

\$~18

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

%

Date of decision: 5th March, 2021

+

W.P.(C) 2871/2021

DELHI JAL BOARD

..... Petitioner

Through: Mr. Saiyad Uruj Abbas, Advocate

Versus

NIRMALA DEVI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

[VIA VIDEO CONFERENCING]

C.M. No. 8658/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The application is disposed of.

W.P.(C) 2871/2021 & C.M. No.8657/2021 (for stay)

3. This petition impugns the order dated 3rd May, 2019 of the Central Administrative Tribunal, Principal Bench (CAT), in O.A. No.1420/2017 preferred by the respondent.

4. The O.A. aforesaid was filed, pleading that (i) the husband of the respondent Dharampal died on 28th February, 2010; (ii) that the daughter of the respondent, as per her eligibility, applied for compassionate appointment in the petitioner Delhi Jal Board (DJB) and in the application dated 23rd March, 2010 filled up her qualification as 'Arts Graduate' and attached her marksheet and provisional certificate of graduation in Arts issued by Delhi University; (iii) the said application for compassionate appointment remained pending and the officials of the petitioner DJB removed the graduation certificate from the application and made changes in the application in column no. 19(8) 'Educational qualification of the applicant' by cutting 'Arts Graduate' and replacing it with 'XII pass'; (iv) the application for compassionate appointment was not considered in the first two lists issued, despite eligibility; (v) on representations of the respondent, the daughter of the respondent was appointed on 1st May, 2012 as Assistant Meter Reader, though as per her qualification, was eligible for the post of Lower Division Clerk (LDC), which post the husband of the respondent was holding; (vi) the respondent represented to the petitioner DJB for change in the post of employment of her daughter Ms. Preeti, from Assistant Meter Reader to LDC, as per her educational qualification; (vii) the respondent learnt that one Ravi Verma employed with the petitioner DJB in the concerned department had cut the words 'Arts graduate' in the application form of the daughter of the respondent and put 'XII pass' instead in his hand and also removed the marksheet and provisional certificate of the Arts graduation; (viii) the respondent filed complaint against the said Ravi Verma and the inquiry initiated in this regard indeed found Ravi Verma, to have so altered the application of the daughter of the

respondent; and, (ix) however inspite of the said finding, instead of giving appointment to the daughter of the respondent as LDC, she was allowed to continue as Assistant Meter Reader.

5. CAT, vide the impugned order, has disposed of the O.A. aforesaid observing that Ms. Preeti, daughter of the respondent should have been considered and offered the appointment as LDC, after taking into consideration her educational qualification of B.A. Arts and has set aside the order dated 1st May, 2012 (incorrectly mentioned as 2nd May, 2015) and directed the petitioner DJB to consider the candidature of Ms. Preeti, daughter of the respondent to the post of LDC if she is otherwise suitable for the said post.

6. This petition has been preferred after close to two years of the impugned order and has come up today for the first time before the Court. The counsel for the petitioner DJB on enquiry, whether the order of CAT has been complied with and/or the candidature of Ms. Preeti considered as directed, replies in the negative. On enquiry about the long delay after which the petition has been filed, the counsel for the petitioner DJB vaguely states that on account of Covid pandemic the petition could not be filed. It is further stated that the petition was filed in October, 2020 but was not got listed awaiting physical hearing. However, on enquiry whether the counsel has not been doing virtual hearing and why the petition has been got listed today for virtual hearing, the counsel though states that he has been doing virtual hearing but there is no explanation otherwise for not having the petition listed. Moreover, the petitioner DJB had more than ten months prior to onset of pandemic to file and have the petition listed but did not do

so and the petition is liable to be dismissed on the ground of laches, acquiescence and waiver alone.

7. However, we have also heard the counsel for the petitioner DJB on merits also.

8. The counsel for the petitioner DJB contends that on the date when the respondent/her daughter Ms. Preeti applied for compassionate appointment i.e. 23rd March, 2010 she was not an Arts graduate and did not have even the provisional graduation certificate available to her which was issued subsequently.

9. A reading of the impugned order does not show the same to be the argument/plea of the petitioner DJB before the Tribunal. We have thus asked the counsel for the petitioner DJB to show us whether such a plea was taken in the reply/counter affidavit filed by the petitioner DJB before CAT.

10. The counsel for the petitioner DJB has referred us to the said reply dated 12th October, 2018 at page 339 of the electronic file and in which it is pleaded that; (i) the daughter of the respondent was given compassionate appointment on 1st May, 2012 as per educational qualification filled in the application form of XII class pass; (ii) a detailed investigation on the representation of the daughter of the respondent/respondent was got done from the Vigilance Department of the petitioner DJB; (iii) the Vigilance reported that the daughter of the respondent had not submitted the Graduation certificate at the time of applying for appointment on compassionate ground; (iv) the Vigilance also concluded that Ravi Verma,

a LDC in the petitioner DJB himself struck out the words 'Arts graduate' written in column no. 19(8) meant for educational qualification, in the compassionate grounds application form of the daughter of the respondent and wrote 'XII passed'; (v) For this lapse, the Disciplinary Authority had issued "Warning" to Ravi Verma and at the time when the request of the daughter of the respondent for compassionate appointment was considered, all candidates having educational qualification of XII class pass were appointed as 'Assistant Meter Reader'; (vi) after compassionate appointment has been granted, request for change of post cannot be considered; (vii) only candidates having educational qualification of graduation were considered/recommended for appointment to the post of LDC on compassionate grounds; (vii) since in the application form submitted by the daughter of the respondent, her educational qualification was mentioned as "XII passed" though as per the alteration done by Ravi Verma, the Screening Committee gave her appointment as 'Assistant Meter Reader'; (viii) the Vigilance Department *inter alia* reported that the daughter of the respondent had not submitted Graduation certificate at the time of applying; and, (ix) as per the Department of Personnel & Training Office Memorandums dated 9th October, 1998 and 21st December, 1999, if a person has been appointed on compassionate grounds to a particular post, the set of circumstances which led to such appointment should be deemed to have ceased to exist.

11. From the reply aforesaid, it indeed appears that the petitioner DJB had before the CAT taken a stand that though the respondent/her daughter

in the application form had claimed to be Arts graduate but had not annexed the qualifying documents.

12. We have enquired from the counsel for the respondent, when did the daughter of the respondent qualify as a graduate. The counsel for the respondent has drawn our attention to page 118 of the paperbook being the statement of marks dated 30th October, 2010 of the daughter of the respondent for B.A. (Pass) Part III Examination, 2010 and to the provisional certificate issued by the School of Open Learning dated 20th December, 2010 certifying that the daughter of the respondent had appeared at the B.A. (Pass) Annual Examination, 2010 of the Delhi University and had passed in the III division as per result declared on 30th October, 2010.

13. We have next enquired from the counsel for the petitioner DJB, whether the qualification on the date of application for compassionate appointment or the qualification on the date of consideration by the Screening Committee, has to be considered.

14. Neither is there any plea of the date on which the Screening Committee considered the case of the daughter of the respondent for compassionate appointment nor are there any documents in this regard being shown.

15. In the entirety of the circumstances aforesaid, considering the delay on the part of the petitioner DJB and considering that the case relates to compassionate appointment and CAT vide the impugned order has already directed the petitioner DJB to consider the case of the respondent/her

daughter, we do not find this to be a fit case to exercise our discretion under Article 226 of the Constitution of India.

16. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 05, 2021
‘A’

