

(2005) 08 DEL CK 0119
In the Delhi High Court
Case No : WP (C) No. 5023 of 2002

Smt. Guddu

APPELLANT

Vs

The Medical Superintendent and Others

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 124 DLT 42 : (2005) 84 DRJ 1 : (2005) 107 FLR 1034

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Aiswarya Rao, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner, in these proceedings, questions denial of compassionate appointment to her, by the respondents. She seeks a direction for consideration of her case, and a consequential direction to the respondents to permit her to reside in the quarters presently under her occupation.

2. The petitioner's husband, one Chiranjvir, had worked with the Lok Nayak Jayaprakash Hospital (hereafter compendiously referred to as "the respondents") for over 9 years, when he died on 25th October, 1998. The petitioner applied for compassionate appointment, and retention of the quarters allotted to her late husband; she was asked to submit evidence in proof of her age. It is alleged that she made repeated attempts to secure employment, and was made to wait on several occasions; however all her requests were unsuccessful. The petitioner also alleges that illegal gratification of Rs. 25,000/- was demanded. She has produced copies of several representations given to the respondents. It is averred that a "no dues certificate" was issued on 3-12-1998. The petitioner does not have anyone to support her, and has no means of livelihood. She continued to occupy the quarters occupied by her. However, the respondents did not decide her request for compassionate appointment; on the other hand, on 9th December, 1999, an order was issued, directing that amounts payable to her

on account of terminal and pension benefits, ought to be adjusted against the license fee/ damages payable for occupation of the quarters. In view of these circumstances, the petitioner approached this court, under Article 226, claiming relief.

3. The respondents have filed three affidavits during course of the proceedings. Initially, they justified their position, and also the deductions effected from amounts payable to her, on the ground that arrears of license fee for occupation of the quarters was recovered from her pension and other amounts. The court had directed, by order dated 13th December, 2004 that the petitioner should be medically examined for determination of her age. That was done, and eventually a report was furnished to court. As per the report, the petitioner's age was 46 years.

4. In the affidavit dated 6th April, the respondents stated that the Screening Committee had considered the petitioner's case, pursuant to the Court's order dated 18.02.2005 and 07.03.2005 concluded that she did not qualify for appointment on compassionate grounds. The reasons given in the order was that there are only 5% vacancies in direct recruitment, in Group C and D that are reserved for compassionate appointment; the number of applications is much higher than the vacancies available and that the petitioner did not have any dependents. The Court had observed that this order dated 11.03.2005 declining compassionate appointment appeared to be devoid of reason and subsequently the matter was adjourned on 26th April 2005. The respondents filed yet another affidavit dated 26th May 2005, enclosing an order dated 13th April 2005 addressed to the Director Lok Nayak Hospital. This letter stated that the petitioner's application was not rejected on the ground of delay. It makes interesting reading in the sense that the order recites two decisions of the Supreme Court, namely, Auditor General of India and others Vs. G. Ananta Rajeswara Rao, (to say that appointment on the ground of descent violates Article 16(2) of the Constitution and further that compassionate appointment can be justified if a Government servant dies and there is an immediate need for relief to the family, in the absence of any earning member to supplement the loss of income, such a course of action would be unexceptionable). The said letter also relied upon in Umesh Kumar Nagpal Vs. State of Haryana and Others, , which indicates that compassionate appointment is not a matter of course.

5. Learned counsel for the petitioner, Mr. Aishwarya Rao submitted that in the present case, the respondents have repeatedly shown, by their orders that they are bent upon denying the benefit of a proper and fair consideration to the petitioner's case at all costs. They even have gone to the extent of adjusting amounts from the meager entitlements towards death-cum-retirement gratuity and other terminal dues payable to the petitioner and deposited only nominal amounts. Learned counsel submitted that the petitioner does not have any source of income. She has no family support and even her father-in-law had died earlier. In these circumstances, the repeated rejection of her claim for

compassionate appointment to a suitable Group-D post is arbitrary.

