

(2006) 07 DEL CK 0175

In the Delhi High Court

Case No : Writ Petition (C) No. 4690 of 2000

Tribhuvan Kumar Gaur

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Citation : (2006) 07 DEL CK 0175

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Raman Kapur, for the Appellant; Arun Birbal and K.C. Dubey, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—This writ petition seeks a direction quashing the appointment of respondent No. 3 on compassionate grounds on the death of the father of the petitioner and an appropriate order directing the respondents to appoint the petitioner on compassionate grounds. The father of the petitioner, namely, Shri Laxman Prasad Sharma, was a Upper Divisional Clerk (UDC) in the Office of the Horticulture Department of Delhi Development Authority (in short `DDA'). While he was in service, he and his wife were murdered at their residence at Loni, Delhi. The petitioner at that time was only five years old. The three other children of the deceased Laxman Prasad Sharma were younger to the petitioner. It is alleged in the petition that the petitioner and his siblings were brought up by their uncle Shri Ram Dayal Gaur and the petitioner on being major applied to respondent No. 1 i.e. the DDA for employment on compassionate grounds when he was informed by respondent No. 1 that the brother of the deceased, namely, Shri Prem Pal Sharma had been employed on compassionate grounds on the death of Shri Laxman Prasad Sharma. It is also alleged that the respondent No. 3 obtained the appointment by fraudulent means since it was only the member of the family of the deceased who could get a compassionate appointment. The petitioner, Therefore, challenges the appointment of respondent No. 3 and seeks

his own appointment. As for the grounds for the challenge, it is submitted in the writ petition that the appointment of the respondent No. 3 is against the scheme of appointment on compassionate grounds, that only the petitioner, being the eldest child of the deceased could have been appointed on compassionate grounds, that the appointment of respondent No. 3 who was only a brother of the deceased implies that manipulations were done with the records to give him employment, that the petitioner has no source of income and has been solely relying upon his appointment on compassionate grounds on attaining majority and that being the eldest member of the family of the deceased, he was the only person who could be appointed on compassionate grounds.

2. The writ petition is contested by the DDA as well as by respondent No. 3. Respondent No. 1 submits in its reply that respondent No. 3 sought appointment on compassionate grounds in pursuance of the Ministry of Home Affairs O.M. dated 25.11.1978 which, inter alia, allowed near relative of a Government servant who dies in harness leaving his family in immediate need of assistance, in the event of their being no other earning member in the family, that the appointment letter was issued to respondent No. 3 subject to submission of an affidavit stating that he would look after the children of his deceased brother, that since one compassionate appointment has already been made on account of death of Shri Laxman Prasad Sharma a second appointment cannot be made. Respondent No. 1 contends that appointment of respondent No. 3 was made bona fide and according to rules. In a rejoinder filed the petitioner reiterates his claim.

3. Respondent No. 3 in his reply affidavit contends that on the death of Shri Laxman Prasad Sharma he (respondent No. 3) applied for appointment on compassionate ground on the advice of relatives and the elder brother Shri Ram Dayal Gaur who was already employed as a Head Master in U.P. and the children of the deceased including petitioner No. 1 were given Rs. 200/- per month from July, 1985 to November, 1996 and Rs. 500/- from December, 1996 to August, 2000 apart from the entire income from the agriculture land of the respondent No. 3, that he (respondent No. 3) also gave financial assistance in the form of money, gifts and clothes out of natural love and affection on various occasions including when the children visited him at Delhi, that the children of the deceased lived in the family of Shri Ram Dayal Gaur as his wife was the real sister of the deceased mother of the children, that trouble started only when the petitioner asked for Rs. 50,000/- on the occasion of marriage of his sister which respondent No. 3 could not give, that the petitioner applied for appointment on compassionate ground much after he attained the age of 18 years, that the petitioner has destroyed the evidence of having received the financial assistance although respondent No. 3 still has evidence to show remittance of money, that the petitioner as well as Shri Ram Dayal Gaur always knew of the compassionate appointment of respondent No. 3 but never sought to raise any objection to such appointment and that the petitioner has no legal right to obtain the compassionate appointment in lieu of the appointment of respondent No. 3.

