



\$~1 (2020)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 25th March, 2022
 + **W.P.(C) 8612/2019, CM APPL. 14911/2022 & REVIEW PET. 79/2022**

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms. Namrata Mukim, Standing Counsel for NrDMC and Ms. Garima Jindal with Mr. Ravi Kant, Radiographer and Mr. K.C. Mittal (Retd. Consultant) (M:9899106515)

versus

LALIT SHARMA Respondent

Through: Mr. Sanjoy Ghose, Sr. Adv. with Ms. Meghna De, Advocate for Union along with Mr. Surendra Bhardwaj, Secretary /Union Respondent-in-person

CORAM:
JUSTICE PRATHIBA M. SINGH
Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the North Delhi Municipal Corporation (*hereinafter* “Corporation”) challenging the impugned award dated 1st February, 2019 passed by CGIT-cum-Labour Court No.1, Dwarka Court, New Delhi in *ID No. 11/2013* titled *Shri Lalit Sharma v. The Management of the Municipal Corporation of Delhi*. Vide the said award, the Respondent/Workman (*hereinafter* “Workman”) was granted appointment on compassionate grounds on the post of TB health visitor or any other suitable clerical post keeping in view the Workman’s educational



qualification. The operative portion of the said order reads as under:

*“16- In view of the above discussion, it emerges that although the claimant herein in view of his qualification was eligible for appointment on compassionate ground to the post of TB Health Visitor, however, the Committee of the Management has rejected the application of the claimant herein **only for lack of sufficient vacancy of TB Health Visitor**. Even if it is assumed and admitted that there was no sufficient vacancy of TB Health Visitor at the given point of time when the application of the claimant herein was considered by the Screening Committee of MCD, in that eventuality also it was moral and legal obligation on the part of the Management to consider and offer the claimant for any suitable post lying vacant at that time or subsequent thereto but nothing of the sort has been done by the Management for the reasons best known to it. As mentioned above, the office of MCD vide its reply dated 30/9/2010 under RTI Act (Ex.WW1/20) has conveyed that 8 Nos. of posts of TBHVs are lying vacant as on April, 2010 under the office of Addl. DHA(TB).*

17- Having regard to the overall facts and circumstances of the case, as discussed above, this Tribunal is of the considered view that the action of the Management in not giving appointment to the claimant for any suitable post on compassionate ground is neither legal nor justified.

Relief:-

18- As a sequel to the aforesaid discussion, the Management is directed to give appointment to the claimant Lalit Sharma on compassionate ground, for the post of TB Health Visitor or any other suitable clerical post keeping in view his educational qualification, within two months, from the date of



publication of this Award. The Award is passed accordingly.

3. The background of the litigation is that one Sh. Charanjeet Singh Sharma was working in the Health Department of the erstwhile Municipal Corporation of Delhi as a TB health visitor, as a regular employee since 1976. He unfortunately passed away on 8th October, 2004. In March 2005, the Workman applied for appointment on compassionate grounds on the post of regular TB health visitor. At the time when he applied, he filled various forms stating that he was not employed anywhere. From the records, it is clear that his application is replete with statements that there is no person in his family who is employed or earning. His mother Ms. Bhagwati stated in her affidavit that her son, i.e., Workman, is unemployed. The affidavit reads as under:

“I, Smt. Bhagwati Wd/o late Sh. Charanjit Singh Sharma R/o 3/7 MCD, Colony, Model Town III, Delhi, do hereby solemnly affirm and declare as under:-

1. That my husband Sh. Charanjit Singh Sharma had died on 8.10.2004 who was worked with T.B.C.O (Health Deptt.) as a Tuber Closis Health Visitor posted at Lal Bagh Dots Centre, under R.B.T.B. Hospital K.W. Camp Delhi.

2. That Mr. Lalit Sharma age 26 years S/o late Shri Charanjit Singh Sharma is my son and who is unemployed and I have fully depend upon him.

3. That my elder son Lovelinder Kumar age 28 yrs is married and living separately since 2 years.

4. That I undertake not to take second marriage



5. That I have no source of income.
6. That I have no objection if my said son shall joined the service on compassionate ground in place of my husband service.”