6. Mr. V.K. Tandon, learned counsel for the respondents, during the course of hearing, gave a break up of the amounts admissible to the petitioner. These disclose that as against a total entitlement of Rs. 72864/-, the petitioner was disbursed Rs. 21079/-. Rs. 40704/- was withheld on account of license fee and market rent for Government accommodation and Rs. 11081/- was adjusted against over payment of salary. It was also submitted that the petitioner has been given Rs.1420/- per month as family pension. Learned counsel also produced a copy of the Minutes of the Screening Committee meeting which led to the order of 11th March 2003. It notices the office memorandum of the Government of India dated 9th October 1998 and records that first priority for compassionate appointment would be for families living in extremely indigent conditions and having all children less than 12 years of age and no without any source of livelihood. The second category, from the guidelines of the Government of NCT was to be for families in extremely indigent conditions with minor children less than 18 years of age and with no source of income. The Committee recorded that in view of this position, the petitioner did not qualify for compassionate appointment and, Therefore, did not recommend her case.

7. The guidelines/OM of the Central Government dated 9th October 1998 were produced in the course of hearing. Its stated object is to enable compassionate appointment to dependant family members of a Government servant who dies or who retires on medical grounds, leaving his family in penury, and without any source of livelihood. Para 4 of the OM earmarks only Group-C and Group-D posts to which appointments can be made on compassionate grounds. Para 5, which talks of eligibility, reads as follows :-

"Eligibility

a) The family is indigent and deserves immediate assistance for relief from financial destitutions ;

b) applicant for compassionate appointment should be eligible and suitable for the posts in all respects under the provisions of the relevant Recruitment Rules."

8. Rule 6(A) exempts the requirement of having to follow the recruitment procedure, namely, through Staff Selection Commission or Employment Exchange; Rule 6(B) enables relaxation in age limit and Rule 6-D(d) states as follows :-

"Where a widow is appointed on compassionate grounds to a Group-D post, she will be exempted from the requirement of possessing the educational qualifications prescribed in the relevant Rules, provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications."

9. The factual narrative of the records regarding consideration by the respondents (including by the Screening Committee which considered the

petitioner's case on 11.03.2005), reveal a non application of mind to the OM of the Central Government dated 9th October 1998. The Screening Committee went merely by the guidelines of NCT which are restrictive in nature in that it confine consideration to families with children. The order/guideline providing for compassionate appointment, admittedly was formulated by the Central Government and is followed by the Government of NCT itself. As per this document, no such restrictive criteria have been formulated. Even otherwise, the exceptional nature of compassionate appointment (exceptional because the normal rule, by virtue of Articles 14 and 16 is that appointment has to be on the basis of norms of non discrimination, which include the specific injunction under Article 16(2) that no one can be denied appointment only on the basis of descent) have been consistently recognized; it has been held that compassionate appointment of dependents of Government servants, who die while in employment, or are exposed to sudden loss of livelihood, would qualify for exceptional relief. If this factor is recognized, the imposition of restrictive conditions such as existence of other dependent family members would be unduly restrictive and in given deserving cases, it might defeat the objective of 1998 Scheme. An applicant might face an extreme poverty, on account of not being possessed of any means of livelihood and without any family support would nevertheless be excluded from consideration if there are very few family members or no children. Hence, I am of the considered opinion that the rationale for excluding the petitioner's case for compassionate appointment, is unfounded in authority, and unsound in law.

10. The facts of the case also show that the petitioner has been in continuous occupation of the quarters which had been allotted to her husband. He was in occupation of the quarters from the year 1988. In these peculiar circumstances and having regard to the fact that there is no denial as to the financial hardship of the petitioner, it was inappropriate on the part of the respondents to adjust or recover the amounts over and above the normal license fee payable under the Rules. This is also in view of the fact that the respondents did not consider the petitioner's application for compassionate appointment till she approached this Court and even after that, she had to wait for a further period of two years.

11. In view of the foregoing conclusions and having regard to the facts of this case, a direction is issued to the respondents to consider the application of the petitioner for compassionate appointment to a Group D post and pass a speaking order within a period of Ten weeks from today. The said order shall be communicated to the petitioner. Till the passing of such order and a further period of four weeks thereafter, the petitioner shall be entitled to continue in the quarters presently under her occupation. Suitable orders shall be passed about the quarters in the light of the consideration by the respondents, to the petitioner's application for compassionate appointment. The respondents are also directed to adjust only the license fee admissible under the Rules for the period of the petitioner's occupation of the premises No.E-13, Type-I MAMC Campus, New Delhi from the date of her husband's death, till fourteen weeks

from today and refund to her amounts of balance or amounts recovered from her entitlements on account of liability towards market rent/penalty etc. within a period of six weeks from today.

12 .The writ petition is allowed to the extent indicated above. Respondents are directed to pay Rs. 5000/- as costs to the petitioner within four weeks from today.