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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 19.10.2022

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W.P.(C) 2899/2019

RAM KARAN

..... Petitioner

Through: Ms.Monica Kapoor, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr.S.Rajappa & Mr.R.Gowrishankar,
Advs. for R-2

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

1. The petitioner, who is the son of late Shri Mata Pher, who was working as a gardener with the respondent no.2 and, while in service, expired on 23.03.2010, has approached this Court seeking a direction to the said respondent to grant him compassionate appointment in lieu of his deceased father.

2. The petitioner's father, while in service, expired on 23.03.2010, leaving behind his widow, one daughter and three sons, with the petitioner being the eldest son. On account of the severe financial hardships being faced by the family due to the death of the sole bread-earner, the petitioner's mother approached the respondent no.2, vide letter dated 19.06.2010, to appoint the petitioner on compassionate grounds in lieu of his father.

3. In response to this request by the petitioner's mother, the respondent no.2, vide its communication dated 10.08.2010, agreed to appoint the petitioner on daily wages, which appointment the petitioner accepted w.e.f. 17.08.2010. The petitioner continued to work as a daily wager till

23.12.2011, whereafter, services of all daily wagers working in the respondent no.2 were terminated w.e.f. 23.12.2011. Even though, the petitioner claims that he worked till 10.03.2012, which averment is denied by the respondent, since nothing much turns on this aspect, I do not deem it necessary to delve into this issue.

4. Upon his services as a daily wager being terminated, the petitioner made various representations to the respondent no.2, and also approached the National Commission for Scheduled Castes (“NCSC”). The learned Commission, vide its order dated 15.02.2013, directed the respondent no.2 to consider the petitioner’s representation seeking regularisation of his services with the respondent no.2 on humanitarian grounds.

5. The NCSC issued summons to the Chairperson of the respondent no.2 asking him to remain present in the hearing, which was held on 02.06.2014 and was attended by the Director of the respondent no.2. Since the petitioner was not taken back in service by respondent no.2, he thereafter made applications under the RTI Act and, upon receiving information that there were 13 vacancies of unskilled Group D posts available in the respondent no.2, approached this Court by way of W.P.(C) No. 4565/2018. This writ petition was disposed of on 01.05.2018, with liberty to the petitioner to make a fresh comprehensive representation to the respondent no.2, with directions to the respondent no.2 to decide the same within six weeks.

6. Pursuant to these directions, the respondent no.2 has, once again, considered the petitioner’s request for compassionate appointment, but has, vide the impugned order dated 01.10.2018, rejected his representation on the ground that there were no available vacancies, against which the petitioner could be appointed on compassionate grounds, as the respondent no.1 had

directed respondent no.2 not to fill up these 13 unfilled vacancies of Group D posts, and instead get the work outsourced.

7. Being aggrieved, the petitioner has approached this Court by way of the present petition.

8. In support of the petition, learned counsel for the petitioner submits that it was evident from the reply received under the RTI Act that there were 13 unfilled vacancies of unskilled group D posts available with the respondent no.2. She submits that 5% of these 13 vacancies are reserved for appointment on compassionate grounds, which would amount to 0.65 posts, and ought to be rounded off to 1 post. She, thus, contends that the petitioner is entitled to be accommodated against this 1 post, which ought to be filled at the earliest. She further submits that the petitioner had approached the respondent no.2 immediately after the death of his father, but the respondent no.2, instead of appointing him against the regular vacancy, which was available, had appointed him on daily wages, from which post too he was illegally removed in March, 2012. The petitioner and his family, who have been facing grave financial hardships have, since then, made repeated representations to the respondent no.2 but to no effect and therefore, he cannot be blamed for the delay in approaching this Court. She, therefore, prays that the writ petition be allowed and the respondent no.2 be directed to appoint the petitioner against the unfilled vacancy of unskilled Group D post on compassionate grounds.

9. On the other hand, learned counsel for the respondent no.2, while contending that the petitioner cannot seek compassionate appointment at this belated stage, submits that, even though there were 13 unfilled vacancies of unskilled group D post available on the date of petitioner's application, once

there was a direction from the respondent no.1 not to fill up those vacancies, the respondent no.2 was justified in not appointing the petitioner for want of vacant posts. However, in order to help the petitioner to tide over the death of his father, he was, on compassionate grounds, appointed on daily wages for over a year.

10. In support of his plea that compassionate appointment cannot be sought as a matter of right, he places reliance on a decision of the Apex Court in *Fertilizers and Chemicals Travancore Ltd. & Ors vs. Anusree K. B. (2022) SCC OnLine SC 1331*, and prays that the writ petition be dismissed.

11. Having considered the submissions of learned counsel for the parties and perused the record, what emerges is that the petitioner's father, Shri Mata Pher, expired on 23.03.2010, at the age of 54 years, that is more than twelve and a half years ago. Undoubtedly, the petitioner and his family must have faced financial hardships at that time on account of the sudden demise of the sole bread-earner of the family. It is, however, an admitted position that, at that stage, on account of the directions from the respondent no.1 not to fill the 13 vacant unskilled Group D posts, the respondent no.2 was precluded from filling up these posts, and had therefore, decided to get the work outsourced as per the directions of respondent no.1. Nothing has been brought on record to show that this decision of the respondent no.2 was not *bona fide*. Despite this position, the respondent no.2, in order to help the petitioner and his family to tide over the financial difficulties on account of the sudden death of Shri Mata Pher, engaged the petitioner as a daily wager on compassionate grounds for more than a year. This Court, therefore, sees no reason to either interfere with this *bona fide* decision taken by the

respondent no.2 not to fill up these posts, or to direct the respondents to appoint the petitioner on compassionate grounds, when there is no available post against which he can be appointed.

12. Even otherwise, it is a settled legal position that compassionate appointment is only meant to help the family of an employee to tide over his sudden demise, and cannot be used as a mode of recruitment and that too in public sector organisations like the respondent no.2. In this regard, reference may be made to a decision of the Apex Court in ***Fertilizers and Chemicals Travancore Ltd. (Supra)*** relied upon by the respondent, the relevant extract whereof reads as under:-

“16. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

17. In the case of State of Himachal Pradesh v. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma v. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:—

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh

Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution

and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

18. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for

such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

19. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

20. Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.

21. In view of the above and for the reasons stated above, the present appeal succeeds. The judgment and order passed by the learned Single Judge as well as the Division Bench of the High Court are hereby quashed and set aside.

22. Present appeal is accordingly allowed. No costs."

13. It is, thus, evident that compassionate appointment is an exception to the general rule of appointment in public services, aimed at ensuring that the family of a deceased employee is not left in penury. In the present case, the petitioner lost his father in the year 2010, and was on compassionate grounds engaged by respondent no.2, for over a year, albeit as a daily wager, and that too, when it had taken a decision, not to fill up vacant Group D posts on regular basis, as per the directions of respondent no.1.

Compassionate appointment being a concession, and not a right, issuance of any direction for granting compassionate appointment to the petitioner, after more than twelve years of his father's death, would be against the very purpose of granting compassionate appointment.

14. For the aforesaid reasons, I find no merit in the writ petition, which is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

OCTOBER 19, 2022

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