

**Virender Singh Vs. Mcd**

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**SooperKanoon Citation :** [sooperkanoon.com/714088](http://sooperkanoon.com/714088)

**Court :** Delhi

**Decided On :** Aug-20-2007

**Reported in :** 2008(2)SLJ262(Delhi)

**Judge :** Hima Kohli, J.

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

**Appeal No. :** Writ Petition (C) No. 4618/2006

**Appellant :** Virender Singh

**Respondent :** Mcd

**Advocate for Def. :** Smita Shankar, Adv.

**Advocate for Pet/Ap. :** Pragyana, Adv

**Disposition :** Petition dismissed

**Judgement :**

**Hima Kohli, J.**

1. By way of the present petition, the petitioner has sought issuance of a writ in the nature of mandamus to the respondent Municipal Corporation of Delhi (MCD), directing it to consider the case of the petitioner for being appointed on compassionate grounds, and upon consideration of the same, to grant him such

an appointment.

2. Briefly narrated, the facts of the case are that the father of the petitioner who was working as a Mali with the Horticulture Department of the respondent MCD, died in harness on 30th December, 1999, leaving behind his wife, a son, that is the petitioner herein, and a daughter (who has since expired). On 22nd April, 2003, the petitioner along with his mother and sister received the terminal dues of his father, pursuant to a succession certificate issued by the Civil Judge, Aligarh, wherein the petitioner was declared as the legal heir of the deceased workman and he was held entitled to receive one third of the terminal dues of his father. In the year 2005, after about five years from the date of death of his father, the petitioner submitted an application to the respondent MCD for being appointed on compassionate grounds. In response to the said application, the respondent MCD, vide its letter dated 17th February, 2006, directed the petitioner to produce his financial status report duly certified either from a Gram Pradhan or an M.L.A., which was submitted by the petitioner to the respondent M.C.D. along with the other relevant documents on 5th April, 2006. However, by order dated 31st May, 2006, the Competent Authority of the respondent MCD refused to condone the delay in submitting the application on the ground that condensation of such a huge delay goes against the very spirit of immediate assistance visualized under the philosophy of compassionate appointment. Aggrieved by the said rejection of his application by the respondent MCD, the petitioner has approached this Court.

3. Learned Counsel for the petitioner submitted that the case of the petitioner is fit to be considered for appointment on compassionate grounds since he belongs to the OBC category and lives with his mother in a rented accommodation. It was also stated that since the petitioner did not have any independent source of income, it is very difficult for him to support himself and his mother. The delay in applying to MCD for seeking an appointment on compassionate grounds was sought to be explained by stating that at the time of the death of his father, the petitioner was 14 years of age and upon attaining majority he applied for and obtained a succession certificate in his favor in the year 2003, and two years thereafter, he applied to the MCD when his mother and sister gave no objection certificates in his favor.

4. Per contra, learned Counsel for the respondent contended that the application of the petitioner suffers from gross delay, the same having been made after five years of the death of the deceased workman, and since the very purpose of granting compassionate appointment is to tide over the immediate financial crunch that the family has to face on the death of its earning member, therefore any delay in preferring an application for grant of compassionate appointment cannot be ignored. While placing reliance on an Office Memorandum dated 5th May, 2003 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, which states that an application for compassionate appointment is to be made within three years of the date of death of the employee, it was argued that the application not having been preferred by the petitioner within the said period, the same was barred by delay and laches.

5. It was further canvassed that posts in the government are not hereditary in nature, and compassionate appointment is not a right vested in an applicant but is within the discretion of the State, which it has to exercise after weighing various factors, such as the financial condition of the family of the deceased employee, the assets and liabilities owned by the family, the retiral benefits received by the family etc.

6. It was also stated that since the age of the petitioner would have been around 14 years at the time of the death of the workman, his wife, i.e., the mother of the petitioner could have very well applied immediately on the death of her husband for appointment on compassionate grounds, had the family been in such dire straits, but she chose not to do so.