4. In the column of the application where he was asked if he is employed, the categorical answer of the Workman is ‘नहीं’. In his own affidavit, the Workman stated that he has no earning source and it has become very difficult to survive. The said affidavit which is dated 9th February, 2005 reads as under:

“I, Lalit Sharma S/o Late Sh. Charanjit Singh Sharma, R/o 3/7 MCD Colony, Model Town-III, Delhi-110009, do hereby solemnly affirm and declare as under:

1. That my father Sh, Charanjit Singh Sharma was Working as T.B. Health Visitor under T.B. Control Office, Gulabi Bagh and deputed for duty of K.C.C. R.B.T.B. Hospital, Kingsway Camp, Delhi, who died on 08/10/2004, at Hindu Rao Hospital Delhi.
2. That after the death of my father, there are no any earning source and member in our family, which has become very difficult to survive.
3. That no any movable and immovable property.
4. That we are living on rent in Govt. Accommodation.
5. That father was survived by the following legal heirs:-

S.No	Name of Legal heir	Age	Marital Status	Relation
1	Smt Bhagwati	57 yrs.	Widow	Wife
2	Lalit Sharma	26yrs.	Unmarried	Son
3	Lovelinder Kumar	28yrs.	Married	Son
4	Vijay Sharma	36yrs.	Married	Daughter

6. That after the death of my father I have applied for the service on compassionate grounds.



7. That my mother, Brother and Sister have furnished, their no objection for granting me the service on compassionate grounds.

8. That the service on compassionate grounds please be given to me because we no have any earning source. No House and No Roof for surviving.

9. That it is my true statement."

5. The Corporation considered the application of the Workman for compassionate appointment but rejected the same. An industrial dispute was raised by the Workman through the Hospital Employees' Union (*hereinafter "Union"*) in 2013 under Section 2A of the Industrial Disputes Act, 1947. In the said proceedings before the CGIT, the Union, which was espousing the case of the Workman, and the Workman repeatedly told the CGIT that he was unemployed and at no point in time was there any disclosure of the fact that he had any kind of employment. This is clear from a reading of the following pleadings and documents before the CGIT:

i. Affidavit of Mr. Lalit Sharma dated 28th September, 2013:

" 4. The deponent submits that the family of the deceased was completely dependent on the workman Shir Charanjeet Singh Sharma as he was only bread earner of the family. Now after death of the workman the family of the deceased have reached to the verge of starvation.

*5. The deponent submits that he is eligible for appointment on compassionate ground on any suitable post and **he is totally unemployed**. It is further submits that the deponent has also successfully done T.B. Health Visitor Course.*

6. The Deponent submits that the denial of appointment on the compassionate ground is totally illegal, bad, unjust."



ii. Cross examination of the Workman before the CGIT:

*“I am doing tuition business these days. I earn a sum of Rs.2500-3000 a month. My wife is also doing tuition business. She also earns a sum of Rs.3000.00 a month. I manage my kitchen by the said amount. Besides that, wheat is being received from my native village. I am well versed in computers and having various certificates in that regard. **I applied against various posts but could not get any job.** It is incorrect that I was not financially dependent on my father at the time of his death. It is incorrect that present dispute has been raised by me only with a view to get a Government job. I have not filed any document in order to show that our family was destitute and I am in need of this job. My mother is not well but I had not filed any medical certificate in that regard. It is incorrect that I had not filed any document alongwith the application moved for compassionate appointment, hence my application was rejected by the management. It is incorrect that my claim is false.”*

6. A perusal of the record also reveals that the statement of claim was signed by the General Secretary of the Union. In the said statement of claim on behalf of the Workman filed by the Union, it is categorically stated that the Workman is totally unemployed. The relevant portion of the statement of claim reads as under:

“4. That the family of the deceased was completely dependent on the workman Shri Charanjeet Singh Sharma as he was only bread earner of the family. Now after death of the workman the family of the deceased have reached to the verge of starvation.

5. That Shri Lalit Sharma is eligible for appointment on compassionate ground on any suitable post and he is totally unemployed. It is pertinent to mention here that Shri Lalit Sharma has also



successfully done T.B. Health Visitor Course.”

