
(2007) 08 DEL CK 0188

In the Delhi High Court

Case No : Writ Petition (C) No. 5275 of 2006

Arif Ali

APPELLANT

Vs

Delhi Jal Board

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 115 FLR 982

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Kuldeep Kumar, for the Appellant; C.S. Prashar, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—By way of the present petition, the petitioner has sought issuance of a writ of mandamus to the respondent Delhi Jal Board (DJB), thereby directing it to provide employment to the petitioner on compassionate grounds.

2. Briefly stated, facts of the case are that the father of the petitioner was working with the respondent DJB as a Beldar and his retirement was due on 31st March, 2007. He, however, expired on 30th October, 2001, during the course of his employment, leaving behind his wife, five sons including the petitioner, and two daughters. Thereafter the mother of the petitioner made a request to the respondent DJB to consider the petitioner for being offered employment on compassionate grounds. Vide order dated 23rd September, 2002, the respondent DJB called the petitioner for an interview on 9th October, 2002, for which the petitioner duly appeared. On 25th September, 2003, the respondent DJB, rejected the request of the petitioner for appointment on compassionate basis on the grounds that the father of the petitioner was nearing retirement, the petitioner was employed, the two elder brothers of the petitioner were doing private jobs, and that sufficient terminal dues had been received by the family. Aggrieved by the aforesaid order of rejection, the petitioner has filed the present writ petition.

3. Learned Counsel for the petitioner contended that the grounds for refusing compassionate appointment to the petitioner were arbitrary. It was submitted that one of the grounds given for rejecting the representation of the petitioner, that his father was nearing retirement, was misconceived in view of the fact that while his father died in the year 2001, he was due for retirement only in the year 2007.

4. It was further submitted that the petitioner and his family are living in extreme poverty and their condition is piteous. Reliance was placed on the Scheme framed by the Government of India dated 30th June, 1987, which deals with granting of compassionate appointment to the son/daughter/near relative of a government servant who retires on medical grounds before he attains the age of 55 years, and in case of Group "D" employees, whose age of superannuation is 60 years, it states that compassionate appointment may be considered where the employee is retired on medical grounds before attaining the age of 57 years. It was stated that since the father of the petitioner also expired before attaining the age of 57 years, Therefore the petitioner was entitled to be considered for being granted the benefit of the aforesaid policy of the Government of India. A plea was also taken to the effect that both the elder brothers of the petitioner were residing separately and contributed nothing to the family income.

5. Per contra, counsel for the respondent DJB submitted that the application of the petitioner for compassionate appointment was duly considered by the Screening Committee, but his case was not recommended because there were other more deserving candidates and the number of vacancies were limited. It was argued that posts in the government are not hereditary in nature, and compassionate appointment is not a right vested in an applicant but is within the discretion of the State, which it has to exercise after weighing various factors, such as the financial condition of the family of the deceased employee, the assets and liabilities owned by the family, the retiral benefits received by the family etc.

6. It was further submitted that in the case of the petitioner, various factors were considered by the screening committee before refusing to recommend his case for appointment on compassionate grounds, which included the fact that his father, i.e., the deceased employee was already nearing the age of retirement, the petitioner and two of his elder brothers were employed, and the family of the petitioner had received sufficient terminal dues amounting to a total of Rs. 3.54 lacs, in addition to a monthly sum of Rs. 1,800 + D.A. as family pension.

7. Before dealing with the arguments advanced by the parties, it is appropriate to note the law on compassionate appointment as laid down by the Apex Court in various judgments. Firstly, while giving such compassionate employment, it is to be kept in mind that it is not unduly unfair to the rights of those other persons who are eligible to seek appointment against a post which would have been available but for the provision enabling appointment being made on compassionate grounds to the dependents of the deceased employee. Reliance in

this regard may be placed on the judgment rendered by the Supreme Court in the case of State of Manipur Vs. Md. Rajaodin, . Appointment on compassionate ground cannot be claimed as a matter of right and such appointment cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. A claim for appointment on compassionate basis has been considered as reasonable and permissible on the basis of the sudden crisis occurring in the family of an employee who has served the state and died while in service. However the rules, regulations, administrative instructions and orders in this behalf must with stand the scrutiny of Article 14 and 16 of the Constitution of India. Appointment on compassionate basis cannot be made another source of recruitment but is merely an exception to the normally mandated procedure of recruitment taking into consideration the effect of the death of the employee while in service, leaving his family without any means of livelihood. In such cases, the object is to enable the family to tide over the sudden financial crisis. But again, such appointments on compassionate ground have to be made only in accordance with the rules, regulations or administrative instructions while taking into consideration the family condition of the family of the deceased. Support is also drawn from the following judgments:

