

(2011) 01 DEL CK 0177

In the Delhi High Court

Case No : Writ Petition (C) No. 3576 of 2007

Dev Priye Saini

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 177 DLT 85 : (2012) 2 SLJ 268

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : K.B. Hina and Piyush Sharma, for the Appellant; Rohit Madan, for Aditya Madan, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—The Petitioner is the son of Shri N.S. Saini who was working as Assistant Sales Tax Officer in the Sales Tax Department of National Capital Territory (NCT) of Delhi which was a Group-B Gazetted post. Unfortunately, while still in service Shri N.S. Saini died on January 31, 1998, leaving behind the Petitioner who was then 14 years of age, his wife Smt. Santosh Saini who was 45 years of age, and two daughters aged 23 years and 11 years. Consequent upon the untimely death of his father, the Petitioner vide an application dated August 28, 1998 addressed to the Commissioner, Sales Tax, applied for appointment as a Lower Division Clerk (LDC) on compassionate basis. The Commissioner, Sales Tax forwarded his request to the Secretary (Services), Government of NCT of Delhi for consideration. Since the Petitioner was a minor at the time he applied for such appointment, the office of the Department of Services, Government of NCT of Delhi vide letter dated January 21, 1999 informed the Sales Tax Department with a copy endorsed to the Petitioner that his request could not be considered and that any further action could be taken only after March 23, 2002, as that was the date when he would have attained the age of majority. In view of this communication, the Petitioner on attaining the age of majority wrote to the Deputy Secretary (Services), Government of NCT of Delhi to take up his case of

appointment on compassionate ground. The Department of Services through a Screening Committee did consider his case along with others in its meeting held on December 19, 2003/January 12, 2004 but did not recommend him for appointment due to shortage of vacancies and also on the basis of relative merit. The Petitioner was informed about the said decision of the Screening Committee vide letter dated February 17, 2005 and was also informed that his case would be placed in the next meeting of the Screening Committee. His case was again considered by the Screening Committee in its meeting held on September 26, 2006 but it again did not recommend him for compassionate appointment citing the same reason of shortage of vacancies and want of relative merit. The decision so taken was communicated to the Petitioner on November 15, 2006.

2. It is this communication which has brought the Petitioner to this Court, seeking quashing of order dated November 15, 2006 and praying for a writ of mandamus directing the Respondent to reconsider his case with relative merit of other applicants.

3. The question is, should this Court issue a direction in the nature of mandamus to the Respondent to consider the case of the Petitioner afresh when already he has been considered twice by the Screening Committee and has been found not fit for such appointment on account of shortage of vacancies and on the basis of relative merit?

4. The Petitioner has relied upon the Office Memorandum issued by the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) dated October 09, 1998 and it is on the basis of this Memorandum that he has sought compassionate appointment. The object of the "Scheme for Compassionate Appointment" as laid down in the Memorandum is "to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency." It also lays down that, "such appointments can only be made to Group "C" or Group "D" posts against the direct recruitment quota up to a maximum of 5% of vacancies falling under the said quota, if the family of the deceased Government servant is found to be indigent and deserving immediate assistance for relief from financial destitution, and the person applying for compassionate appointment is eligible and suitable for the post in all respects under the provision of the relevant Recruitment Rules." It further provides that, "upper age limit can be relaxed wherever can be found to be necessary but the lower age limit, in no case, shall be relaxed below 18 years of age."

5. It is evident from the "Scheme for Compassionate Appointment" that the whole purpose behind providing such an appointment to one of the family members of a Government employee who dies in harness, is to help the family tide over the financial crisis in which it suddenly finds itself on account of the

death of the only bread-earner. The Petitioner soon after the death of his father did apply for appointment to the post of LDC, but since he was only 14 years of age, he was ineligible in terms of the Memorandum dated October 09, 1998 wherein, as noticed above, it is laid down that in no case, the lower age limit shall be relaxed below 18 years. Hence, he was informed that his request could only be considered on his attaining the age of majority. Notwithstanding the fact that in view of the age of the Petitioner, there was no prospect of his getting immediate employment, the family preferred to wait for him to come of age rather than the eldest daughter applying for the job who suffered from no such disability of age. When asked as to why the daughter did not apply, it was sought to be justified on the ground that she was of marriageable age and in the event of her marriage, she would have ceased to be of any assistance to the family monetarily. The explanation so rendered gives rise to the presumption that the family was not in dire need of financial assistance. This is fortified by the fact that the family received Rs. 6,13,969/- as terminal benefits and Rs. 3750/- per month was fixed as family pension. What does one make out from all this? Does it not give a feeling that the family was more keen in securing a job for the son than to rehabilitate itself, for if it was really reduced to a state of penury consequent upon the death of the only earning member, it would not have waited for the son to turn 18. At least, this is how I look at it. Ordinarily, in a situation like this when the survival of a family is at stake, whoever is eligible, be it a daughter or a son or even a wife, anyone of them will seek compassionate appointment and all other concerns including the marriage of a daughter become secondary. As a matter of fact, I feel, had the eldest daughter of the family applied for the job and in the event of her getting the same, it would have enhanced her prospects of marriage and at the same time, she would have also rendered help to the family. But the family instead of exercising this option chose to wait for the Petitioner to attain the age of majority as if he had a vested right to compassionate appointment and could lay his claim to the same at any point of time. The father of the Petitioner had died 13 years ago. The Petitioner is now more than 27 years of age. He is still chasing a job to which he has no right. It has been time and again held by the Courts, particularly, the Apex Court that compassionate appointment cannot be claimed as of right. It is subject to availability of vacancies in the quota prescribed for such appointments and is also subject to the financial condition of the family of an employee who dies in harness. The case of the Petitioner was considered not once, not twice but thrice, but each time he was not found fit enough to be recommended. On the first occasion, he was not eligible for consideration, and on the other two occasions, he was not found fit enough to be recommended on the basis of relative merit when compared with cases of similar nature and also on account of the cap of 5% quota for such appointments.

6. For what has been noticed above, I find no merit in the writ-petition. The same is dismissed.