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

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Date of Decision: 15th May, 2023

+ W.P.(C) 1440/2019

GAGAN SHARMA

..... Petitioner

Through: Mr. Saifuddin Shams and
Mr. Farman Bilal Rayeeni, Advocates

versus

THE SECRETARY, SERVICES DEPARTMENT GOVT. OF
NCT OF DELHI AND ORS. Respondents

Through: Mr. Parvinder Chauhan,
Advocate along with Mr. Prakash Deep,
Legal Assistant, DUSIB.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking compassionate appointment and for quashing the impugned orders dated 15.12.2017, 14.05.2018 and 31.05.2018 by which his request for compassionate appointment was rejected on the ground that his deceased father was a Work Charge employee and was not covered under the policy in question.

2. The facts in brief are that Petitioner is the only surviving son of his deceased father Sh. Arun Kumar Sharma who was employed as Regular Work Charge employee with Urban Shelter Improvement Board, Government of NCT of Delhi ('DUSIB'). Petitioner's father expired on 24.12.2000 at the age of 36 years and his mother also expired when he was 4 years old. At the time of his father's death, Petitioner was a minor and upon becoming a major he represented to

the Respondents on 03.07.2015 and 03.11.2016 to appoint him on compassionate grounds.

3. It is the case of the Petitioner that all requisite documents such as matriculation certificate, ITI certificate, bio-data etc. were submitted with the Respondents and they were also apprised of his financial condition. Another representation was made by the Petitioner on 22.12.2017, however, he was not given any appointment.

4. Counsel for the Petitioner submits that compassionate appointment is granted in accordance with the Circular dated 23.02.2017 which refers to detailed Guidelines of the Government of India laid down by DoPT. As per the policy, first priority is given to families who are living in extremely indigent circumstances and having children less than 12 years of age and no other source of livelihood such as rent etc. and next consideration is given to cases where family is in an indigent condition and has minor children less than 18 years of age with no other source of employment. Petitioner is an orphan and with no source of income except a meagre amount of family pension, which too has been stopped on the ground that he is over 25 years of age.

5. Respondents No. 2 to 4, on the other hand, contend that Petitioner's deceased father worked as a Work Charge employee with the DDA till 24.12.2000 and was not a regular employee. There is no policy which permits the Respondents to grant compassionate appointment to the family of Work Charge employees. Moreover, the Petitioner has approached this Court belatedly inasmuch as the official records pertaining to his date of birth show that he attained majority on 05.11.2011 and yet he waited for applying until 03.07.2015 and even thereafter filed the present writ petition in 2019. The argument is that the purpose of compassionate appointment is to provide an

immediate succour to a family who has lost an earning hand and

Courts have repeatedly rejected belated claims for compassionate appointment.

6. I have heard the learned counsels for the parties and examined their respective contentions.

7. It is not disputed that Petitioner's deceased father expired on 24.12.2000. As per the affidavit of the Respondents No. 2 to 4, Petitioner attained majority in 2011, which is not refuted by the Petitioner, however, the application for compassionate appointment was made for the first time only on 03.07.2015. The application was rejected by the Respondents on 15.12.2017 but the Petitioner filed the present writ petition in 2019, which is 8 years after he attained majority and was eligible to apply. There is substance in the objection of the Respondents that the writ petition raises a belated claim for compassionate appointment and Courts have repeatedly deprecated the practice of approaching the Courts years after the cause of action arises on account of death of a family member. In this context, I may refer to a recent judgment of the Supreme Court in ***State of West Bengal v. Debabrata Tiwari and Others, 2023 SCC OnLine SC 219.*** In the said case, the Supreme Court first referred to the earlier decisions of the Supreme Court on the rationale behind the policies or schemes for compassionate appointment and the considerations that ought to guide determination of such claims. Relevant para is as follows:-

“31. It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

i. In Sushma Gosain v. Union of India, (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment

should, therefore, be provided immediately to redeem the family in distress.

ii. In Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That 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, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That 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, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.

iii. In Haryana State Electricity Board v. Hakim Singh, (1997) 8 SCC 85, ("Hakim Singh") this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

iv. This Court in State of Haryana v. Ankur Gupta, (2003) 7 SCC 704 : AIR 2003 SC 3797 held that in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

v. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only

for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad v. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) v. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani v. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared 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.

vi. In State of Jammu and Kashmir v. Sajad Ahmed Mir, (2006) 5 SCC 766 : AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

vii. In Shashi Kumar, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

“41. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar

Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.”

8. The Supreme Court thereafter elucidated the principles which emerge from the aforesaid judgment as follows:-

“32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard

*to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, **after** the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.*

34. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter."

