



2024:DHC:6428



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

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Date of Decision: 8th August, 2024

+ W.P.(C) 16741/2023

DEEPAK

.....Petitioner

Through: Mr. Kuldeep Singh, Advocate

versus

GENERAL MANAGER DELHI CO-OPERATIVE BANK AND
ANR.

.....Respondents

Through: None.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking compassionate appointment on the death of his father on 25.09.2005.
2. As set out in the writ petition, case of the Petitioner is that his father was employed with Respondent No.1/Delhi State Co-operative Bank on a regular post of Gunman and expired on 25.09.2005 while on duty. Petitioner's mother Smt. Savitri Devi made a representation to the Bank on 24.10.2005 seeking compassionate appointment for Petitioner's elder brother. Petitioner's brother was not appointed on compassionate ground and after he got married, Petitioner sought compassionate appointment as per the policy of the Bank. However, there was no response from the Bank compelling the Petitioner to file the present writ petition.



3. Learned counsel for the Petitioner submits that after the death of his father on 25.09.2005, Petitioner sought compassionate appointment but his representations dated 20.08.2014 and 20.12.2015 are pending with no response from the Bank. Through his application under Right to Information Act, 2005 ('RTI Act'), Petitioner learnt that several persons have been appointed on compassionate grounds by the Bank between 2001 to 2007 but no appointment has been given to the Petitioner, which is discriminatory. To a pointed question by the Court on why the Petitioner did not take recourse to legal remedies between 2005 till the filing of this petition, there is no answer, save and except, stating that Petitioner was making representations and waiting for them to be considered favourably.

4. I have heard learned counsel for the Petitioner.

5. The narrative of facts emerging from the writ petition which is completely sketchy shows that father of the Petitioner expired on 29.05.2005 while serving as a Gunman with the Bank. Mother of the Petitioner sought compassionate appointment for her elder son on 24.10.2005 but as per the Petitioner, his brother Dalbir was not given the appointment. Petitioner gave a representation on 20.08.2014 seeking compassionate appointment for himself. It is not stated in the petition as to why there was inaction between 2005 and 2014, save and except, filing an application under RTI Act. Again from 2014 till October, 2023, when this petition was filed, Petitioner was only making representations on 20.08.2014, 20.12.2015 and thereafter on 14.03.2023. It is thus evident that this petition is barred by gross delay and laches which are unexplained. While it is true that matters pertaining to compassionate appointments must be dealt liberally but it is equally settled that the object underlying compassionate employment is to enable the family



of the deceased employee to tide over a sudden crisis due to the death of a bread earner, who has left the family in a state of penury and without livelihood. The sense of immediacy is the ethos of compassionate appointment. In a recent judgment in ***State of West Bengal v. Debabrata Tiwari and Others, 2023 SCC OnLine SC 219***, the Supreme Court has held that the *sine qua non* for entertaining a claim for compassionate appointment is that the family of the deceased employee will be unable to make two ends meet and that the financial condition of the family of the deceased at the time of death of the deceased is the primary consideration that ought to guide the decision granting compassionate appointment. Observing on the issue of delay in claims pertaining to compassionate appointment, the Supreme Court observed that in a case where there is a 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 lost and diluted. The relevant guiding factor would then be that for such prolonged period of delay, the family was able to sustain itself most probably by availing gainful employment from some other source. Relevant passages from the judgment are 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.

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. Prosper 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.”



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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.

40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005-2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, wherein the following observations were made:

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.”

(emphasis by us)

6. From the aforesaid observations, it is clear that the overriding factor in considering claims of compassionate appointment is the sense of



immediacy as the object is to enable the family of the deceased employee to tide over the penury status resulting from the loss of the bread earner of the family and therefore, the crucial time to determine the financial condition of the family deserving of compassionate appointment will be proximate to the death and not after several years. Compassionate appointment is not a vested right which can be exercised at any time in the future and is neither a source of recruitment as held by the Supreme Court.

7. In light of these principles, this Court is unable to agree with the Petitioner that he is entitled to compassionate appointment having waited from 2005 to 2023 with not a whisper in the writ petition to explain the long delay. Making representations over nearly 02 decades cannot come to the aid of the Petitioner since the sense of immediacy of redeeming the family of distress and financial crisis is lost. Learned counsel for the Petitioner has relied on the judgment of Gauhati High Court in *Kilangsangla v. State of Nagaland and Ors., W.P.(C) 54/2020*, decided on 23.03.2021, to contend that even after a delay of 10 years, the writ petition was entertained. The said judgment cannot aid the Petitioner in view of the judgment of the Supreme Court in *Debabrata Tiwari (supra)*, and moreover, as the facts indicate, Petitioner therein was vigilant and had approached on time but the authorities had shown a lackadaisical approach and had not taken timely action.

8. For all the aforesaid reasons, this writ petition is dismissed on ground of delay and laches in approaching the Court.

JYOTI SINGH, J

AUGUST 08, 2024/kks