4. On 7.3.2002 this Court directed respondent No. 1 to produce the records relating to the appointment of respondent No. 3. Respondent No. 1 produced the relevant policy in respect of appointment on compassionate grounds and the original records relating to appointment of respondent No. 3. The court observed on 1.5.2002 that respondent No. 1 authority had acted in accordance with the policy in giving appointment on compassionate ground to respondent No. 3 in view of the fact that the deceased employee and his wife had both died and the three children were minors. The court also observed that as per the policy, action against the person taking appointment on compassionate ground was envisaged if he failed to maintain the family of the deceased. Respondent No. 1 further informed the court that on the basis of the complaint of the petitioner a show cause notice had been issued to respondent No. 3 and that the matter was being investigated. The court asked for a final report of this investigation within eight weeks. The DDA subsequently filed the report of the inquiry. On 26.4.2004 it was observed that prima facie the appointment in favor of respondent No. 3 was liable to be quashed as respondent No. 3 had not maintained or supported the minor children of his late brother and that respondent No. 3 must compensate the petitioner and his siblings. Respondent No. 1 was directed not to release the salary of respondent No. 3 and to issue a memo to respondent No. 3 asking him to be present in court on the next date of hearing. Accordingly respondent No. 3 put in appearance on 25.5.2004. By this time he had also filed his counter affidavit. Respondent No. 3 undertook to pay a sum of Rs. 2,500/- per month till the disposal of the writ petition and on such undertaking order dated 26.4.2004 was vacated.

5. The order has been complied with and no default in complying with the order has been reported. By now approximately 67,000/- stands paid to the petitioner.

6. The narration of the grounds for challenging the appointment of respondent No. 3 were only two, namely, (1) that the petitioner being the eldest child of the deceased employee was the only person entitled to appointment on compassionate ground; and (2) in view of No. (1) appointment of respondent No. 3 must have been on account of certain manipulations on the record. The challenge to the appointment of respondent No. 3 was not on the ground that respondent No. 3 had failed to maintain or assist the children of the deceased employee. It was only during the course of the proceedings that the petitioner expressed his grievance that respondent No. 3 did not provide any kind of financial assistance and that the children of the deceased employee were brought up by his other brother, namely, Shri Ram Dayal Gaur, who was employed as a Head Master/Principal in U.P. It remains a fact that till the filing of the petition neither the petitioner nor Shri Ram Dayal Gaur or anybody else ever raised any dispute in this regard. No one asked for cancellation of the appointment of respondent No. 3 on the ground that he had failed to fulfill his obligations of looking after the family of the deceased. Nor is it the prayer in this writ petition that the appointment of respondent No. 3 be canceled on the ground that he has failed to maintain or assist the family of the deceased or that he has not fulfilled

