

(2013) 07 DEL CK 0336

In the Delhi High Court

Case No : Writ Petition (C) 13270 of 2009

Ms. Manju

APPELLANT

Vs

Balwantray Mehta Vidya Bhawan Sr. Sec. School and Another

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2013) 7 AD 158

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : G.D. Bhandari and Mr. Parveen K. Nagpal, for the Appellant;
Bandana Shukla, Advocate for Ms. Ruchi Sindhwani, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner, who is the wife of late Sh. Om Prakash, seeks compassionate appointment with the respondent No. 2 Balwantray Mehta Vidya Bhawan Sr. Sec. School. Compassionate appointment can only be granted in terms of an applicable policy and on the aspirant satisfying the requirements of the policy. Under certain compassionate policies, there is a quota for appointment and subject to vacancies arising in that quota, appointment can be made. Also entitlement to compassionate appointment in certain policies is only for a certain number of years. A reading of the writ petition shows that there is no reference to the policy of the respondent No. 2/school or of the respondent No. 3/Director of Education, what are its requirements, how the petitioner meets the requirements, whether under the policy there is a specific quota and whether vacancy exists in that quota for appointment of the petitioner, and all of which aspects have to be looked into before compassionate appointment could be given.

2 Law on the aspect of compassionate appointment is stated recently by the Supreme Court in the case of State Bank of India and Another Vs. Raj Kumar, The relevant paras of this judgment of Supreme Court are paras 6 to 8 which read as under:

6. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

7. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply. On the other hand, if a scheme provides that on the death of an employee, a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfil any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the Scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

8. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies. Obviously, therefore, there can be no immediate or

automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

(underlining added)

3 In view of the aforesaid legal position and lack of necessary pleadings I put it to the counsel for the petitioner that it would be better that the petitioner files a fresh writ petition giving the details of the policies, how the petitioner meets the qualifications and as to whether there are vacancies in the quota for the post to which petitioner seeks appointment, however, counsel for the petitioner states that the case be decided as it is. I have, therefore, no option but to dismiss the writ petition on account of the facts that unless and until it is known what are the requirements of the compassionate appointment, as to how the petitioner satisfies the requirements, what are the vacant posts available in the specified quota etc, relief as prayed for cannot be granted. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs. Though the writ petition is dismissed, in the peculiar facts of the present case, because the Director of Education admits that there is a policy of compassionate appointment, the petitioner will be at liberty to make a representation to the school preferably within a period of six weeks from today indicating as to how petitioner complies with the requirements of the compassionate appointment policy. The school will forward the proposal/recommendation within four weeks to the appropriate authority of the Directorate of Education and which appropriate authority will take a sympathetic decision on the proposal of the petitioner within a period of two months of the receipt of the same from school. The decision of the appropriate authority will be communicated to the petitioner and her counsel.