



2024:DHC:726



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 18th January, 2024**
+ **W.P.(C) 24053/2005 and CM No.15965/2005**

DELHI JAL BOARD

..... Petitioner

Through: **Ms.Sangeeta Bharti, standing counsel
with Ms.Malvi Balyan, Advocate.**

versus

ITS WORKMEN

..... Respondent

Through: **Appearance not given.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“a)set aside the impugned award dated 9.12.2004 passed by the Industrial Tribunal No I, Karkardooma Courts, Delhi vide its award bearing ID No 25 of2000:

b)pass any other direction as may be deemed fit and proper.”

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

a) The respondent herein is the wife of Sh. Roop Chand who

Signature Not Verified

Digitally Signed
By:GAURAV SHARMA
Signing Date:02.02.2024
19:46:27

W.P.(C) 24053/2005

Page 1 of 23



was a workman under the petitioner i.e., Delhi Jal Board (“petitioner Jal Board” hereinafter) and served as a ‘Beldar’ in the petitioner entity from May, 1983, till 1st July, 1995. Apart from carrying work in the capacity of a Beldar, the respondent workman also worked in short intervals for the monsoon periods in the year 1984-87 as a ‘pump driver’ on daily wages muster roll.

- b) In the year 1990, the petitioner Jal Board sent a letter dated 8th November, 1990, to the workman giving him an opportunity to seek regularization at the post of ‘Beldar’ and he was provided 10 days to appear before the Medical Board for the same. On account of being medically deranged, the workman, i.e., the husband of the respondent could not appear before the board due to which he could not be regularized to the said post and continued to work at the same post on muster roll until 1st July, 1995.
- c) The husband of the respondent left the job of Beldar, subsequent to which the respondent through her husband’s union preferred a demand notice dated 14th July, 1998, thereby, seeking appointment on compassionate grounds in the petitioner Jal Board in lieu of her workman husband.
- d) Thereafter, the workman’s wife i.e., Smt. Kanta raised a grievance before the Appropriate Government, Delhi and the dispute was referred for adjudication to the learned



Industrial Tribunal *vide* notification dated 27th January, 2000, wherein, the learned Tribunal was tasked with adjudicating upon whether the workman i.e., husband of the present respondent was entitled to be examined by Medical Board and what relief is he entitled for in case he is declared medically unfit.

e) Before the commencement of the proceedings before the learned Industrial Tribunal, the appropriate Government deemed it necessary to amend the terms of the aforesaid reference *vide* corrigendum dated 20th June, 2001, and the following changes were incorporated to the initial referral:

- *Firstly*, whether the workman is entitled to be regularized as a 'Pump Driver' w.e.f. May, 1983, and if so, will he also be entitled to difference of wages as is admissible to his regular counterparts for his muster roll employment.
- *Secondly*, whether the workman is entitled to be examined by a Medical Board and if declared unfit, can his wife i.e., the respondent entitled to be appointed on his behalf on compassionate ground.

f) Thereafter, the learned Industrial Tribunal in I.D No. 25/2000, passed the impugned award dated 9th December, 2004 in favour of the respondent i.e., Smt Kanta, thereby, directing the petitioner Jal Board to appoint her as a 'Beldar'



on compassionate grounds. Further in the impugned award the learned Tribunal also held that , it was not desirable to refer the workman husband to be examined by a Medical Board as he was medically unfit.

- g) Pursuant to passing of the said award, the respondent served a notice dated 18th July, 2005, under Section 2(ra) of the Industrial Disputes Act (“Act” hereinafter) upon the petitioner Jal Board, seeking implementation of the impugned award dated 9th December, 2004.
- h) Therefore, being aggrieved by the impugned award, the petitioner Jal Board has assailed the same by way of the instant writ petition under Article 226/227 of the Constitution of India.

3. The learned counsel on behalf of the petitioner submitted that the learned Industrial Tribunal erred in passing the impugned award as the same has been passed without taking into consideration the entire facts and circumstances.

