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

% **Date of decision: 08.03.2022**

+ **W.P.(C) 3928/2022 and CM Nos.11703-04/2022**

YOGENDER KUMARPetitioner

Through: Mr Anant Agarwal, Advocate

versus

MUNICIPAL CORPORATION OF DELHI. & ANR.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE JASMEET SINGH

[Physical Hearing/ Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.(ORAL):-

1. This is a writ petition, whereby the following substantive reliefs are sought:

“a. Pass appropriate writs, orders and/or directions particularly in the nature of Mandamus directing the respondents to reinstate the petitioner on the post of Assistant Sanitary Inspector with consequential benefits;

b. Pass appropriate writs, orders and/or directions particularly in the nature of Certiorari quashing the impugned order dated 27.09.2011 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 3446/2011.”

2. The record shows that the appellant was offered appointment on compassionate grounds as Assistant Sanitary Inspector with the earlier avatar of North Delhi Municipal Corporation (NDMC), on 12.09.1994.

2.1. The appointment was, however, subject to certain conditions; one of



the conditions being that the petitioner would obtain a Diploma in Sanitation, within two years, albeit from a recognized institution.

2.2. Admittedly, the petitioner could not obtain the necessary qualification, within the timeframe provided in the order of appointment dated 12.09.1994. The petitioner avers that the necessary qualification was obtained by him in and about 26.08.1997. This resulted in the petitioner being asked to go home. The petitioner claims that he was not permitted to join his post on 01.12.1997.

2.3. The reason why the petitioner was prevented from joining his post was the issuance of the office order dated 29.07.1997, passed by the Assistant Commissioner, Municipal Corporation of Delhi (MCD).

2.4. In this office order dated 29.07.1997, it is clearly stated that the petitioner's services had been terminated "forthwith", as he had failed to pass and produce a Diploma Certificate in Sanitation within the stipulated timeframe as indicated at the time of his appointment to the subject post.

2.4. The petitioner claims that the aforesaid office order was not served upon him and, therefore, it is this uncertainty that impelled him to approach the Central Administrative Tribunal [in short "the Tribunal"] in 2011. This action of the petitioner was registered as O.A. No. 3446/2011. The Tribunal dismissed the O.A., *via* order dated 27.09.2011.

2.5. The petitioner claims that he obtained the office order dated 29.07.1997 whereby his services were terminated, when he accessed the Right to Information (RTI) route. According to the petitioner, a copy of the office order dated 29.07.1997 was obtained by him on 27.11.2012.

2.6. It appears that, thereafter, the petitioner did not take recourse to any legal proceedings. The only step the petitioner took was that he had,



according to him, got his advocate to issue a legal notice dated 28.07.2020 to the respondents.

3. We have heard Mr Anant Agarwal, who appears on behalf of the petitioner, at some length and have also perused the record.

3.1. The impediment in the way of the petitioner is, clearly, the long delay and laches. The petitioner was given appointment on compassionate grounds, subject to the condition that he had to obtain a Diploma in Sanitation. For this purpose, the period fixed in the appointment order dated 12.09.1994 was two years.

3.2. Admittedly, the requisite qualification was obtained by the petitioner, as noticed above, after the timeframe was over, and in the interregnum, the impugned order dated 29.07.1997 was passed terminating his services.

3.3. To our minds, if the petitioner had a tenable case, he should have immediately taken recourse to a remedy, as, even according to him, although the office order dated 29.07.1997 was not served upon him, he was not allowed to join his post on 01.12.1997. This action of the respondents should have raised the petitioner's antenna that there was a legal impediment in his way.

3.4. However, the petitioner chose not to agitate his grievance up-until 2011; that is when he approached the Tribunal. As noted above, the Tribunal dismissed the O.A., via order dated 27.09.2011.

3.5. It is, thereafter, that the petitioner took recourse to the RTI route, and obtained a copy of the termination order dated 29.07.1997, on 27.11.2012.

3.6. One could have been indulgent and entertained the petitioner, if he had endeavoured to approach the Court even in 2012 and taken recourse to a legal remedy. Unfortunately, all that the petitioner did between 2012 and up-



until July 2020 was to have a legal notice served on the respondents.

4. This is a case, where the petitioner has no one else to blame, but himself.

4.1 As noticed above by us, there have been several glitches, and the last one which is not approaching the Court immediately after a copy of the order was served upon him, is fatal to his cause. Immediate amelioration is the edifice based on which compassionate appointments are made; there being no vested right in such appointments. [See observations of the Supreme Court in *Punjab State Power Corpn. Ltd. v. Nirval Singh*, (2019) 6 SCC 774, cited with approval in *Steel Authority of India Limited v. Gouri Devi*, 2021 SCC OnLine SC 1080¹.]

4.2. In the foregoing circumstances, we find it difficult to entertain this

¹ “9. At this stage it is required to be noted that in the year 1977, the eldest son made an application for appointment on compassionate ground, which was rejected in the year 1977 and the same has attained finality. Despite the above fact, second time the application was filed in the year 1996 now to appoint the second son, which was after a period of 18 years. Despite the fact that there was a delay of 18 years in making the second application, unfortunately, the learned Tribunal still directed the appellant to reconsider the case and to appoint the second son on compassionate ground, which has been confirmed by the High Court by the impugned judgment and order. Apart from the fact that in the impugned judgment and order the Division Bench has not at all given any specific independent findings, it can be seen that except narrating the submissions on behalf of the respective parties, there is no further discussion at all on merits and there is no discussion at all on delay and laches. Be that it may, even otherwise, on merits also, the respondent shall not be entitled to appointment on compassionate ground on the ground of delay and laches.

10. As held by this Court in the case of *Punjab State Power Corporation Limited v. Nirval Singh*, (2019) 6 SCC 774 delay in pursuing claim/approaching court would militate against claim for compassionate appointment as very objective of providing immediate amelioration to family would stand extinguished. Before this Court, there was a delay of 07 years in approaching the Court and this Court observed and held that on the ground of delay itself, the heir/dependent of the deceased employee shall not be entitled to the appointment on compassionate ground.”



writ petition.

5. The writ petition is, accordingly, dismissed. Consequently, pending applications shall stand closed.

RAJIV SHAKDHER, J

JASMEET SINGH, J

MARCH 8, 2022/sr

Click here to check corrigendum, if any