
(2007) 09 DEL CK 0299

In the Delhi High Court

Case No : Writ Petition (C) No. 6526 of 2002

M.C.D.

APPELLANT

Vs

Madhubala

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 09 DEL CK 0299

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Saroj Bidawat, for the Appellant; Sanjoy Ghose, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—present petition has been filed by the petitioner Municipal Corporation of Delhi (MCD) against the award dated 9th March, 2001, passed by the Industrial Tribunal (hereinafter referred to as "the Tribunal"), whereunder while holding that the respondent daughter of the deceased employee of the petitioner was entitled for appointment at the post of LDC or an equivalent post on compassionate grounds and that she was entitled to hold the accommodation which was allotted to her deceased mother, the petitioner MCD was directed to complete the necessary formalities regarding the appointment of the respondent within one month from the date when the Award was to become enforceable.

2. Briefly narrated, the facts of the case as set up by the respondent in the statement of claim filed by her before the Tribunal are that her mother, the deceased employee of the petitioner MCD died on 16th April, 1991 while in service as a permanent Ward Aya posted at Lajpat Nagar Hospital, leaving behind her husband, daughter, i.e., the respondent aged 24 years at the relevant time, and two younger sons. It was stated that one of the sons of the deceased employee initially applied for compassionate appointment, but later on it was decided to secure appointment in favor of the respondent however, it was only during the course of the conciliation proceedings that the petitioner management

agreed to supply the application form to her. It was further stated that though she tried to submit the form to the Resident Medical Superintendent, Lajpat Nagar Hospital, but on his refusal to accept the same, it was submitted to the Asst. Labour Officer, MCD on 23rd October, 1992. Having received no reply to the same, the respondent assumed that her application was rejected. Thereafter the conciliation proceedings failed and the dispute was referred for adjudication to the Industrial Tribunal (hereinafter referred to as "the Tribunal") in the following terms of reference:

Whether Miss Madhubala is entitled to be appointed on compassionate ground and if so, that directions are necessary in this respect?

Whether the residential accommodation allotted to Smt. Chadra, mother of Miss Madhubala should be regularized/allotted in the name of Miss Madhubala and if so, what directions are necessary in this respect?

3. The claim of the respondent was resisted by the petitioner MCD by way of filing the written statement and the main objection taken therein was that she was not entitled to be appointed on compassionate grounds since sufficient retiral benefits had been released to the family. On the basis of the pleadings of the parties, issues were framed which was followed by the parties advancing their arguments and leading evidence, based on which the learned Presiding Officer came to the conclusion that it was not acceptable that the respondent had not applied for compassionate appointment and also that the respondent did submit her application for the same on the intervention of the conciliation officer. The Tribunal took note of the fact that the management did not apply its mind on the application even after a long time had passed and the same was rejected without any communication to the respondent and also that no ground was made out by the petitioner MCD to prove that the respondent was not entitled to be appointed on compassionate basis. Accordingly, the impugned award was passed by which it was directed that the respondent be appointed on compassionate grounds and also that she was entitled to hold in her possession the accommodation that was allotted to her mother. Aggrieved by the said award, the petitioner MCD has approached this Court.

4. Counsel for the petitioner MCD submitted that the impugned award was patently illegal and unsustainable in law, firstly because no application was ever received on behalf of the respondent and Therefore there was no question of not considering the same. It was stated that the Tribunal erred in relying on the said application without any proof of the same having been served on the petitioner MCD.

5. It was further submitted that the Tribunal failed to appreciate the fact that the purpose of compassionate appointment is only to provide immediate succor to the family of the deceased employee and not to provide alternate employment. It was contended that all the retiral benefits of the deceased employee had been released to the family of the respondent and the same ought to have been

considered by the Tribunal before deciding on the respondent's claim for compassionate appointment. Counsel for the petitioner MCD relied on the judgment rendered by the Supreme Court in the case of General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, , in support of her aforesaid contention. It was also argued that since the application of the brother of the respondent had already been considered and rejected once, it was not open for another member of the same family to apply for compassionate appointment again.