7. Mr. Surender Bhardwaj, Secretary of the Union in his affidavit states as under:

“3. The deponent submits that as the workman concerned, approached our union for securing his appointment on compassionate ground on any suitable post on regular basis in proper pay scale and allowances with retrospective from the date of death of his father.” Consequently, a resolution was also passed in the meeting of union held on 08.10.2008. A copy of said resolution is already on record marked as Ext. WWR/4.

4. The deponent further submits that Sh. Rajiv Agarwal is the General Secretary of Hospital Employees Union. I am also part and parcel of the Hospital Employees' Union since last many years and as such I have seen Sh. Rajiv Agarwal writing and signing and as such, I can identify the signature.

5. The deponent submits that, as such the case of the workman concerned was duly espoused by our union and as such our union is pursuing for redressal of grievance of the workman concerned.”

8. On the basis of the representations made by the Workman and the Union, that he was unemployed and that his family was destitute, the CGIT granted compassionate appointment vide the impugned award.

9. In this writ petition, on the first date, i.e., 7th August, 2019, submissions were made before the Id. Predecessor Bench by the Id. Counsel for the Corporation that the Workman is already employed with Babu Jagjivan Ram Memorial Chest Clinic, Jahangirpuri since 4th December, 2004. Hence the Court has directed the Workman to remain present in the court. The relevant part of the order reads as under:



“4. Learned counsel for the petitioner submits that the respondent raised a false claim before the petitioner as well as before the Industrial Tribunal that he was unemployed. It is submitted that the petitioner found that the respondent is already employed with Babu Jagjeevan Ram Memorial Chest Clinic, Jahangirpuri since 04th December, 2004. It is submitted that the respondent is liable to be prosecuted for raising a false claim under Section 209 of the Indian Penal Code. In view of the submissions made, the operation of the impugned award shall remain stayed till the next date of hearing.”

10. Thereafter directions were issued to the Workman vide order dated 15th November, 2019 to file his affidavit along with educational qualifications and employment details. The said affidavit was also filed on 4th March, 2020. In the said affidavit the Workman gave details of its educational qualifications but again took the plea that he looked for employment but to no avail.

“4. That the Respondent worked as Tuberculosis Health Visitor with the Delhi Tuberculosis Association under the WHO-DTA Project from 19.07.2001 to 31.10.2001. That the Respondent also worked as Health Worker from 11.09.2002 to 09.01.2003 in Voluntary Health Association of Delhi. Copy of experience certificate from Delhi Tuberculosis Association and Voluntary Health Association of Delhi is annexed herewith as ANNEXURE R-1 (COLLY).

5. That the death of the father of the Respondent on 08.10.2004 caused sudden loss of income to the family of the Respondent. That during the pendency of the application for appointment of the Respondent on compassionate basis and subsequently during the pendency of dispute raised by the Respondent for



appointment on compassionate basis, the respondent and his family were on the verge of starvation. That the Respondent looked for employment to the best of his abilities but to no avail. That the respondent has offered his services as Health Worker/Visitor to various projects.

Xxx

Xxx

Xxx

8. That the Respondent is not employed with any organisation but has been providing his services as a Contractor. That the Respondent has not worked in a post in any Government Department/Organisation and cannot be termed as gainfully employed and he cannot to be termed to be employed in any establishment.”

11. Thus, the plea of the Workman was that he was not employed with any organization and was merely a Contractor.

12. On 21st February, 2022, after perusing the documents on record, the Court had directed personal presence of the Workman on the next date of hearing, i.e., 22nd February, 2022. On the said date upon being enquired by the court, the Workman stated as under:

“2. The Respondent/Workman (hereinafter “Workman”) is physically present in the Court today in compliance with the order passed by this Court yesterday, i.e., 21st February 2022. On being queried by the Court, he states the following:

a) He has been employed at the Integrated District Health Society attached to the Babu Jagjivan Ram Memorial Hospital as a Senior TB Supervisor (STS) on contract basis with renewal of contract from time to time since 4th December, 2004 till date. At the time of appointment, his salary was Rs.6,000/-.



b) On being questioned as to why he did not disclose the fact of his contractual employment in March, 2005 when he filed the application for compassionate appointment, he states that he was advised by the people in MCD who were colleagues of his father that since it is contractual employment, the same need not be mentioned in the application for compassionate appointment. He further states that he had also informed the Hospital Employee Union (hereinafter "Union") about his employment as it is not a thing which he could hide.

