

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

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W.P.(C) 2082/2002

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Date of decision: 5th May, 2010

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

Through: Ms. Amita Gupta, Advocate.

Versus

SMT. BHATERI & ANR.

..... Respondents

Through: Mr. Anuj Agrawal, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. The challenge in this petition is to an *ex parte* award dated 18th January, 1999 holding the respondent no.1 entitled to compassionate appointment with the petitioner MCD. The counsel for the petitioner MCD has contended that the Industrial Tribunal could not have directed compassionate appointment and could have at best directed the petitioner MCD to consider the case of the respondent no.1 for compassionate appointment. Reliance in this regard is placed on *LIC Vs. Asha Ramchandra Ambekar* (1994) 2 SCC 718, *State of H.P. Vs. Jafli Devi* (1997) 5 SCC 301 and *Union of India Vs. Bhagwan Singh* (1995) 6 SCC 476. The counsel for the respondent no.1 contends that all the said judgments are relating to service matters and do not deal with the powers of the Labour Court/Industrial Tribunal. It is contended that what has been held by the Supreme Court in the said judgments has no application to the Industrial Tribunal/Labour Court. It is urged that an industrial adjudicator is competent to

even direct compassionate appointment. Reliance is placed on the Division Bench judgment of this Court in *DDA Vs. Sudesh Kumar* MANU/DE/0863/2009 laying down that the Industrial Tribunal has the power, in the interest of industrial peace, to direct the appointment of a candidate on compassionate basis. I find that though a single judge of this Court in *MCD Vs. Bhorilal* MANU/DE/0514/1999 has applied the principle laid down by the Supreme Court in *Asha Ramchandra Ambekar* (supra) of the courts being not empowered to give direction for compassionate appointment and being entitled to only direct consideration for compassionate appointment, to industrial adjudicators also but this Court is bound by the judgment aforesaid of the Division Bench which has squarely dealt with the said aspect.

2. The next question to be considered is the effect, if any, of delay. The death on the basis whereof compassionate appointment has been directed happened on 31st July, 1991, the reference of the industrial dispute was made on 25th September, 1995 & award directing compassionate appointment made on 18th January, 1999. Upon the present petition being filed, this court vide *ex parte* order dated 3rd April, 2002, which continues to be in force, stayed the operation of the award. Though undoubtedly there is an element of urgency in compassionate appointment and which element of urgency has now disappeared/ceased to exist after nearly 19 years since the demise, but the fact remains that the said delays are on account of the adjudicatory process. It is the claim of the respondent no.1 that she had sought compassionate appointment immediately and was thereafter forced to raise an industrial dispute and decision whereof as aforesaid remained pending till the award. Thereafter the matter has

remained pending in this Court for about eight years. The award has found the respondent no.1 entitled to compassionate appointment. Such right of the respondent no.1 cannot be taken away merely because the matter has remained pending for adjudication. Thus the said right of the respondent no.1 cannot be defeated for this reason.

3. The matter being squarely covered by the judgment of the Division Bench in *Sudesh Kumar* (supra), there is no merit in the petition, the same is dismissed. The interim order is vacated. The petitioner is directed to comply with the award within six weeks herefrom.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th May, 2010
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