- (i) Umesh Kumar Nagpal Vs. State of Haryana and Others,
- (ii) State of Haryana and Others Vs. Rani Devi and Another,
- (iii) State of Haryana and Another Vs. Ankur Gupta,
- (iv) M.C.D. v. Jagdish Prasad decided by the Delhi High Court on 23rd December 2005, in WP (C) No. 721/2003

8. It is to be taken note of that the Minutes of the Screening Committee for Compassionate appointment, reflects that the Committee refused to refer the case of the petitioner for compassionate appointment keeping in view various factors, and that the decision was taken after due application of mind. As noted above, the various factors that were considered were that the father of the petitioner was nearing retirement, that the petitioner was self employed, that two of his elder brothers were also doing some private job, and that the family was in receipt of sufficient terminal dues.

9. There is force in the contention of the respondent that the petitioner having already received all the terminal benefits due to him in addition to a monthly amount for family pension, there is no such financial crisis or extreme financial difficulty, to tide over for which he needs to be appointed with the respondent DJB on compassionate grounds. In the case of Punjab National Bank and Others Vs. Ashwini Kumar Taneja, , the Supreme Court has held that compassionate appointment should not be given where there is no financial hardship as the purpose and object behind the said appointment is to tide over the sudden financial crisis. While determining and deciding this aspect, the Supreme Court held that retrial benefits have to be taken into consideration and cannot be ignored.

10. There is no merit in the contention of the petitioner that the rejection of the petitioner's application was based on erroneous reasons and Therefore the same is arbitrary. While accepting the plea of the petitioner that his father was not "nearing" retirement at the time of his death, fact still remains that there were other cogent reasons also, for rejecting the application of the petitioner. Reliance placed by the counsel for the petitioner on Clause (b) of the Scheme of Government of India dated 30th June, 1987 is also misconceived as the said scheme deals with extension of the benefit of compassionate appointment to the son/daughter/near relative of a Government servant retired on medical grounds and not in case of death of a Government servant.

11. It is pertinent to note that in the present case, while the application of the petitioner was rejected in September 2003, the present petition has been filed only in the year 2006, i.e., after a gap of 2" years of the said rejection, and as such as of today, more than 5 years have passed since the death of the father of the petitioner. It is well settled that delay defeats the very purpose of compassionate appointment which is to help the family of the deceased employee tide over the sudden financial crisis that follows as a result of the untimely demise of an earning member. The delay of over two years in filing the present petition also makes this Court draw an inference that the condition of the petitioner is not as penurious as claimed by him, as he has been able to sustain himself and his family over this period.

12. At the cost of repetition, it may be emphasised that government jobs are not hereditary in nature. The object of compassionate appointment is not to provide for an alternate employment, but to provide relief to a family that is left in a penurious condition by the death of its earning member. However, in the case in hand, the petitioner is today aged about 25 years and is employed. The family of the petitioner is also in receipt of the terminal dues and family pension amount as stated above. Therefore, irrespective of whether the two elder brothers of the petitioners are residing separately or not, the case of the petitioner cannot be deemed to be one of such an exceptional nature, so as to warrant any interference by this Court with the administrative discretion exercised by the respondent DJB in rejecting the application of the petitioner for compassionate appointment.

13. Keeping in view the aforesaid facts and circumstances and the position of law as discussed above, the Court finds no illegality or perversity in the impugned letter dated 25th September, 2003 issued by the respondent DJB to the petitioner, rejecting his application for compassionate appointment. The writ petition is dismissed. There shall be no order as to costs.