c) He submits that he has three children and his mother passed away in 2017. His current salary is more than Rs.40,000/- per month.

d) On being asked as to whether he is still insisting on the compassionate appointment in the NDMC, he states that irrespective of whether he gets the compassionate appointment or not, he does not wish to lose the job which he presently has.

e) When asked to explain as to why he did not disclose the details of his employment before the Labour Court, he submits that he orally told the same to the Court. When asked as to why he did not disclose in his cross-examination that he was employed, he submits that it was by mistake."

13. This Court on the said date noticed that the Workman took a stand that he had informed the Union of his employment. The Court further noticed that the General Secretary of the Union was also representing the Union before the Court as the counsel on behalf of the Workman. Clearly, there was a mismatch between the stand of the Workman and the Union. A plea was sought to be taken that since the Workman was only contractually employed, the same did not constitute employment and hence was not to be disclosed.



14. The certificate issued by the Integrated District Health Society- North District attached with Babu Jagjivan Ram Hospital makes it very clear that the Workman, though stated to be on contract basis, has been working from 2004 till date as an STS at the Babu Jagjivan Ram Memorial Chest Clinic Jahangirpuri under Integrated District Health Society-North District and his total gross salary per month is Rs.34,579/-. The extract of the certificate issued by the health society reads as under:

*“This is to certify that **Mr. Lalit Sharma** is working as STS at BJRM Chest Clinic Jahangirpuri under Integrated **District Health Society - North District (on Contract basis)** with renewal of contract from time to time. He has been working since 04-12- 2004 to till date.*

His current remuneration for the month of June 2019 is as follows:

<i>Govt.of India Salary per month</i>	<i>State Govt. Share per month</i>	<i>Total Gross Salary drawn per month</i>
27,929/-	27,929/-	34,579/-

This department is not responsible for any legal dispute or financial liability undertaken by the official.

This certificate is issued on request received from DTO BJRM Chest Clinic in r/o High Court Matter vide letter no. AO (Health)/NDMC/2019/118, dated 26.06.2019”

15. After having noticed these facts, this Court directed as under:

“12. All these facts clearly appear to be well within the knowledge of the Workman, the office bearers of the Union as also the various representatives for the



Workman, including the ld. counsel for Workman, however, there has been a clear concealment of material facts leading to the Labour Court passing the impugned award dated 1st February, 2019 by which compassionate appointment has been directed to be given to the Workman.

13. The ld. counsels, at this stage, submit that they do not have the lower court record. Let the electronic copy of the lower court record be made available to the ld. counsel for the parties upon request.

14. Mr. Surender Bhardwaj, Secretary of the Union who deposed on behalf of the Workman is directed to be physically present before the Court on the next date. In case, Mr. Bhardwaj, is no longer the Secretary of the Union, the present General Secretary of the Union shall, in addition, be also present before the Court. The General Secretary of the Union shall be served at: **Hospital Employees Union, Agarwal Bhawan, GT Road, Tis Hazari, Delhi-54.** Mr. Surender Bhadwaj, shall be served on his mobile Number- **9873376166.**”

16. Today, Mr. Surender Bhardwaj, the Secretary of the Union has appeared before the Court in person. An application has also been moved on behalf of the Union seeking review of the order dated 22nd February, 2022. Ld. counsels appearing for the Workman made submissions that they would like to seek discharge in the matter in order to avoid any conflict. However, since Mr. Ghose, ld. Senior Counsel is representing the Union, he was asked to assist for the workman as well. The Court has heard the submissions of Ms.Mukim and Mr. Ghosh.

17. Mr. Surender Bhardwaj’s stand is that the Workman never informed him or the Union that he was employed on a contractual basis. Upon being



queried, even today the Workman contradicts Mr. Bhardwaj and submits that the he informed the Union about his employment.