7. Before dealing with the respective contentions of the parties, it is appropriate to note certain basic parameters as laid down by the Apex Court, that ought to be the guiding factors while dealing with the cases of compassionate appointment. While considering the case of compassionate employment, it is to be kept in mind that it is not unduly unfair to the rights of those other persons who are eligible to seek appointment against a post which would have been available but for the provision enabling appointment being made on compassionate grounds to the dependents

of the deceased employee. Reliance in this regard can be placed on the judgment rendered by the Supreme Court in the case of State of Manipur v. Md. Rajaodin reported as : AIR 2003 SC3794 . Appointment on compassionate ground cannot be claimed as matter of right and such appointment cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. A claim for appointment on compassionate basis has been considered as reasonable and permissible keeping in view the sudden crisis occurring in the family of an employee who has served the state and died while in service. However the rules, regulations, administrative instructions and orders in this behalf must stand the test on the touchstone of Articles 14 and 16 of the [Constitution of India](#). Appointment on compassionate basis is not another source of recruitment, but merely an exception to the aforesaid requirement taking into consideration the effect of the death of the 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 the sudden financial crisis. But again such appointments on compassionate grounds have to be made only in accordance with the rules, regulations or administrative instructions and taking into consideration the financial condition of the family of the deceased. Support is drawn from the following judgments:

(i) Umesh Kumar Nagpal v. State of Haryana : [1994]3SCR893

(ii) State of Haryana v. Rani Devi : AIR 1996 SC2445

(iii) State of Haryana v. Ankur Gupta : AIR 2003 SC3797

8. Looking at the facts of the case in hand, it has been rightly argued by the counsel for the respondent MCD that the application preferred by the petitioner for compassionate appointment suffers from gross delay and laches. It is now a settled position of law that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment. To be considered for such employment is not a vested right which can be exercised at any time in future. The object of compassionate appointment being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, compassionate employment cannot be claimed and offered after a long lapse of time and after the

crisis is over. This view has been taken by the Supreme Court in the case of Umesh Kumar Nagpal (*supra*) and has been reiterated time and again in various cases. However, it may be noted that reference on behalf of the respondent MCD to the Office Memorandum dated 5th May, 2003 is misplaced, since the import of the said Office Memorandum is not that an application for compassionate appointment ought to be made within a period of 3 years from the date of the death of the employee, but that an application for compassionate appointment can be kept under consideration for a maximum period of 3 years from the date of making such an application, and if it is not possible to offer compassionate appointment to the applicant after expiry of three years, then such a case ought to be finally closed and not considered again. Therefore, nothing turns on the said Office Memorandum in the facts of the present case. However, irrespective of the same, the case of the petitioner suffers from gross delay and this Court finds no illegality or invalidity in the action of the respondent MCD in rejecting the application of the petitioner on this ground alone vide its order dated 31st May, 2006.

9. Coming to the next plea of the petitioner, that as he was a minor when his father expired, he made an application for appointment on compassionate grounds immediately after attaining majority, on several occasions, the courts have examined cases where at the time of the death of the employee, the children were minors, and even though compassionate appointment was offered to the widow of the deceased, but the option of appointment was sought to be availed of by such minor children upon attaining the age of majority. In such circumstances, it has been observed time and again that such applications were made not with the object of enabling the family to tide over the sudden crisis, but with the purpose of obtaining 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 of India](#) and such an appointment can in any case, not be treated as an alternate mode of appointment. 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

10. 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 v. 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 an argument 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 due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress and provide succour. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself makes a provision that as and when such minor becomes a major, he can be appointed without any time considerations.

11. 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, could not be entertained being time barred. This position of law was again reiterated in the case of *Md. Rajaodin (supra)*.

12. In the present case also, the petitioner undisputedly applied after five years from the date of the death of his father. The Explanationn offered for the said delay that he was only a minor at the time of the death of his father, and that subsequently, upon attaining majority he applied for a succession certificate in the Court of Civil judge, Aligarh, and that after the said succession certificate was

granted in the year 2003, No Objection Certificates were to be obtained from his mother and sister, does not cut any ice and is liable to be rejected. At the cost of repetition, it may be emphasized that Government jobs are not hereditary in nature and the purpose of compassionate employment is only to help the family of the deceased employee get over the sudden financial crisis and not to provide employment. The application of the petitioner for grant of compassionate employment is therefore hopelessly barred by delay and to entertain such an application would result in defeating the very object of giving compassionate appointments.

13. Law is also settled in this regard, that while considering a case for compassionate appointment, retiral benefits have to be taken into account and the same cannot be ignored. Thus it has to be taken note of that as per the Succession Certificate placed on record, the petitioner and his family received a sum of Rs.1,38,788/- towards the retiral benefits of the deceased and the mother of the petitioner is also receiving family pension plus dearness allowance. Except for his mother, who is receiving family pension, the petitioner is not saddled with any liability of a younger sibling who he has to fend for. He also owns - bigha of land in his native village.

14. In view of the facts and circumstances of the case, and in light of the position of law as discussed hereinabove, the present petition fails and is dismissed. There shall however be no order as to costs.