4. It is submitted that since Smt. Kanta was not a ‘workman’ with the petitioner Jal Board hence, the espousal by the Union cannot be sustained in the eyes of law as it is not in accordance with Section 9C(2) of the Act. The said provision provides that a dispute must be represented by the Union provided that the workman is a member. Since, Smt. Kanta was neither a workman and nor a member of the Union, the said espousal was against the provisions of the Act.



5. It is submitted that the regularization of a workman must be carried out in accordance with the administrative decision of the petitioner entity. As it is an admitted fact on the part of the respondent that her husband who was a workman was mentally deranged since the year 1990, therefore, the view taken on compassionate grounds that the workman husband shall be deemed to have been regularized is against all canons of justice.

6. It is further submitted that the policy for regularization in the petitioner Jal Board provides for the workman to undergo a medical examination and since the workman did not undergo the test as he was medically unfit therefore, the humanitarian approach taken by the learned Industrial Tribunal is baseless.

7. It is submitted that the policy for compassionate appointment is extended to the families of government servants who either die while in service or retire on medical grounds. The same cannot be extended to the respondent as neither her husband had died in service nor did her husband retire on any medical grounds.

8. It is submitted that the reference made by the Appropriate Government to adjudicate upon whether the workman can be put before a fresh medical board, is totally misconceived since it is an admitted fact by the respondent herself that her husband was medically unfit.

9. It is submitted that the respondent for the first time preferred the matter for her appointment on compassionate grounds vide letter dated 14th July, 1998 and admittedly, the workman stopped reporting to work on 1st July, 1995. Hence, the principle behind grant of compassionate appointment



catering to managing the financial emergency is diluted as a considerable time has passed and the same is against the settled principles of law.

10. It is submitted that there cannot be a direction to grant appointment on compassionate grounds since the same is a prerogative of the petitioner's administrative decision making process and the learned Tribunal could only have sought consideration *qua* the said appointment.

11. It is submitted that it was neither pleaded nor proved by the respondent that she was not gainfully employed and the learned Tribunal failed to adjudicate upon the said issue, and hence, the impugned award suffers from illegality, thereby, making it liable to be set aside.

12. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the reliefs be granted, as prayed.

13. *Per contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that the same is liable to be dismissed being devoid of any merits.

14. It is submitted that the impugned award has been passed after duly considering the entire facts and circumstances available on its record, and there is no illegality or infirmity thereto. The learned Tribunal had applied its judicial mind and thus, the impugned award cannot be challenged under a writ petition as per the law settled in this regard.

15. It is submitted that if the petitioner was aggrieved by the non-application of mind on the part of the Appropriate Government in making the said reference, then it should have preferred a writ petition against the



2024 : DHC : 726



same thus, the petitioner cannot agitate the same before this Hon'ble Court belatedly.

16. It is submitted that humanitarian approach taken by the learned Tribunal in directing appointment of Smt. Kanta on compassionate grounds in the petitioner Jal Board is in accordance with the objective of enabling her family to sail through the patch of sudden financial crisis, as is laid down by the Hon'ble Supreme Court in a catena of cases.

17. It is further submitted that as per the law settled by the Hon'ble Supreme Court, an award of the Industrial Tribunal cannot be intervened with unless the same suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law.

18. It is submitted that the learned Tribunal has passed the Award in accordance with the law and there is no merit in the contentions advanced by the petitioner which would amount to any infirmity or illegality in the impugned award.

19. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the instant petition, being devoid of any merits, may be dismissed.

