

** Earlier they had two cows but one died 5 months ago. He has one son aged one year. His wife is a housewife.*

** His elder brother named, Rakesh drives a Taxi at Vasant Kunj and earns Rs. 6000/- per month, and he has two sons.*

** Rakesh has been driving for the last 6 years and his wife is a housewife. He further states that his mother gets pension of Rs.7500/- per month. They have a bank account from which money is withdrawn whenever needed.*

** The house, in which, they live belonged to his father.*

** It is a double storey house, constructed in an area of 160 sq. yard.*

** That they have rented 4 rooms @ of Rs. 2500/- per room per month.*

** The rooms remain vacant sometimes due to shortage of water and that they do not have any ancestral property.*

5. The scheme as framed by the District Courts, stipulates, vide Clause

6, the following eligibility conditions:

"6. ELIGIBILITY CONDITIONS

The applicant shall fulfil the following conditions for appointment under the scheme:

- i. The family is indigent and deserves immediate assistance for relief from financial destitution; and*

- ii. *He/She is eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules/guidelines/orders”.*

6. Clause 10 of the said scheme relates to time for applying the compassionate appointment. The same reads as under:

“10. **TIME FOR APPLYING FOR COMPASSIONATE APPOINTMENT**

(a) *An application for Compassionate Appointment shall be made within six months from the date of death or retirement on medical grounds of the Court Officer/Official.*

(b) *If the Office is not able to offer Compassionate Appointment for three years from the date of death or date of retirement on medical grounds as the case may be, the application for compassionate appointment shall, lapse and shall not be processed further. The applications pending on the date of commencement of the scheme shall however lapse on expiry of one year from the commencement, if compassionate appointment cannot be offered within that period.*

Provided that the competent authority may consider belated request with circumspection taking into account that the family had means of sustenance in the meanwhile and was not in need of immediate financial assistance.”

7. From the above stipulations in the scheme and the facts as narrated by the petitioners themselves, it is clear that they own a double storey house constructed in an area of 160 square yards and rented four rooms at Rs.

2500/- per month. The petitioner No. 1 is getting pension of Rs. 7500/-. The son is also earning an amount of Rs. 4000-5000 per month. The elder son namely Rakesh drives a Taxi and earns Rs. 6000/- per month. That apart, from the amount of Rs. 12-13 lakhs received from the department, they purchased a 100 Square Yard plot in Mahipalpur Village. The said facts reveal that the position of the family is not indigent and does not require urgent financial assistance. The law on compassionate appointment is well settled. The same is to provide immediate succour to family which may suddenly find itself in dire straits as a result of death of breadwinner. The same cannot be claimed as a matter of right. No doubt, the impugned letter does not give any detailed reasoning but the conclusion of the Committee that the family of the deceased employee is not indigent and does not require any immediate financial assistance, is clearly borne out from the representation made by the petitioner No. 1.

8. The ground that the son Ravi Kumar, of the deceased employee is not adequately qualified, may not be a ground for rejection as he is a Matriculate and has a driving licence but that would not itself entitle him a compassionate appointment given the family position, as noted above.

9 I note for benefit the judgment in the case of *Union of India and*

another vs. Shashank Goswami and another (2012) 11 SCC 307, wherein in paras 14 to 16, the Supreme Court has held as under:-

14. In the instant case, office of the Comptroller and Auditor General of India, New Delhi issued a Circular dated 19.2.2003 explaining the scope of such appointments. Relevant part of the same reads as under:

“With a view to bring uniformity in our offices regarding parameters for compassionate appointment of a family member in the case of death of a government servant in harness, it has been decided that the total income of the family from all sources including terminal benefits after death, excluding G.P.F., should be taken into account. If the resultant computation works out to a figure less than the parameters given below such cases can be considered for compassionate appointment subject to fulfilment of all other conditions. The limits are given below:

Group ‘B’ Rs. Five lakhs

Group ‘C’ Rs. Three lakhs

Group ‘D’ Rs. Two lakhs.”

15. The case of the respondent was rejected by the appellants in view of the fact that the family of the deceased Anand Kishore Gautam had been given the following terminal benefit excluding the G.P.F.

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|---------------------|----------------|
| 1. DCRG | Rs.2,48,248.00 |
| 2. Leave Encashment | Rs.88,660.00 |

3. CGEIS	Rs.44,000.00
4. DLIS	Rs.60,000.00
Total:	Rs.4,40,908.00

In addition to above, family pension @ 3100/- per month has been authorised to Smt. Rashmi Gautam for a period of 7 years and thereafter @ 1860/- per month plus admissible relief on pension.

16. In view of the fact that, in the instant case the retiral/ terminal benefits have been received by the family exceeding Rs.3 lakhs, respondent No.1 is not eligible to be considered for the Group 'C' post. In view of the above, the appeal succeeds and is allowed. The impugned judgments/orders stand set aside.”

I have relied upon the aforesaid judgment only to draw a point that receipt of Rs.3 lakhs, even though in terms of the scheme, is a sufficient amount to deny the compassionate appointment.

10. In the case of ***State of Gujarat and others vs. Arvind Kumar T. Tiwari and another (2012) 9 SCC 545***, the Supreme Court in para 8, has held as under:-

“8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the

rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it. (Vide: Union of India & Ors. v. Shashank Goswami & Anr., AIR 2012 SC 2294).”

11. In the facts of this case, this Court is of the view that the impugned letter dated May 19, 2015 cannot be interfered with. The petition is without any merit. The same is dismissed.

V. KAMESWAR RAO, J

JULY 29, 2016/akb