
(2010) 05 DEL CK 0047
In the Delhi High Court
Case No : Writ Petition (C) 2810 of 2002

Satya Pal Singh	Vs	APPELLANT
The Management of MCD and Another		RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0047

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajiv Aggarwal and Anuj Aggarwal, for the Appellant; Gaurang Kanth and Sudershani Ray for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition impugns the award dated 2nd February, 2000 on the following reference:

Whether Shri Satyapal Singh is entitled to be appointed on compassionate grounds and if so, what directions are necessary in this respect?

2. The petitioner had claimed compassionate appointment with the respondent MCD on the ground that his father was in the employment of MCD as a Mali/Beldar; that the father died on 28th April, 1990 leaving behind a widow aged about 54 years, three sons including the petitioner and a married daughter; that the petitioner being the youngest son, in May, 1990 itself applied for compassionate appointment but the same was rejected by respondent No. 1 MCD vide letter dated 3rd June, 1991. Industrial dispute was raised by the petitioner leading to the award aforesaid. The Labour Court found that one of the brothers of the petitioner was employed with Delhi Water Supply & Sewage Disposal Undertaking and the other was a daily wager in C.S.C. Deptt. of MCD; the widow of the deceased was also getting pension and was also found to be selling milk from which she was earning Rs. 300/- p.m. The respondent No. 1 MCD contested the dispute by contending that the case did not fall under the instructions of the

Central Government for granting appointment on compassionate grounds.

3. The Industrial Tribunal however found that the order of the respondent No. 1 MCD rejecting the claim of the petitioner for appointment on compassionate grounds was not a speaking order. The Industrial Tribunal was thus of the opinion that the respondent MCD should consider the case properly and should pass a speaking order. The impugned award thus directs the respondent No. 1 MCD to consider the case of the petitioner for appointment and also gives opportunity to the petitioner to file afresh representation to the respondent No. 1 MCD in this regard. While directing so, the Industrial Tribunal referred to *Municipal Corporation of Delhi Vs. Bhoori Lal and Another*, and to *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, laying down that the Court is not empowered to direct the management to provide employment on compassionate ground and that the Tribunal can only direct the management to consider the case as per the policy.

4. Aggrieved from the award aforesaid, the present writ petition was filed. The petitioner has inter alia pleaded in the writ petition that as per the judgment of the Supreme Court in *Bidi, Bidi Leaves?* and *Bidi, Bidi Leaves"* and *Tobacco Merchants Association Vs. The State of Bombay*, the Tribunal has very wide powers. Reliance is also placed on *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi* and *The Bharat Bank Employees" Union, Delhi*, where also the Supreme Court held that the Labour Court should not bind themselves as per the contract and could go beyond that and pass an award according to social justice and equity. Attention in this regard is also invited to *Rohtas Industries Ltd. Vs. Brijnandan Pandey*, and to *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*,

5. Notice of this writ petition was issued on the aforesaid contentions in the writ petition and also in view of the submission that despite the direction given by the Tribunal, the respondent No. 1 MCD had till then not considered the case of the petitioner for compassionate appointment. The respondent No. 1 MCD has however placed before this Court a copy of its Memorandum dated 18th April, 2002 whereby the request of the petitioner was considered (as directed by the award aforesaid) and rejected. In the said Memorandum, it has been stated that as per the Government policy, compassionate appointment can be given to the son or daughter or near relative of a government servant who dies in harness leaving his family in immediate need of assistance, when there is no other earning member of the family. It is recorded in the said Memorandum that the family of the deceased has its own house to live and one of the sons of the deceased is employed with the CSE Deptt. of MCD itself and the deceased has left no specific liability and the family is not in distress. It is also recorded that a period of more than ten years had passed since the demise, thereby defeating the very purpose of immediate relief to the bereaved family. The respondent No. 1 MCD thus again rejected the case of the petitioner for compassionate appointment. In spite of opportunity no response has been filed by the petitioner

to the same.

6. The counsels for the parties have been heard.

7. The counsel for the petitioner, besides the judgments aforesaid has mainly relied on the recent dicta of the Division Bench of this Court in DDA v. Sudesh Kumar (2009) 3 AD (Delhi) 96. The Division Bench in the said judgment negated the plea that the Industrial Tribunal ought not to have issued the mandate to the management to appoint on compassionate basis. The counsel for the petitioner has contended that in view of the said judgment of the Division Bench, the impugned award of the Industrial Tribunal on the premise that the Industrial Tribunal has no power to direct compassionate appointment is liable to be reversed and the petitioner is entitled to an order of compassionate appointment.

8. However, a perusal of the impugned award shows that the Industrial Tribunal has not returned any finding therein of a case for compassionate appointment being made out, as was done in the case aforesaid before the Division Bench and as was the case in MCD v. Smt. Bhateri W.P.(C) No. 2082/2002 decided on 5th May, 2010 by the undersigned. The award in the present case proceeds merely on the premise that the order of the respondent No. 1 MCD rejecting the case of the petitioner for compassionate appointment was a non-speaking order. Owing thereto the respondent No. 1 MCD was directed to reconsider the matter.

9. Upon the same being pointed out, the counsel for the petitioner states that the matter be remanded to the Tribunal for consideration afresh as to whether a direction is to be issued to the respondent No. 1 MCD or not.

10. I am, however, not inclined to so remand the matter. A period of 20 years has passed since the incident on the basis whereof the claim for compassionate appointment is made. The Supreme Court recently in Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, has held that compassionate appointment is not a vested right which can be exercised at any time in future; compassionate appointment cannot be claimed and offered after a lapse of time and after the crisis is over. The compassionate appointment is intended to enable the family to tide over the sudden crisis or distress. In the present case for nearly 20 years the family has pulled on, apparently without any difficulty. In this background, I am not inclined to remand the matter to the Tribunal as claimed.

11. Before parting with the case, I may also notice that besides in Asha Ramchandra Ambekar (supra), the Supreme Court in State of H.P. and Another Vs. Jafli Devi (Smt.), and in Union of India (UOI) and Others Vs. Bhagwan Singh, and a single judge of this Court in Municipal Corporation of Delhi Vs. Bhori Lal and Another, have also held that courts are not empowered to give direction for compassionate appointment and are only entitled to direct consideration for compassionate appointment. It would thus appear that recent judgment of the Division Bench in Sudesh Kumar (supra) is against the grain of said judgments.

There is no merit in this petition; the same is dismissed. No order as to costs.