the undertaking given by him at the time of his appointment. Yet during the course of the pendency of the writ petition this aspect of the petitioner's grievance was highlighted and the respondent Therefore, attempted to refute the allegations of the petitioner in this regard. The evidence produced by respondent No. 3 to respondent No. 1, inter alia, includes receipts showing payment to Shri Ram Dayal Gaur. Photocopy of the receipt dated 2.3.1998 is a receipt for payment @ Rs. 200/- per month up to December, 1996 and from January, 1997 to June, 1997 @ Rs. 500/-. This receipt is purported to have been signed by Shri Ram Dayal Gaur. Another receipt dated 31.1.2000 is for a sum of Rs. 10,068/- which is purportedly signed by Bobby, namely, the present petitioner. The receipts dated 2.8.1997 and 5.4.1998 signed by the petitioner are both for sums of Rs. 500/- towards July, 97 and March, 98. There are two other similar receipts dated 2.6.98 and 11.8.98. Photocopy of the money order receipt for Rs. 500/- dated 31.3.97 purports to have been signed by the petitioner. Although respondent No. 3 has not produced the full statement of account these receipts do show that respondent No. 3 did make payment to the petitioner/Shri Ram Dayal Gaur from time to time. Since the petitioner seeks the relief of cancellation of appointment of respondent No. 3 now, on the newly developed ground of non-fulfillment of the undertaking, the onus is heavy on the petitioner to prove that respondent No. 3 has been in default. Respondent No. 3 cannot be called upon to prove that he fulfilled his obligation nor can the appointment of respondent No. 3 be cancelled on account of his failure to prove the same. These receipts were submitted by respondent No. 3 to the Welfare Inspector of respondent No. 1 who conducted the enquiry under order of this Court even before notice of the writ petition was served upon him. The report of the Welfare Inspector dated 18.7.2002 shows that respondent No. 3 stated that most of the receipts of payment had been taken away by the petitioner and destroyed and that he was able to submit only some of the receipts which still could be retained by him. The report further adds that the petitioner denied having received any monetary help from respondent No. 3 and maintained that at the time of taking the appointment respondent No. 3 had manipulated the signatures of Shri Ram Dayal Gaur on some documents supporting the application for compassionate appointment. Although the petitioner disputes having received any payment so far there is no allegation on the record of their being any forgery so far as these receipts are concerned.

7. It has to be noticed further that respondent No. 3 admittedly has agricultural land in the village. Respondent No. 3 says that the land was tilled by the other brother Shri Ram Dayal Gaur and the proceeds from that land has been used by Shri Ram Dayal Gaur and the petitioner as well as by the siblings of the petitioner. To this there is no denial. There is no averment on behalf of the petitioner as to how the land is being used. There is no categorical denial that the land is in the possession of the Shri Ram Dayal Gaur and that the proceeds of the land are being employed for the benefit of Shri Ram Dayal Gaur as well as for the family of the deceased brother. The DDA has in fact accepted the assertion of

respondent No. 3 that he had been maintaining the four children of the deceased.

8. In my opinion, the petitioner has failed to substantiate the plea that respondent No. 3 has not fulfilled the undertaking given by him at the time of appointment. All the children of the deceased employee are adults. The obligation to maintain the family of the deceased cannot be an obligation in perpetuity. The obligation on the part of the petitioner has come to an end on the children of the deceased attaining majority. The petitioner has received the money during the pendency of the writ petition after attaining majority. Deficiency, if any, in fulfilling the undertaking should be treated to have been sufficiently made good by payment during the pendency of this case. The appointment of respondent No. 3, Therefore, cannot be cancelled on this ground.

9. As stated earlier the other challenge of the appointment regarding manipulation of record, which was otherwise quite vague has also not been substantiated. Shri Ram Dayal Gaur denies having submitted any affidavit giving his consent for the application of respondent No. 3 for compassionate appointment. It was for respondent No. 1 to consider the application. All the procedures required to be complied for such appointment has already been found to have been so done. It cannot be believed that neither Shri Ram Dayal Gaur nor the petitioner ever knew that respondent No. 3 had got a compassionate appointment on account of the death of Shri Laxman Prasad. They having never raised any objection to his appointment for nearly 13 long years cannot do so at this late stage.

10. In any case the appointment on compassionate ground is made only to meet the immediate needs of the family who may be in distress at the time of death of the deceased employee. The petitioner's claim to such appointment at such a late date has no merit. In the case of Haryana State Electricity Board Vs. Krishna Devi, the Supreme Court found the order of the High Court directing compassionate appointment of the deceased's son seven years after the death to be bad.

11. I, Therefore, find no merit either to the challenge to the appointment of respondent No. 3 or in the prayer for appointment of the petitioner on compassionate ground. The petition is accordingly dismissed.