

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

+ **W.P.(C) No. 15553/2004**

% **11th January, 2017**

KM. RAJNI Petitioner

Through: None.

versus

VIDYA GIAN MANDIR SR. SEC. SCHOOL & ANR. Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, petitioner seeks compassionate appointment with the respondent no. 1/Vidya Gian Mandir Senior Secondary School for Class-IV post. Respondent no. 1/School is an aided school of the respondent no. 2/Government of National Capital Territory of Delhi (GNCTD) through Directorate of Education. The petitioner's father was appointed as a peon by the respondent no. 1/school. He died in harness on 5.3.2000. Petitioner, who is the daughter of the deceased employee Sh. Om Prakash, accordingly,

seeks compassionate appointment on the ground that there is a practice for giving compassionate employments in schools which are aided schools.

2. Various pleadings have been filed by the petitioner as also the respondent no. 2/GNCTD through Directorate of Education on record. The relevant counter affidavit on behalf of the respondent no. 2 has been filed on 6.1.2010 and a reading of this counter affidavit, along with other counter affidavits of respondent no. 2, shows as under:-

(i) That the father of the petitioner died at a ripe age of 53 years after completing twenty eight years, four months and twenty one days in service. In other words, it is not as if the deceased employee has considerable number of years of service still left when he died because he had died in a young age of employment.

(ii) On account of death of the Sh. Om Prakash, petitioner's family received a sum of Rs.1,25,856/- as death Gratuity as per the norms besides a sum of Rs.17,891/- as General Provident Fund (GPF) balance and was also granted family pension at the rate of Rs.1920/- per month. Therefore, the present is not a case where there is extreme hardship of grave financial stringency.

(iii) Respondent no. 1/school is a private school but an aided school and there is no policy of the respondent no. 2/Directorate of Education for

giving compassionate appointment in private aided schools, however, the case of the petitioner was repeatedly examined for various years but it was found that there was no vacancy available for the post of a peon in the respondent no. 1/school and hence for around four to five years petitioner's applications did not fructify for grant of compassionate appointment.

3. The law with respect to compassionate appointment has been dealt with by the Supreme Court in many judgments and one such judgment is in the case of *State Bank of India and Another Vs. Raj Kumar, (2010) 11 SCC 661*. In this judgment the Supreme Court has held that compassionate appointment is neither a matter of right nor a source of recruitment. Compassionate appointment can only take place in accordance with the applicable policy and subject to fulfilling various criteria. The relevant observations of the Supreme Court in the case of *Raj Kumar (supra)* are contained in paras 8, 9, 11, 12 and 13 and which paras read as under:-

"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the

scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

9. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply.

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11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts."

(underlining added)

4. In the facts of the present case, therefore, it is seen that there is no scheme framed by the respondent no. 1/school for compassionate appointment in a private school and which are aided schools of respondent no. 2/ Directorate of Education. Petitioner was, in fact, repeatedly considered for around four to five years for grant of compassionate appointment but could not be appointed on account of non-existence of a vacancy in a Class-IV post because there were only five posts in the respondent no. 1/school and all of which remained filled in i.e. there was no vacancy. Right of compassionate appointment is not a perpetual unending right, more so in the facts of the present case where the issue relates to death of the year 2000 i.e. around sixteen years back, and the petitioner with her family has received substantial financial amount towards gratuity, GPF, pension, etc etc. Also, the deceased father of the petitioner Sh. Om Prakash died not at a young age but at a ripe old age of 53 years and had only around seven years of service remaining.

4. In view of the above, there is no merit in the petition and the same is, therefore, dismissed holding that the petitioner is not entitled to compassionate appointment with the respondent no. 1/school. Parties are left to bear their own costs.

JANUARY 11, 2017/ JK

VALMIKI J. MEHTA, J