

Virender Singh Vs. Mcd

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Court : Delhi

Decided On : May-09-2007

Reported in : [2007(115)FLR387]

Judge : Hima Kohli, J.

Acts : [Constitution of India](#) - Articles 14, 16 and 226

Appeal No. : Writ Petition (C) No. 3474/2007

Appellant : Virender Singh

Respondent : Mcd

Advocate for Def. : None

Advocate for Pet/Ap. : M.P. Gupta and; C.B. Gupta, Advs

Disposition : Petition dismissed

Judgement :

Hima Kohli, J.

1. This writ petition has been filed by the petitioner praying inter alias for directions to the respondent to appoint the petitioner on compassionate ground.

2. The case of the petitioner is that father of the petitioner was made to retire on medical ground by the respondent/MCD on 03-09-90. Thereafter, pension was being paid to the wife of the deceased employee and the mother of the petitioner, namely, Smt. Kela Devi. The mother of the petitioner expired on 04-02-03. At the time of the death of father of the petitioner, the petitioner was aged 13 years. On 03-03-05, the petitioner applied to the respondent/MCD for being appointed on compassionate ground. It is stated that vide order dated 09-03-07 the MCD erroneously rejected the request of the petitioner for being appointed on compassionate ground. The reason stated in the rejection letter is that the case of the petitioner did not come under the rules.

3. Apart from the aforesaid letter of rejection, the petitioner has also placed on record a photocopy of the noting file of the respondent/MCD relating to the petitioner wherein it is noted that the case of the petitioner is time barred. On being asked as to how the petitioner laid his hands on the noting file of the respondent a very candid statement is made by counsel for the petitioner that the same have not been obtained officially, but an erstwhile friend of the deceased father of the petitioner assisted the petitioner in extracting copies of the nothings of the respondent department. The aforesaid conduct of the petitioner in adopting clandestine methods to access the internal files of the respondent MCD, itself is sufficient to refuse to exercise the discretion vested in the Court under Article 226 of the [Constitution of India](#), in favor of the petitioner. Be that as it may, even if it is assumed that letter dated 09-03-07, issued by the respondent MCD, rejecting the case of the petitioner did not contain sufficient ground for rejecting the case of the petitioner for compassionate appointment, a perusal of nothings of the file of the respondent copy of which the petitioner has filed, itself makes it clear that the case of the petitioner was held to be time barred. The said position is also borne out from the facts on the record that at the time when father of the petitioner expired, i.e., in 1990, the petitioner was 13 years of age. In the year 2005, when the application in question was submitted by the petitioner for seeking appointment on compassionate ground, the petitioner was 27 years old. The only ground for seeking appointment on compassionate ground is that till date the petitioner has not been able to get any job and is thus, entitled for appointment on compassionate ground.

4. In several cases the courts have had an occasion to examine cases where at the time of the death of the employee, the children of such deceased employees were minors, and even though compassionate appointment was offered to the widow of the deceased, but the option of appointment is sought to be availed by such minor children on attaining the age of majority. In these circumstances, it has been observed that such applications were made not with the object of enabling the family to tide over the sudden crisis, but the purpose was to obtain employment out of turn, on compassionate basis for the applicant, which would ensure to him benefit for the whole of his life. It has been held that this is beyond the scope of Article 16 of the Constitution and cannot constitute a reasonable and intelligible differentia. Following judgments may be referred to in this regard:

(i) *Rajender Poddar v. State of Bihar and Anr.* 1991 LC 959

(ii) *MCD v. Veer Mohd.* 54 (2001) DLT 746

5. It is apparent that when an application is belated or delayed, the penury on account of the sudden demise of an employee dissipates and there would be no warrant or justification for violating the equalities guaranteed under Articles 14 and 16 of the Constitution. In *Jagdish Prasad versus State of Bihar and Anr.* reported as : (1996)ILLJ 1105 SC , compassionate appointment was sought by the son of a deceased employee who had died in harness and at the time of the death of the employee, the applicant was a minor of only about four years. It was held by the Apex Court that the applicant was not entitled to be appointed after he attained majority long thereafter and that if such a contention was to be accepted, it would amount to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules. In *Sushma Gosain v. Union of India* reported as : (1990)ILLJ169SC it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship caused to the family due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself

envisages specifically otherwise, to state that as and when such minor becomes a major, he can be appointed without any time consciousness or limit.

6. The view taken in *Sushma Gosain (supra)* was reiterated in *Sanjay Kumar v. State of Bihar* reported as : AIR 2000 SC2782 , wherein the petitioner's mother died in harness when the petitioner was a minor, and it was held that the application of the petitioner for compassionate appointment eight years after the death of his mother, i.e., on attaining majority, was barred for being time barred. This position of law was again reiterated in the case of *State of Manipur v. Md. Rajaodin* reported as : AIR 2003 SC3794 .

7. In the present case also, the petitioner applied for compassionate appointment in the year 2005 i.e. after 15 years of the death of his father. The Explanation offered by the petitioner that the petitioner's mother was getting pension till she expired in the year 2003 and therefore there was no occasion for the petitioner to make an application for compassionate appointment, is not sufficient to explain the gross delay in applying for compassionate appointment. Government jobs are not hereditary in nature and the purpose of compassionate appointment is only to help the family of the deceased employee tide over the sudden financial crisis and not to provide employment. As the application of the petitioner for grant of compassionate appointment was hopelessly barred by delay, the respondent was justified in rejecting the same.

8. For the aforesaid reasons, the present writ petition fails. The same is, therefore, rejected.