



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

Judgment reserved on: 29.08.2022

% **Judgment delivered on: 02.09.2022**

+ **LPA 415/2021 & CM APPL. 39190/2021**

SURENDER KUMAR Appellant

Through: Mr. K. K. Sharma, Senior Advocate
with Mr. Ram Pravesh Rai, Advocate.

versus

**ARCHAEOLOGICAL SURVEY OF INDIA
THROUGH ITS DIRECTOR GENERAL & ANR. Respondents**

Through: None.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeal is arising out of order dated 16.08.2021 passed by the learned Single Judge in W.P.(C.) No. 7547/2021 dismissing the claim of the appellant herein for grant of compassionate appointment.

2. The undisputed facts of the case reveal that the father of the appellant was working as Garden Attendant in the services of the Archeological Survey of India (ASI) w.e.f. 1974, and unfortunately, the father of the appellant expired on 28.08.2009 leaving behind the appellant, appellant's



mother and the appellant's three brothers. At the time of death of the father of the appellant, the family has received Rs.3,96,723/- towards terminal dues which included Gratuity, G.P.F., Insurance amount. At the relevant time, the appellant's mother was granted family pension of Rs.15,260/-.

3. It has been stated by the appellant that immediately after the death of his father an application was submitted for grant of compassionate appointment and the application was submitted by the mother requesting appointment in respect of the appellant. However, nothing was done by the Department, and finally, an order was passed by the Department on 16.06.2016 rejecting the claim of the appellant. The contention of the appellant is that large number of representations was submitted in the matter for grant of compassionate appointment after 2009. The appellant had stated in the writ petition as well as in the appeal that the representations were submitted in the year 2015, 2016, and finally, the case was turned down by the Department.

4. The learned Single Judge has dismissed the writ petition. Paragraphs 4 to 7 of the impugned order dated 16.08.2021 passed by the learned Single Judge read as under:

“4. From the above, it is clear that the Mother of the petitioner, the petitioner and his siblings who constitute the family of the deceased employee had received amounts under Gratuity, GPF, Insurance, etc, and the Mother of the petitioner is also receiving pension of Rs.15,260/- per month. Unfortunately, the aforesaid material facts have not even been disclosed in the writ petition. Suffice to state, that the deceased employee had died in the year 2009. The objective for grant of compassionate appointment is to tie over an immediate



situation where on the death of the employee the dependent – family members of the deceased employee do not have means of sustenance. In 2016 itself the request for compassionate appointment was rejected by the respondents. Concedingly, the order has not been challenged by the petitioner. The fact that the petitioner has not challenged the communication of 2016, surely indicates that there has been no urgency to approach the Court. It also indicates they are not in penury but are well placed and are able to sustain themselves. That apart, the Mother of the petitioner is receiving the pension.

5. *I note that the petitioner is married and has two school going children. That apart, his younger brothers are also married. The youngest brother has a son and his income is Rs.20,000/- per month. It is also conceded by petitioner that they all living in the same accommodation / House; which is family owned. The Supreme Court in the judgment of MGB Gramin Bank v. Chakrawarti Singh, (2014) 13 SCC 583 has held as under:*

“6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment



cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.”

6. Law with regard to the grant of compassionate appointment is well settled by the Supreme Court in the case of *Umesh Kumar Nagpal v. State of Haryana and Ors.* 1994 (4) SCC 138 wherein in Para 6 it is held as under:

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

7. *There is no merit in the petition, the same is dismissed.”*

5. The learned Single Judge has taken note of the judgment delivered in the case of ***MGB Gramin Bank*** (supra) as well as ***Umesh Kumar Nagpal*** (supra) while dismissing the writ petition.

6. This Court has carefully gone through the order passed by the learned Single Judge and the object of compassionate appointment is to help the family in distress of the deceased Government servant on account of loss of sole bread winner. In the present case, the death has taken place in the year



2009 and nothing prevented the appellant to approach this Court immediately after the death or within a reasonable time after the death. The petition was preferred in the year 2021 and the family has survived from 2009 to 2021, as noticed by the learned Single Judge. The learned Single Judge has taken note of the fact that the appellant is a married person having two school going children; his younger brothers are also married; the youngest brother is having a son and his income is Rs.20,000 per month; the mother is receiving family pension; and therefore, at such a belated stage, the question of directing the employer to grant compassionate appointment after a decade from the date of death of the Government servant, does not arise.

7. This Court also does not find any reason to interfere with the order passed by the learned Single Judge in the writ petition.

8. The appeal is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 02, 2022
B.S. Rohella