9. Therefore, as observed by the Supreme Court, the underlying purpose of grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to death of the bread earner which has left the family in penury and without a source of livelihood and therefore the *sine qua non* for entertaining the claim is that the family is unable to make the two ends meet. Thereafter the Supreme Court posed the question whether applications for compassionate appointments could be considered after a delay of several years and answered the question by observing that prolonged delay leads to a situation where the sense of immediacy is diluted and lost and further the financial circumstances of the family may have changed for the better. Granting compassionate appointment in such a case would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession, which is contrary to the Constitution of India. The Supreme Court also held that laches or undue delay for obtaining discretionary reliefs

disentitles the grant of such a relief. Relevant passages from the

judgment are as under:-

“35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

36. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in Lindsay Petroleum Co. v. Prosser Armstrong, [1874] 3 P.C. 221 as under:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

37. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the

grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in Moon Mills Ltd. v. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

38. *In State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:*

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

39. *While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution, ordinarily, a writ petition should be filed within a reasonable time, vide Jagdish Lal v. State of Haryana, (1997) 6 SCC 538; NDMC v. Pan Singh, (2007) 9 SCC 278.*

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41. *Applying the said ratio to the facts of the present case, we hold that the Respondents-Writ Petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e., for a period of ten years. Notwithstanding the tardy approach of the authorities of the Appellant-State in dealing with their applications, the Respondent-Writ Petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the Respondents-Writ Petitioners. Such a delay would disentitle the Respondents-Writ Petitioners to the discretionary relief under Article 226 of the Constitution. Further, the order of the High Court dated 17th March, 2015, whereby the writ petition filed by some of the Respondents herein was disposed of with a direction to*

the Director of Local Bodies, Government of West Bengal to take a decision as to the appointment of the Respondents-Writ Petitioners, cannot be considered to have the effect of revival of the cause of action.

42. It may be apposite at this juncture to refer to the following observations of this Court in Malaya Nanda Sethy v. State of Orissa, AIR 2022 SC 2836, as to the manner in which the authorities must consider and decide applications for appointment on compassionate grounds:

*“9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and **the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.***

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object

and purpose of appointment on compassionate grounds can be achieved.”

(emphasis by us)

43. In the said case, the claim of the appellant-applicant therein for compassionate appointment was directed by this Court to be considered by the competent authority. This Court noted that in the said case, there was no lapse on the part of the appellant-applicant therein in diligently pursuing the matter. The delay in considering the application of the appellant therein was held to be solely attributable to the authorities of the State, and no part of it was occasioned by the appellant-applicant. Further, in the said case, the appellant-applicant was prejudiced not only because of the prolonged delay in considering his application but also by the fact that in the interim, the policy of the State governing compassionate appointment had changed to his detriment. Therefore, the facts of the said case were distinct from the facts involved herein. In the present case, the conduct of the Respondents-Writ Petitioners cannot be said to be blameless in that they did not pursue their matter with sufficient diligence. However, the observations made in the said case as to the manner in which applications for compassionate appointment are to be considered and disposed of are relevant to the present case.

44. As noted in the said case, the operation of a policy/scheme for compassionate appointment is founded on considerations of immediacy. A sense of immediacy is called for not only in the manner in which the applications are processed by the concerned authorities but also in the conduct of the applicant in pursuing his case, before the authorities and if needed before the Courts.

45. In the present case, the applications for compassionate appointment were made by the Respondents-Writ Petitioners in the year 2005-2006. Admittedly, the first concrete step taken by the Chairman of the Burdwan Municipality was in the year 2013, when the said authority forwarded a list of candidates to be approved by the Director of Local Bodies, Burdwan Municipality. The Respondents-Writ Petitioners knocked on the doors of the High Court of Calcutta only in the year 2015, i.e., after a lapse of nearly ten years from the date of making the application for compassionate appointment. The Respondents-Writ Petitioners were not prudent enough to approach the Courts sooner, claiming that no concrete step had been taken by the Appellant-State in furtherance of the application by seeking a Writ in the nature of Mandamus.

46. The sense of immediacy in the matter of compassionate appointment has been lost in the present case. This is attributable to the authorities of the Appellant-State as well as the Respondents-Writ Petitioners. Now, entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail, because admittedly, the Respondents-Writ Petitioners have been able to eke out a living even though they did not successfully get appointed to

the services of the Municipality on compassionate grounds. Hence, we think that this is therefore not fit cases to direct that the claim of the Respondents-Writ Petitioners for appointments on compassionate grounds, be considered or entertained.”

10. Applying the aforementioned judgment to the facts of the present case, there can hardly be any doubt that the claim for compassionate appointment by the Petitioner is belated and cannot be entertained as this would be against the rationale and purpose of compassionate appointment which is to provide an immediate succour to the family of an employee who dies leaving the family to fend for itself without a source of livelihood. Therefore, in view of the binding dictum of the Supreme Court, present writ petition cannot be entertained as the claim for compassionate appointment is highly belated. Since this Court is not entertaining the writ petition on ground of delay and laches, it is unnecessary to go into the question raised by the Respondents as to whether the family of a Work Charge employee can claim compassionate appointment or not.

11. For the aforesaid reasons, the writ petition cannot be entertained and is accordingly dismissed.

12. At this stage, learned counsel for the Petitioner submits that the claim of the Petitioner has been rejected on the ground that being the son of a Work Charge employee, he is not entitled to compassionate appointment, however, there is no provision in the policy which permits the children of orphans to apply for compassionate appointment and Petitioner may be given liberty to lay a challenge to the policy of compassionate appointment on that score. In case the Petitioner seeks to challenge the policy, he may do so, if so advised and in accordance with law.

JYOTI SINGH, J

MAY 15, 2023/kks/shivam