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

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Date of Decision: August 18, 2023

+ **W.P.(C) 2939/2023**

SARITA MISHRA

..... Petitioner

Through: Mr.Mahindra Dubey, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Praveen Swarup and Ms.Pratishtha
Majumdar, Advocates for respondents
No.2 and 3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT

V. KAMESWAR RAO (ORAL)

1. The challenge in this writ petition is to an order dated February 07, 2023, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'Tribunal') in O.A. 1663/2021, whereby the Tribunal has dismissed the O.A. filed by the petitioner herein.

2. The claim of the petitioner before the Tribunal was for grant of appointment of her son on compassionate basis. It is conceded position that the petitioner's husband was employed as Skilled Subordinate Staff (in short 'SSF') with respondent No.3. In 2016, the petitioner's husband while working with Heavy Crane Load Machine, received serious injury due to fall



of heavy hammer on his head. Similarly, on April 17, 2018, he received another cut injury on his leg during his working with respondent No.3. It is also the case of the petitioner that against the doctor's advice, the petitioner's husband was given heavy duty work. He became 100% disabled. It is conceded that he had superannuated on February 28, 2019 and died on July 26, 2019.

3. The case of the respondents before the Tribunal was that the challenge in the OA was primarily for appointment of the petitioner's son on compassionate basis which was rejected vide order impugned before the Tribunal. It was also the case that the object of the Scheme is to grant appointment on compassionate ground to the dependant family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood. As per rules, the disabled person has to make an application in the Department for compassionate appointment of any of his permissible legal representative only till the age of 55 (or 57 for Group D employees). As per Rule 38 of the CCS Pension Rules 1972, without prior consent of the Office In-charge, the disability certificate submitted would not be taken into consideration. It was their case that the petitioner's husband neither informed the Department of any disability nor submitted any valid disability certificate within prescribed time limit. In fact, they had stated that late husband of the petitioner had not even submitted any application in the Department for appointment of his son on compassionate ground. They also stated that the petitioner is getting family pension and the family is not in penury as having received retiral benefits on superannuation of her husband. The Tribunal on



analysis of facts in para No.6 onwards has stated as under:

“6.1 In the present case, it is not disputed that the total length of service of applicant's husband was 39 years since 1980 and as a regular employee his length of service was 20 years 10 months and 27 days.

6.2 It is also not disputed that as per the Disability Certificate dated 18.01.2019, applicant was 100% disabled. On the date of application for grant of compassionate appointment, the applicant has retired from service on 28.02.2019. The applicant is seeking compassionate appointment of her son on the premise that the applicant's husband had acquired the disability during his service, and therefore, entitled to protection under Section 47 of the Disability Act, 2016. In the light of aforesaid provision, the applicant's son is entitled to get compassionate appointment under Section 20 read with Section 47 of Disability Act, 2016. The provisions of Disability Act, 2016 and aims thereto are prepared with a view to safeguard the rights and interests of disabled persons, which is clear from the aims and objects of the Disability Act, 2016 itself, which reads as under:

"OBJECT

The object of the Scheme is to grant appointment on compassionate grounds to dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

TO WHOM APPLICABLE

To a dependent family member-

- (A) of a Government servant who-dies while in service (including death by suicide); or*
- (b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding*



provision in the Central Civil Services Regulations before attaining the age of 55 years (57 years for erstwhile Group 'D' Government servants); or

*(c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years 57 years for erstwhile Group 'D' Government servants); or
.... "*

6.3 *Bare perusal and plain reading of the above provisions itself make it abundantly clear that in facts of the case, the said provisions are not at all applicable. The applicant has not retired on medical grounds in present case. The applicant has misread and misconstrued the purpose behind the said Rule position. Merely, because the applicant was medically ill, is no ground for extending the benefit of disability. Once the applicant, even though was disabled, had retired on 28.02.2019, it is unconceivable to think how the benefit of Disability Act can be extended to the applicant in the light of provisions of the Disability Act 2016 as well as Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.*

6.4 *It is also highlighted that merely because one or the other benefit is extended to a disabled person after completion of his complete period of service/tenure under the Service Regulations, such right to compassionate appointment to their son cannot be said to be inheritable and shall automatically come into play to call upon the respondents to consider the case of the applicant for grant of compassionate appointment. It is well settled law that the compassionate appointment cannot be claimed as a matter of right. In the present case, when the applicant has fully enjoyed all benefits accorded to him in accordance with law during his tenure, now, at the fag end of the career, he or any of his dependent(s) cannot seek benefit of his disability. The applicant has taken a tarnishing plea that her husband acquired disability during service, she or her son is entitled to corresponding right of employment. Such an extension would run contrary to letter and spirit as well as the policy of grant of compassionate appointment.*



6.5 In the recent decision, this Court in the case of **Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree**, 2021 SCC Online SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of the Honble Apex Court in **N.C. Santhosh Vs. State of Karnataka**, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

- (i) that the compassionate appointment is an exception to the general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
- (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment. 6. 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.

6.6 In the case of **State of Himachal Pradesh and Anr. Vs. Shashi Kumar**, (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 Vs. LIC**, reported in (2005) 10 SCC 289, (REF: Civil Appeal No. 6938 OF 2022 **The State of Maharashtra and Anr. Versus Ms. Madhuri Maruti Vidhate (Since after marriage Smt. Madhuri Santosh Koli)** 30.09.2022) in paras 21 and 26, it is observed 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 sec 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

"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 sec 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."

7. *Conclusion:*

7.1 *In view of the above, the application for grant of relief sought in Clause 8 (i) is devoid of merit. Hence, the OA is dismissed qua the said relief.*

7.2 *In so far as the dues in terms of Clause 8 (ii) is concerned, the respondents authorities are directed to grant the applicant salary of her husband from September, 2018 to February, 2019, pension from March 2019 to December 2019, leave encashment of 2 months, death gratuity, benefits from CGEGIS, CGHS facility, if not released, in accordance with the provisions, within a period of two months from the date of receipt of certified copy of this order. OA is partly allowed to the aforesaid extent only. There shall be no order as to costs."*

4. The submissions of learned counsel for the petitioner are a reiteration of the pleas advanced before the Tribunal. We are unable to agree with the submissions made by the learned counsel for the petitioner inasmuch as the employee namely Late Ajay Kumar Mishra has expired after his date of superannuation. Pursuant to his superannuation, the benefits thereof have been given to him. It was in July, 2019 that he expired. In that sense he ceased to be an employee of respondent No.3 when he expired. It is doubtful that in such circumstance, any of the family members shall be entitled to compassionate appointment. The petitioner has been paid an amount of Rs.11 lakhs. It is also stated that the petitioner is getting family pension.

5. Be that as it may, this Court is of the view that in the given facts, the Tribunal is justified in rejecting the OA. This is said because the family is not in penury or without any means of livelihood. In that sense the family is



not in destitution.

6. We are of the view that the present petition lacks merit and the same is dismissed. No order as to costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

AUGUST 18, 2023/v