18. From the facts that emerge, it is clear that all is not well in the manner in which the matter has proceeded all through since the time of filing of application for compassionate appointment. The Workman has resorted to falsity since inception, i.e., the filing of the application giving of incorrect information, non-disclosure of all particulars of his employment and an impression has been sought to be portrayed that the Workman was in penury and his family was destitute, while the actual fact was that the Workman was working in a government institution during this entire period. The explanation given by the Workman today is that he was told by some employees of the Corporation and by the Union that since he was under contractual employment the same would not be construed as regular employment and need not be disclosed at the time of filing the application for compassion appointment. The exact truth of the statement obviously cannot be ascertained by this Court at this stage of these proceedings as the same is in the realm of past events, of which the Workman claims to state his own version. On the other hand, the Secretary of the Union who had signed the espousal before the CGIT, is in the Court and takes a position that the Workman had neither informed him nor the Union of the fact that he was employed.

19. The purpose of compassionate appointment is to help and support the family of a deceased employee who may be in dire need. This Court cannot condone the fact that there has been misrepresentation and concealment on behalf of the Workman and Union in this matter. Moreover, the fact that the Id. counsel appearing for the Union is also General Secretary of the Union



also blurs the distinction between the client and the advocate which ought not to ideally happen. The Workman has clearly given misleading affidavits before this Court which have been espoused by the Union and its Id. counsel before the Court. The entire turn of events is clearly not palatable. While in general, workmen's applications for compassionate appointment deserve sympathetic consideration, they cannot be permitted to mislead and make false statements. The Workman in this case ought to have candidly disclosed in his application for compassionate appointment that he has some sort of contractual appointment and then sought regular employment from the Corporation. Such a stand would have been fair and truthful. Concealing the entire factum of employment in another government institution from the Corporation and the Court is clearly deliberate and cannot be held to be innocent.

20. The Union and its representatives ought to also have been careful in this matter while prosecuting the application on behalf of the Workman. There was also some responsibility on the part of the Id. Counsel who was the General Secretary and Secretary of the Union to also ascertain the true facts and present them in a proper manner.

21. The Workman submits that he does not wish to press his application for compassionate appointment with the Petitioner corporation so long as he can retain his employment in Jagjivan Ram Memorial Hospital where he is already employed.

22. The Workman is a qualified person who has the necessary educational background to work as a TB health worker. This Court, while having come to the conclusion that there has been suppression and misrepresentation on behalf of the Workman, however, does not wish to jeopardize his entire



career and the well-being of his family. The Workman is only 42 years of age and also has his wife and children to take care of.

23. Under these circumstances, the following directions are issued:

- i. The application for compassionate appointment filed on behalf of Mr. Lalit Sharma, the Workman, by the Hospital Employee Union shall stand withdrawn as stated by the Workman today in the Court.
- ii. The Workman shall deposit a sum of Rs.60,000/- with the DHCBA Pandemic Relief Fund [A/c No.15530110152195, IFSC Code- UCBA0001553, UCO Bank, Delhi High Court] within four weeks for the misrepresentations made by him to this Court and the CGIT *qua* his employment status. The Court has desisted from taking any further action against the Workman owing to his family background and his age, however, the Workman is warned that he ought not to indulge in such conduct in future.
- iii. This Court does not appreciate the stand of the Union that it was never aware that the Workman was employed. The Workman's statement to the contrary that he had informed the Union, was recorded on the last date and the same stance is reiterated by the Workman today as well in the Court. The Union is accordingly directed that in future whenever espousal of cause is taken up on behalf of any Workman, especially for compassionate appointment or any other similar application, before the Management or before the Labour Court/CGIT, the correct facts shall be ascertained regarding the employment



status contractual or otherwise, of the applicant. In the present case, the Union has more than 3000 members. It is an active Union which ought to be careful so as to ensure that wrong facts are not placed before this Court or the Labour Courts and CGIT. Accordingly, costs of Rs.50,000/- shall be deposited by the Union with the Corporation within four weeks. The Union shall ensure that such conduct is not repeated in the future.

23. Since the Workman has withdrawn the application for appointment on compassionate grounds, the impugned order of the Tribunal is set aside.

24. It is clarified that the Workman's current employment in Babu Jagjivan Ram Hospital shall not be jeopardized in any manner due to passing of the present order.

25. The writ petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

MARCH 25, 2022/aman/sk
(corrected & released on 31st March, 2022)