6. Lastly, it was stated that the impugned award is illegal and perverse inasmuch as the Tribunal exceeded its jurisdiction in directing appointment to the respondent as the discretion to take such a decision is vested in the petitioner MCD and such an administrative decision is to be taken after considering various factors such as the availability of vacancies, suitability, qualifications, medical fitness etc.

7. It was submitted on behalf of the respondent that her condition remains penurious even today since the retiral benefits of her mother were released in favor of her father who also died in the year 2002. It was submitted that the respondent is 35 years old as of date, is unemployed and is staying alone. It was further submitted that she has no source of income to support herself and both her younger brothers are married and are staying separately. Accordingly it was averred that hers was a fit case for grant of compassionate appointment and there was no illegality in the impugned award by which the petitioner MCD was directed to appoint the respondent on compassionate grounds.

8. It was further stated on behalf of the respondent that the application filed by her younger brother was rejected without giving any reasons vide communication dated 12th May, 1992 after which she tried to apply for compassionate appointment, but the petitioner MCD refused to accept her form. It was only thereafter that a demand notice was served on the petitioner MCD and conciliation proceedings were initiated. It was further submitted that during the conciliation proceedings, the petitioner MCD agreed to supply an application form to the respondent but when she filled up and form and submitted the same to the Medical Superintendent of the Lajpat Nagar hospital, he refused to accept the same. Thereafter the form was submitted to the Assistant Labour Commissioner, but having received no reply to the same, she assumed that her application had been rejected. It was contended that the petitioner MCD was completely at fault, for it failed to take any action in respect of the application of the respondent for a long time.

9. While countering the arguments advanced by the counsel for the petitioner MCD, counsel for the respondent referred to the cross examination of the respondent to show that she was not questioned at all in respect of the application form, and that once the said application form was placed on record by the respondent it was then for the petitioner MCD to disprove it. However since no relevant material was placed on record and in absence of any cross-

examination in order to prove that the said application form was not served on the petitioner MCD, the Tribunal rightly drew an adverse inference against the petitioner MCD.

10. As against the argument of the counsel for the petitioner MCD, counsel for the respondent stated that merely releasing retiral benefits does not preclude the family member of the deceased employee from claiming compassionate appointment, since compassionate appointment is admissible over and above what is granted to the family of the deceased employee on his death. Reliance was placed in this regard on the judgment rendered by the Supreme Court in the case of *Govind Prakash Verma v. Life Insurance Corporation of India and Ors.* (2005) 10 SCC 289.

11. I have heard the counsels for both the parties and have perused the material placed on record including the lower court records of the present case. It is pertinent to note at the very outset that despite the fact that there was a stay operating in favor of the respondent to the effect that the respondent will not be evicted from the premises vide order dated 9th October, 2002, the respondent has already vacated the premises in question in the year 2002 itself. Therefore, the only issue that needs to be addressed herein is with regard to that part of the impugned award by which the petitioner MCD was directed to grant compassionate appointment to the respondent.

12. Much emphasis has been laid by the counsel for the petitioner MCD on the fact that since the respondent had never submitted an application for compassionate appointment, Therefore there was no question of considering the same. A perusal of the records reveals that the respondent had made an unequivocal averment to the effect that the demand was raised on the management for a Form, but despite her best efforts, she could not get the Form for compassionate appointment, and it was only during the course of the conciliation proceedings that the petitioner MCD agreed to supply the said Form to the respondent. It is also mentioned therein that the respondent tried to submit the Form after filling it to the Resident Medical Superintendent, Lajpat Nagar Hospital and on his refusal to accept the same it was submitted to the Assistant Labour Commissioner. However, the respondent was never cross-examined with respect to her aforesaid deposition, and Therefore the stand of the respondent remains unrebutted. In this view of the matter, the petitioner MCD cannot be allowed at this stage to challenge the impugned award on the aforesaid ground specially for the reason that the petitioner MCD had itself not availed the opportunity of disproving the averment of the respondent before the Tribunal.