20. Heard the learned counsel for the parties and perused the record.

21. The instant petitioner has approached this Court seeking setting aside of the impugned award dated 9th December, 2004, in favor of the respondent workman i.e., Smt. Kanta, whereby, the petitioner management was directed to appoint Smt. Kanta at the post of 'Beldar' on compassionate grounds. The



relevant paragraphs of the impugned award are reproduced herein below:

“...14. After hearing ARs of the parties, I find that as per the muster roll, the workman Sh. Roop Chand was assigned the job of pump driver during the monsoon season from May to August in the year 1984-89. This muster roll which has been relied upon by the AR of the workman, shows that only during the exigency of the work that Roop Chand was allowed to work as pump driver and so, to my mind, it is not a case, where the services of the workman is to be regularized on the post of pump driver from the initial date of his appointment. So, this issue is decided in favour of the management and against the workman, holding that he is not entitled to be regularized on the post of pump driver w.e.f. 1983.

15. The other part of the reference relates to, whether Sh. Roop Chand is entitled to, to be examined by the Medical Board and in the event of being declared unfit, whether his wife Smt. Kanta is entitled to be appointed on the compassionate ground and if so, what directions are necessary. In this regard, it may be mentioned that in para ‘2’ of the statement of claim, it is stated that the services of Sh. Roop Chand was to be regularized in accordance with the policy framed by the management in the year 1990, but the workman was not having good health at that time and was suffering from various ailments for which he became mentally deranged and this fact was brought to the notice of the authorities on 02.07.1995 in writing. Smt. Kanta who was examined as WW1, also in her cross-examination has admitted that her husband was medically examined and he was found unfit. In the year 1990, the workman was informed by a letter dated 08.11.1990, copy of which has been proved on the record as Ex. WW1/3, that his services as beldar was to be regularized in proper pay scale plus usual allowances provided he gets himself medically examined within 10 days of the issue



of this memo. Admittedly, the workman did not get himself medically examined, in view of thus, the services of this workman could not be regularized as beldar since there is an admission on the part of Smt. Kanta-WW1 that her husband is medically unfit. So, to my mind, it is not desirable to refer the present workman to be examined by the Medical Board as he is medically unfit.

16. Now, the question arise, as to whether Smt. Kanta wife of the workman is entitled to be appointed on compassionate ground. Admittedly, the workman joined the management in My, 1983, as beldar on muster roll. He continued to serve the department for a period of 12 years and from July, 1995, he stopped reporting for duties because of ill health. As per the policy of the management, the services of the present workman would have been regularized as beldar in November, 1990, if he was found medically fit, even though, he did not get himself medically examined, but as has come in the evidence of MW1 that he continued top work as beldar on daily wage muster roll upto July, 1995, so, even though, he was not technically regularized in the proper pay scale of beldar because of ill health, but taking humanitarian approach in the present case, he should be deemed to have been regularized against the post of beldar. Admittedly, at present, he is medically unfit to perform the duties, so it can be deemed that he being medically unfitted, so his wife can be allowed to be appointed on compassionate grounds. It is so necessary because she has only to look after her children but has also to help her ailing husband. In the above facts and circumstances of the case, I am of the considered opinion that it is a fit case, where a direction should be issued to the management to appoint Smt. Kanta on compassionate ground in the vacancy of her husband Sh. Roop Chand.

17. In view of my above discussion, I hereby pass an award in



favour of Smt. Kanta and against the management, directing the management to appoint Smt. Kanta as beldar on compassionate grounds within two months from the date of publication of this award. It is ordered accordingly. Reference is answered in favour of the workman. Award is passed, accordingly...”

22. As stated above, the learned Tribunal was tasked to adjudicate upon two primary issues, the first issue pertains to whether the workman is entitled to be regularized at the post of ‘Pump Driver’ and the second issue was with respect to whether the workman i.e., Sh. Roop Chand is entitled to be further examined by a medical board and in the event, he is found medically unfit, can the respondent herein be appointed on compassionate grounds.

