
(2013) 10 DEL CK 0443

In the Delhi High Court

Case No : Writ Petition (C) No. 6618 of 2013

Smt. Kamla

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0443

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Geeta Sharma and Ms. Venessa Singh, for the Appellant; Sweety Manchanda, CGSC for R-1, Mr. Piyush Gaur and Mr. Arun Bhardwaj, Advocates for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, petitioner seeks compassionate employment on account of death of her husband who died in harness on 19.7.2012. It is now settled law that compassionate employment is not a source of recruitment. Compassionate appointment can only be in terms of an applicable policy. The following important observations have been made by the Supreme Court recently in the case of State Bank of India and Another Vs. Raj Kumar, with respect to compassionate employment.

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 An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn.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)

2. The facts of the present case shows that the husband of the petitioner was subjected to a departmental punishment. That departmental punishment became final and the petitioner did not in any manner seek setting aside of that punishment. Though the petitioner claims that her husband was exonerated in the criminal case, however, admittedly in that case of rash and negligent driving petitioner's husband was convicted by imposition of compensation.

3. No doubt a prayer for consideration of representation is an innocuous prayer, however, in law consideration of representation can only be on a legal basis. In the present case, no policy is pleaded of how there exists a right in the petitioner to claim compassionate appointment and in what manner the elements of the compassionate appointment policy are satisfied by the petitioner so as to get compassionate appointment. In view of the above, there is no merit in the writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.