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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9063/2018**

SH. VIRENDER SINGH Petitioner
Through **Mr.Anuj Aggarwal, Adv. with**
Mr.Kshitij Arora, Adv .

versus

SOUTH DELHI MUNICIPAL CORPORATION
(SDMC) AND ORS. Respondents
Through **Mr.Arun Birbal, Adv.**

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 29.08.2018

1. The present petition has been filed by the petitioner assailing an order dated 12th March, 2018, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby OA No.2813/2015 filed by him seeking directions to the respondent/South Delhi Municipal Corporation, to appoint him on a regular basis as a Safai Karamchari w.e.f. 24th September, 2018, i.e., the date of his initial engagement as a daily wager, along with consequential benefits, has been rejected with a direction that the respondents shall consider the petitioner's case for regularization along with others as per his seniority and as per the extant Rules and the Scheme, if any, in that regard.

2. Mr.Aggarwal, learned counsel for the petitioner submits that the petitioner's father, an ex. Sanitation Superintendent, DEMS, had

died in harness on 9th February, 1990 leaving behind a widow and three sons. At the time of the demise of his father, the petitioner was only 13 years of age and could not apply for appointment on compassionate basis. However, the petitioner's eldest brother, Shri Bhagat Ram, who was 22 years of age at that point of time and unemployed, did apply for appointment on compassionate basis but his case was rejected by the respondent/MCD on 2nd May, 1991 on the ground that he was already married. The petitioner attained majority in the year 1995 but did not take any steps till March 2005 to apply for appointment on compassionate grounds. It is the petitioner's case that though the respondent/MCD did appoint him as a daily wage Safai Karamchari on humanitarian grounds on 24th September, 2008, he was actually entitled to a regular appointment on compassionate grounds.

3. It is not in dispute that after his appointment as a daily wager in the year 2008, the petitioner did not seek legal recourse regarding his claim for regular appointment on compassionate grounds till the year 2015, when he finally filed the subject OA before the Tribunal. Unimpressed by the submission made by learned counsel for the petitioner to the effect that the petitioner is entitled for regular appointment on compassionate grounds w.e.f. 24th September, 2008, the Tribunal declined the said relief to the petitioner with the following observation:-

“7. Firstly, the Scheme of compassionate appointment is evolved to save the family in destitution due to the sudden death of the bread

earner. The Scheme is not meant for backdoor appointments after long lapse of time of the death of the employee. The applicant though became major in the year 1995, has not chosen to make an application till 2008 and when he was appointed as Safai Karamchari on daily wages in the year 2008, again not chosen to question the same by seeking regular appointment till 2015. Hence, he cannot claim any regular appointment or regularisation with effect from 24.09.2008.

8. Secondly, the decision in Shri Rajesh (supra) has no application to the facts of the applicant's case since in that case the father of the applicant (therein) was appointed on 31.03.2003. In the present case making the application for compassionate appointment itself has abnormally been delayed and hence same cannot be made applicable to the applicant's case."

4. However, having regard to the fact that the petitioner has been working continuously with the respondent since the year 2008, as a daily wage Safai Karamchari against an existing vacancy, the Tribunal held that he is entitled for regularization in terms of the extant Rules and Scheme of the respondent/SDMC. Aggrieved by the said order, the present petition has been filed.

5. Learned counsel for the petitioner submits that the Tribunal failed to appreciate that a compassionate appointment can only be made on a regular and permanent basis and the respondent had erred in initially appointing the petitioner as a Safai Karamchari on a daily wage basis whereas he ought to have been appointed as a permanent and regular Safar Karamchari from day one; that the Tribunal did not

appreciate the fact that the petitioner's father was a permanent employee of the respondent and, therefore, he was entitled to appointment on a regular basis on compassionate grounds as he fulfils all the conditions of the Recruitment Rules for the post of Safai Karamchari. Lastly, learned counsel for the petitioner alludes to the Office Order dated 30th September, 2008, issued by the Municipal Corporation to state that the petitioner was actually appointed on compassionate ground againsts a vacant post.

6. Per contra, Mr. Birbal, learned counsel for the respondent/SDMC who appears on advance notice, defends the impugned judgment and submits that the petitioner's plea that he was initially appointed on a daily wage basis on compassionate grounds itself is incorrect and since he was not appointed on compassionate basis, there is no question of his seeking regularization on the ground that appointment on compassionate grounds has to be on a regular basis. Learned counsel categorically denies the Office Order dated 27th September, 2008 issued by the Municipal Corporation and relied on by the otherside that stated that the petitioner had been appointed as a Safai Karamchari on a daily wage basis on compassionate grounds.

7. We have heard learned counsel for the parties and examined the judgment in the light of the pleadings. On reading an extract of the noting file of the department of the year 2005, enclosed with the counter affidavit filed by the respondent/SDMC before the Tribunal, it is clear that the petitioner was never considered for appointment on compassionate basis. However, the matter was put up to the

competent authority, to consider if the petitioner could be granted some relief purely on humanitarian grounds. It is in view of the aforesaid noting that the Office Order dated 24th September, 2008 was issued appointing the petitioner as a Safai Karamchari on a daily wage basis, on humanitarian grounds. Even though, his subsequent joining order dated 30th September, 2008 mentions that the petitioner was allowed to join as a daily wager Safai Karamchari on compassionate grounds, but that itself cannot be treated as an appointment made on compassionate grounds as sought to be contended by the learned counsel for the petitioner.

8. The scheme of compassionate appointment does not contemplate appointment of a family member of a deceased employee at any point in time. The said scheme is meant to provide immediate succour, as a tide over to members of a deceased government employee who would find themselves in a destitute state upon the death of the sole bread earner. In this regard reference may be made to the decision of the Apex Court in the case of ***Commissioner of Public Instructions & Ors. V. K.R.Vishwanath*** [(2005) 7 SCC 206] para 9 whereof reads as under:-

“9. As was observed in State of Haryana v. Rani Devi [(1996) 5 SCC 308 : 1996 SCC (L&S) 1162 : AIR 1996 SC 2445] , it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such

employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In **Rani Devi case [(1996) 5 SCC 308 : 1996 SCC (L&S) 1162 : AIR 1996 SC 2445]** it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In **LIC of India v. Asha Ramchandra Ambekar [(1994) 2 SCC 718 : 1994 SCC (L&S) 737 : (1994) 27 ATC 174]** it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in **Umesh Kumar Nagpalv. State of Haryana [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537]** that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased”

9. Reference may also be made to the following observations of the Supreme Court in the case of ***State of U.P. v. Paras Nath*** [(1998)2 SCC 412]:-

“The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments.”

10. In the light of the above principles, when we examine the facts of the present case, we find that even if the petitioner was a minor on the date of the demise of his father, admittedly, he had attained majority in the year 1995, but still did not take any steps for over a decade to approach the respondent and seek employment on compassionate basis. Even the original application was filed by the petitioner sometime in the year 2015, for claiming a relief that relates back to the year 1995. That itself is sufficient ground to non-suit the petitioner for a claim of appointment on compassionate grounds.

11. We, therefore, do not find any infirmity in the impugned order that deserves interference in judicial review. In any event, the Tribunal has directed the respondents to consider the petitioner's case for regularisation alongwith other similarly situated employees in terms of his seniority and the extant Rules. Compliances in this regard shall be made by the respondent in accordance with law, within a reasonable period.

12. The petition is dismissed along with the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 29, 2018/aa

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