23. Upon perusal of the aforesaid paragraphs of the impugned award, the learned Tribunal summed up the issues by holding that it was not found desirable to refer the husband of the respondent to be examined by the Medical Board, as it is an admitted fact on the part of Smt. Kanta-WW1 that her husband was informed vide letter dated 8th November, 1990, that his services as Beldar were to be regularized provided, he gets himself medically examined within 10 days. The workman did not get himself medically examined as he was medically unfit and in view of this, his services could not be regularized as Beldar by the petitioner Jal Board. Further, with regard to the second issue, the learned Tribunal observed that since the workman is medically unfit, therefore, taking a humanitarian approach, it held that he should be deemed to have been regularized against



the post of Beldar. Thus, it directed the petitioner to appoint Smt. Kanta at the post of Beldar on compassionate grounds as she has to look after her children and ailing husband.

24. Before delving into the analysis of the issue at hand, it is pertinent to note herein that the learned Tribunal had held that based on the admission by Smt. Kanta (wife of the workman), the workman was held to be medically unfit and hence, he was not entitled to be referred for further medical examination. The parties to the present petition have not advanced any arguments *qua* the issue of entitlement of reference for further medical examination and in view of the same, this Court will now only adjudicate upon the issue of compassionate appointment of the wife of the workman, i.e., the respondent herein.

25. At this juncture, this Court deems it necessary to state the law, as settled by the Hon'ble Supreme Court with regard to what yardsticks must be followed by Courts in matters involving appointment on compassionate grounds since the said grounds have been raised by the petitioner whilst challenging the impugned award.

26. The Hon'ble Supreme Court in its recent judgement titled ***State of W.B. v. Debabrata Tiwari, 2023 SCC OnLine SC 219***, observed in detail, the law settled by the Hon'ble Supreme Court with regards to what ought to guide the determination of a claim for compassionate appointment. The relevant paragraphs are reproduced herein below:

“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.”

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.”

27. The Division Bench of Calcutta High Court in ***Gour Sarkar v. State of W.B.***, 2021 SCC OnLine Cal 391, observed the following with respect to what must be examined by a Tribunal or a Court when considering a request for compassionate appointment. The relevant paragraph is reproduced herein below:



“27. While adjudicating an issue of refusal to give compassionate appointment by the state employer, it is the duty of the Tribunal or Court to carefully examine and consider that the request for appointment on compassionate ground should be reasonable and proximate to the time of death of the bread earner of the family, who died in harness. The Tribunal and the Court must be very cautious and keep it in mind that the process of giving appointment on compassionate ground cannot be a source of recruitment and should not give rise to any right of employment in the government sector. The Court must also be very sure at the same time, as to whether any specific rule or scheme is in existence for granting such a compassionate appointment in the relevant employment sector. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.”

28. The Hon’ble Supreme Court in ***LIC v. Asha Ramchandra Ambekar, (1994) 2 SCC 718***, observed that the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic consideration for compassionate appointments. The relevant paragraphs are reproduced herein below:

“10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in “Merchant of Venice”:

“The quality of mercy is not strain'd;



*It droppeth, as the gentle rain from heaven
Upon the place beneath it is twice bless'd;
It blesseth him that gives, and him that takes;”*

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that “law is the embodiment of all Wisdom”. Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

11. At this juncture we may usefully refer to Martin Burn Ltd. v. Corporation of Calcutta [AIR 1966 SC 529, 535 : (1966) 1 SCR 543]. At page 535 of the Report the following observations are found:

“A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.”

The courts should endeavor to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case itself, there are regulations and instructions which we have extracted above. The court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the circular dated January 20, 1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered.”



29. It can be summed up from the above stated judgments that the Courts must carefully examine and follow the below mentioned yardstick in matters seeking appointments on compassionate grounds. *Firstly*, the principle of compassionate appointment makes a departure from the general rules of appointment with the intention to achieve the objective of enabling the family of the deceased to sail through the period of sudden financial crisis. *Secondly*, the scheme for compassionate appointment is strictly to keep the family of a deceased financially running and shall not be thought to be a source of recruitment as it is not a vested right. *Thirdly*, compassionate appointment cannot be claimed or offered if there exists a lapse of time and the situation of crisis has ended thus, the process shall be that any such compassionate appointment shall be concluded in a timely manner and varied factors such as income of the family, age of dependents, marital status, financial liabilities, etc. must be given due consideration.