13. Insofar as the contention of the counsel for the petitioner MCD to the effect that the application of the younger brother of the respondent had already been rejected by the petitioner MCD and that once an application of one of the members of the family of the deceased employee had been rejected, no other member can again apply for compassionate appointment is concerned, it is to be

noted that the said contention is not supported by any Rule, Regulation or any provision of law which precludes a person from filing an application for compassionate appointment, if an application filed by some other member of his family has already been rejected. It is also worthwhile to note that it is specifically mentioned in the impugned award that it was an admitted fact that the son of the deceased employee had applied for compassionate appointment but the said application was rejected without passing any speaking order. This being the position, there can be no bar on the respondent in applying for compassionate appointment merely because an earlier application filed by her brother had been rejected, more so when the order of rejection contains no reasons.

14. It has been rightly submitted by the counsel for the respondent that mere release of retiral benefits cannot be the sole ground for refusing compassionate appointment to an applicant. Each case has to be examined in its own facts and circumstances, and all the factors have to be weighed together to see whether an applicant is fit for appointment on compassionate grounds or not. Reference was rightly made by the counsel for the respondent to the judgment in the case of Govind Prakash Verma (supra), wherein it has been held as under:

6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.

15. There are innumerable judicial pronouncements to the effect that this Court while exercising its powers of judicial review under Article 226 of the Constitution of India, cannot normally substitute its opinion for that of the Tribunal merely because two views are possible and that it ought not to interfere with the finding of facts arrived at by the Tribunal unless the same suffers from the vices of arbitrariness, violation of principles of natural justice, malafides, complete non-application of mind etc. Since the petitioner MCD has failed to make out any such grounds in the present case, this Court finds no reason to interfere with the impugned award.

16. However, there is force in the contention of the counsel for the petitioner MCD that even if the Tribunal came to the conclusion that the case of the respondent was fit for consideration for appointment on compassionate grounds, the right course was to remit the matter back to the petitioner MCD with directions to reconsider her case, rather than direct the petitioner MCD to appoint her. Support in this regard can be drawn from the judgment a Single

Judge of this High Court in the case of Municipal Corporation of Delhi Vs. Bhori Lal and Another, , wherein after considering the case law on the subject, it was held that it would have been appropriate, if the direction was confined to the consideration of the application of the petitioner therein by the MCD, rather than directing his appointment on compassionate grounds. Such administrative decisions are best left to be taken by the petitioner MCD, so that the same can be decided in light of various factors such as the scheme for compassionate appointment, the eligibility of the respondent etc.

17. In view of the facts and circumstances of the present case and the position of law as discussed above, the writ petition is disposed of while modifying the operative part of the impugned award to the extent that the petitioner MCD is directed to consider the case of the respondent for compassionate appointment on the basis of her currently existing situation. For the said purpose, the petitioner shall submit a requisite Form to the respondent within two weeks, which the respondent shall fill up by giving an update of her current financial position, and all other relevant factors as required, so as to enable the petitioner to consider the case of the respondent as per the guidelines laid down in judicial pronouncements for grant of appointment on compassionate basis, and pass a speaking order thereon within four weeks from the date of receipt of the Form, under written intimation to the respondent.

18. Before parting with the case, the court must observe that in this case, as also in many other cases of compassionate appointment, it is found that invariably, the time lag between making of the application and its disposal is unreasonably and inexplicably long and very often, no reasons for rejection are indicated in the letters addressed to the applicants. The employer to whom the applications are made, is expected to deal with the same with alacrity and reasonable dispatch and failure to do so virtually amounts to frustrating and negating the very object of providing compassionate appointment to a member of the family of a deceased employee which is to enable the family to tide over a sudden financial crisis. This is not to say that in every case compassionate appointment ought to be given, but only to indicate that applications filed on the said ground ought to be considered as expeditiously as possible and disposed of one way or the other, instead of keeping the same pending for long durations, and prolonging the agony of the applicants. In case of rejection, the reasons thereof ought to be furnished to the applicants in writing. This will not only obviate the requirement of issuing notice in all such cases, but also enable the court to examine the grounds of rejection at first blush and then sift out the grain from the chaff, at the same time, giving priority to deserving cases while keeping in mind the urgent nature of relief sought, that is, of providing immediate succor to the family of a deceased employee, by way of compassionate appointment.