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

+ **W.P.(C) 7656/2023**

RITESH MISHRA

.....Petitioner

Through: Mr. Ranjit Sharma, Advocate.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Ms. Anu Bagai and Ms. Aakriti Bhandari, Advocates for Respondent No.2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

03.10.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following relief:

“Issue an appropriate Writ/Order/Direction in the nature of mandamus, directing the respondents to consider and appoint the petitioner to a suitable post on compassionate ground in terms of its circular No.10/2013 dt.2-7-2013 on the death in harness of his father late Mahesh Mishra without delay.”

2. Brief facts to the extent necessary and relevant are that late Mahesh Mishra, father of the Petitioner was appointed as an Attendant by Respondent No. 2/M/s. Engineering Projects India Limited on 16.07.2007. After rendering 15 years of service, late Mahesh Mishra died in harness due to a heart attack on 27.08.2022 and is survived by his wife, two sons and a daughter. The sons and the daughter are stated to be unemployed and unmarried. Death of late Mahesh Mishra left the family in a financial crisis besides an emotional turmoil.



3. It is averred in the petition that in view of the Scheme of appointment on compassionate ground issued by Respondent No. 2 vide Circular No. 10/2013 dated 02.07.2013, Petitioner who is son of late Mahesh Mishra applied for appointment on compassionate ground on 29.01.2023 followed by reminder on 20.02.2023 but there was no response and hence the Petitioner approached this Court.

4. It is the case of the Petitioner that his father was employed as an Attendant with Respondent No. 2 and died in harness after an unblemished and long service of 15 years. His mother and younger brother and sister are unmarried and nobody in the entire family is employed and therefore, the family is finding it difficult to make the two ends meet and looking at the penury status, Respondent No. 2 ought to have granted compassionate appointment to the Petitioner. At the time of filing the writ petition, Petitioner had passed Class 12th and was pursuing Advance Diploma in TV Programmes and News Production from Delhi University and is thus, qualified to work with Respondent No. 2. It is averred in the petition that other legal heirs of late Mahesh Mishra have given their No Objection by way of affidavits in favour of the Petitioner for appointment with Respondent No. 2.

5. Counter affidavit has been filed by Respondent No. 2 and relying on the averments therein, it is urged by Ms. Anu Bagai, learned counsel that there is no dispute that father of the Petitioner was appointed as an Attendant with Respondent No. 2 although his service was for a period of 14 years and 10 months till his demise on 27.08.2022. On the aspect of compassionate appointment, it is submitted that Clause 5(b) of Circular No. 10/2013 dated 02.07.2013 does provide for compassionate appointment based on the



eligibility of the applicant and suitability for the post in question as well as the required qualifications for the post, however, Petitioner was not considered for compassionate appointment as he is not eligible for any post in Management cadre and as per Clause 6 of EPI Recruitment Policy for the time being, recruitment is not being undertaken on posts other than the Management cadre and in case of unavoidable requirement of supervisory, skilled, semi-skilled or unskilled categories, Respondent No. 2 is resorting to outsourcing. It is further submitted that Respondent No. 2 has also received a communication dated 12.04.2021 from the Ministry of Heavy Industries & Public Enterprises, its Nodal Ministry to stop any new recruitments and therefore, it will not be possible for Respondent No. 2 to consider the case of the Petitioner.

6. Heard learned counsel for the Petitioner and learned counsel for Respondent No. 2.

7. It is an undisputed position that father of the Petitioner was employed as an Attendant with Respondent No. 2 and expired on 27.08.2022 after rendering a service of 14 years and 10 months leaving behind his wife, two sons and a daughter. As per the case set out in the writ petition, none of the children of late Mahesh Mishra are employed and/or married and were wholly dependent on him for their livelihood. It is equally undisputed that Respondent No. 2 issued Circular No. 10/2013 dated 02.07.2013 formulating a Scheme for appointment on compassionate ground for dependent family members of employees dying in harness. The object of the Scheme is to grant appointment to a dependent family member of the employee dying in harness leaving his family in penury and without any means of livelihood so as to relieve the family from financial destitution and



to get over the emergency situation. 'Employee' has been defined in the Scheme to mean an employee who was on the rolls of Respondent No. 2 and expression 'Dependent Family Members' means spouse; or son; or unmarried daughter and widow daughter. As per the Scheme, the eligibility conditions include: (a) family deserves immediate assistance for relief from financial destitution; and (b) applicant should be eligible and suitable for the post in all respects and possessing requisite qualification(s). No doubt, the appointment will depend on the availability of the vacancy *albeit* the Scheme also provides that where regular vacancy does not exist, a supernumerary vacancy may be created.

8. From a reading of the counter affidavit filed by Respondent No. 2, as also from the arguments canvassed by Ms. Anu Bagai, it is clear that case of the Petitioner was not considered for compassionate appointment on the ground that Respondent No. 2 is not resorting to fresh recruitment due to Clause 6 of the EPI Recruitment Policy as also a communication from the Nodal Ministry to that effect. The said reasoning, in my view, is wholly misconceived for the reason that the EPI Recruitment Policy deals with recruitments to different posts in Respondent No. 2 and has no concern with compassionate appointment which is separately provided for under Circular No. 10/2013 dated 02.07.2013, save and except, to the extent that qualifications etc. for the posts in question will be borrowed from the Recruitment Policy. It is not the case of Respondent No. 2 that Circular No. 10/2013 dated 02.07.2013 laying down a Scheme for compassionate appointment has been recalled and is no longer in operation. Therefore, case of the Petitioner ought to have been considered in accordance with the said Circular and the requirements of eligibility laid down therein, subject to



availability of the vacancy.

9. In view of the above, this writ petition is disposed of at this stage directing Respondent No. 2 to consider the case of the Petitioner for compassionate appointment in light of the provisions of the Circular No.10/2013 dated 02.07.2013, both with respect to the penury status of the family after the death of late Mahesh Mishra and the other eligibility conditions including existence of vacancy. The decision shall be taken within eight weeks of the receipt of this order. Needless to state if the decision of the Competent Authority is in favour of the Petitioner, he shall be given appointment forthwith. In case for any reason the decision is otherwise, the Competent Authority shall pass a reasoned and speaking order, which shall be communicated to the Petitioner within one week from the date of the decision and Petitioner will be at liberty to take recourse to legal remedies, if so advised.

JYOTI SINGH, J

OCTOBER 3, 2024

B.S. Rohella/shivam