30. In the instant petition, the petitioner has prayed for issuance of a writ of certiorari and it is apposite to state the law in such regard, as has been reiterated time and again by this Court with respect to the position as to what must be observed by the High Court while issuing a writ in the form of certiorari.

31. It can be fairly summed up via two cardinal principles of law, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or reweigh the evidence upon which the consideration of the inferior Court purports to have been based. The writ of certiorari can be



issued if an error of law is apparent on the face of the record and *secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put certiorari is issued for correcting errors of jurisdiction exercised by inferior Courts, for Courts violating principles of natural justice and acting illegally and the Court issuing such a writ shall act in supervision, and not appeal.

32. Now advertent to the facts of the instant petition.

33. After carefully examining the impugned award and perusing the settled law with regard to the appointments on compassionate grounds, this Court is of a considered view that appointment to a post on compassionate grounds is not a vested right rather, such appointment is in violation of the principles of equality as enshrined under Article 14 of the Constitution of India.

34. As per the settled law, for any appointment to a public office, government or semi-government entity, all eligible candidates must be considered at an equal footing as per the mandate of Article 14 of the Constitution. Further, as a general rule, the state or its instrumentalities while making such appointment must not ignore the said mandate. However, there is an exception to the above said rule where it is inevitable to consider granting appointment on compassionate grounds under exceptional circumstances to the family of a deceased employee so that the family left behind, may not starve. The primary purpose of such a scheme is to save the bereaved family from a sudden financial crisis, as may occur due to the death of a sole bread earner.



35. Therefore, such appointment must not be construed as source of recruitment as evidently it is not a heritable possession that a family member of a deceased could claim since the objective behind such a scheme of appointment is to cater to the sudden financial crunch and restore the equilibrium of the family in crisis. Such appointment cannot be claimed or offered after a lapse of a considerable time as the sense of immediacy and urgency would cease to exist as the whole purpose is premised on the urgency of the crisis situation and hence, defeating the very foundation of such a policy.

36. This Court observes that the impugned award on the face of it, suffers from infirmity as the same has not been passed in accordance with the settled position of law on the issue of appointment on compassionate grounds.

37. In the backdrop, this Court is of the view that the learned Industrial Tribunal should have considered and carefully examined the belated claim/request of the present respondent as the workman on whose account she claims appointment on compassionate grounds stopped reporting to work on 1st July, 1995, whereas, the demand notice was preferred by the respondent Smt. Kanta through her husband's union on 14th July, 1998 and further the industrial dispute was referred by the Appropriate Government in the year 2000.

38. Considering the above, this Court concludes by holding that the learned Tribunal should have perused and relied upon the internal administrative decision making process that might be in operation at the



2024:DHC:726



relevant time in order to conclude that Smt. Kanta, wife of the workman, should be granted appointment on compassionate grounds. Thus, the learned Tribunal surpassed its jurisdiction and did not rely upon the petitioner Jal Board's internal administrative decision making process and instead took a liberal approach beyond permissible limits merely on humanitarian grounds, which is impermissible as per the settled law.

39. In view of the aforesaid observation as well as the law settled by the Hon'ble Supreme Court and different High Courts, the impugned award passed by the learned Industrial Tribunal suffers from infirmity.

40. In light of the foregoing paragraphs, it is held that the compassionate appointment of the respondent i.e., wife of the workman is illegal and against the settled principles of law and accordingly, the impugned award dated 9th December, 2004 passed by the learned Industrial Tribunal – I, Karkardooma Courts, Delhi, in ID No.25/2000 is set aside. Therefore, the instant writ petition is allowed.

41. In view of the aforesaid terms the instant petition stands disposed of along with pending applications, if any.

42. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 18, 2024
VLD/RYP

Click here to check corrigendum, if any