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

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Date of Decision: September 15, 2023

+ W.P.(C) 12112/2023

SHALENDRA

..... Petitioner

Through: Ms. Ankita Gautam, Mr. Harsh Gautam and Mr. Nitin Juyal, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sanjib Kumar Mohanty, SPC with Mr. Gokul Sharma, Govt. Pleader and Mr. Subesh Kumar Sahoo and Mr. Vijay Singh, Advocates for R-1. Mr. Vineet Malhotra, Mr. Vishal Gohri, Mr. Abhinav Dubey and Mr. Harvinder Singh, Advocates for Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPL. 47580/2023

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The challenge in this Writ Petition is to an order dated October 14,

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2020, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in O.A. No. 689/2019, whereby the claim of the petitioner for compassionate appointment on the death of his father in the year 2006 was rejected by the Tribunal. The facts as noted from the record are the father of the petitioner was working as a Research Officer died on March 11, 2006. At that time, the petitioner herein was of 12 years of age. His mother made a representation dated August 04, 2014 with a request to appointment on compassionate grounds. On March 10, 2015, the respondents informed the mother of the petitioner that the benefit cannot be extended since she was herself accused of committing murder of deceased employee.

4. The criminal case is said to have ended in acquittal .on July 05, 2016. Thereafter, representations were made reiterating the earlier request. On August 03, 2018 the respondents rejected the claim of the petitioner by giving various reasons. The O.A. was filed in the year 2020.

5. The Tribunal rejected the O.A. by stating in paragraph 4 and 5 as under:

"4. The concept of compassionate appointment is not contained in any recruitment or service rules. At one point of time, the Hon'ble Supreme Court directed that in case an employee in public service dies in harness and the family of the employee is facing penury, the feasibility of appointing one of the dependents of the deceased employee can be considered. Over the period, the concept has assumed such ramifications, that it has become almost an indefeasible right of succession, compared to one in respect of ancestral properties. The financial status of the family or the extent of the benefits that accrued to the family after the death of the employee have all been reduced to the matters of no consequence. The only consideration which is projected is that the employee died and the dependents are entitled as a



matter of right, to get employment even by relaxing the qualifications or by creating vacancies. The extent of damage caused to the public employment as such, is not difficult to be imagined. At a time when lakhs of highly qualified Graduates and Post Graduates hailing from families which did not have benefit of any employment for ages together are remaining unemployed, the concept of compassionate appointment is made to flourish.

5. One unfortunate aspect of this case is that, the deceased is said to have been murdered by none other than by his wife i.e. the mother of the applicant herein. The criminal trial went on for some time and at a time when the case was pending the application was made and it was rightly rejected in the year 2015. On acquittal, the mother may have been extended the death-cum-retirement benefits of the employee. However, we cannot authoritatively assert that the applicant had an indefeasible right to be appointed on account of death of his father and it remained intact for the past more than a decade. Whether one goes by the principles of equality or the transparency and efficiency in the public employment, such claims cannot be entertained. It is only in exceptional cases, where employee may not have become eligible for pension or the benefits after his death are too minimal to enable the family to sustain, that such a facility can be extended. As of now, the concept has developed to such an extent that in certain cases the dependents are waiting for the death of the employed person before his retirement. The Hon'ble Supreme Court which evolved the concept may not have imagined that the facility would assume such proportions. A time has come, when a pragmatic approach, keeping in view, the larger public interest, needs to be adopted. In the OA the applicant did not challenge the two orders of rejection."

6. The O.A. was filed after a period of two years from the date of rejection of representation. Even this writ petition has been filed after a



period of almost three years, as the impugned order is dated October 14, 2020. Even otherwise, we have been informed that the petitioner is M.A. Economics and has also did LL.B.

7. It appears that monetary benefits have been received by the family. Even otherwise, the death of the deceased employee was in the year 2006, 17 years have gone by. A compassionate appointment is to meet a situation arisen as a result of death of an earning member of the family which is immediate, as held by the Supreme Court in the case of ***Umesh Kumar Nagpal vs. State Of Haryana & Ors., 1994 (4) SCC 138***, in paragraphs 2 and 6, as under:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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.

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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.”

8. Even in the recent judgment of the Supreme Court in the case of ***State of Himachal Pradesh and Another vs. Shashi Kumar, 2019 (3) SCC 653***, in paragraphs 35, 36 and 37, it has been held as under:

“35. 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 11-5-2015. The application for compassionate appointment was submitted on 8-5-2007. On 15-1-2008 the Additional Secretary had required that the amount realised 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 [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , this Court has emphasised 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.

36. We are not impressed with the submission that delay should not be taken into account since Para (8) of the policy/scheme contemplates that in a situation where all the dependent children of the deceased employee have yet to attain the age of majority, the time-limit for submission of an application is extended until the first of the children attains the age of twenty-one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court,



including State of J&K v. Sajad Ahmed Mir [State of J&K v. Sajad Ahmed Mir, (2006) 5 SCC 766, para 11 : 2006 SCC (L&S) 1195] and Local Admn. Deptt. v. M. Selvanayagam [Local Admn. Deptt. v. M. Selvanayagam, (2011) 13 SCC 42, paras 11, 12 & 13 : (2012) 1 SCC (L&S) 717] .

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.”

9. We are of the view that in the facts of this case, the claim of the petitioner for compassionate appointment has been rightly rejected by the Tribunal.

10. We do not see any merit in the present writ petition, the same is dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 15, 2023/R