

[2022 LiveLaw \(SC\) 863](#)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., KRISHNA MURARI; J.**

OCTOBER 19, 2022

CIVIL APPEAL NO. 7047 OF 2022 (Arising from S.L.P.(Civil) No. 20935/2021)

Delhi Jal Board versus Nirmala Devi

Compassionate Appointment - Qualification prevailing on the date of applying for compassionate appointment is to be considered and not the date on which the application for compassionate appointment is considered. (Para 6-7)

For Appellant(s) Mr. Ajay Vikram Singh, AOR Ms. Priyanka Singh, Adv.

For Respondent(s) Mr. Ajay Kumar, AOR

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.03.2021 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 2871/2021, by which the High Court has dismissed the said writ petition preferred by the appellant – Delhi Jal Board and has confirmed the order dated 03.05.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the ‘Tribunal’) in O.A. No. 1420/2017, by which the Tribunal directed the appellant to consider the candidature of the respondent for the post of Lower Division Clerk (LDC), the original opponent - Delhi Jal Board has preferred the present appeal.

2. That the respondent herein applied for compassionate appointment of her daughter in the Delhi Jal Board – the appellant herein for the post of LDC. The said application was made on 23.03.2010. That by order dated 01.05.2012, the respondent’s daughter was appointed as Assistant Meter Reader considering her qualification at the time when application for compassionate appointment was made. According to the respondent, she was eligible for the post of LDC.

2.1 The respondent then approached the Tribunal by way of Original Application No. 1420/2017 claiming the appointment of her daughter on the post of LDC. It was the case on behalf of the respondent that by the time the application for compassionate appointment came to be considered in 2012, her daughter acquired the requisite qualification for the post of LDC, i.e., Graduation. Therefore, it was the case on behalf of the respondent that she ought to have been appointed on the post of LDC. The Tribunal accepted the same and directed the appellant – Delhi Jal Board to appoint the respondent’s daughter on the post of LDC. The order passed by the Tribunal dated 3.5.2019 in O.A. No. 1420/2017 was the subject matter of writ petition before the High Court at the instance of the appellant herein. By the impugned judgment and order, the High Court has dismissed the said writ petition, which has given rise to the present appeal.

3. Learned counsel appearing on behalf of the appellant has vehemently submitted that qualification for the post of LDC was Graduation. It is submitted that admittedly when the respondent applied for appointment on compassionate grounds for the post of LDC, i.e., 23.03.2010, her daughter was not graduate and therefore she was not having the requisite qualification for the post of LDC.

3.1 It is submitted that subsequent acquiring of the qualification for the post of LDC cannot be considered and the qualification prevailing when the application for compassionate appointment was made is required to be considered. It is submitted that therefore both, the Tribunal and the High Court have committed a very serious error in directing the appellant to appoint respondent’s daughter on the post of LDC.

4. While opposing the present appeal, learned counsel appearing on behalf of the respondent has made the following submissions:

i) that the time limit for making appointment on compassionate grounds was five years. Therefore, when the respondent's daughter acquired the requisite qualification for the post of the LDC within five years, she ought to have been appointed on the post of LDC, considering acquisition of the graduation qualification within five years;

ii) that as per the Policy for compassionate appointments, while considering the appointment on compassionate grounds, only bar with respect to age shall be applicable and not with respect to educational qualification. In support of above, reliance is placed on clause 6 (A & B) of the Policy which provides for Exemptions and Relaxations, while making compassionate appointments; and
iii) that the relevant date for considering the educational qualification shall be the date on which the application for compassionate appointment was considered and not the date on which the application for compassionate appointment was made.

4.1 Making the above submissions, it is prayed to dismiss the present appeal.

5. Having heard learned counsel for the respective parties and considering the facts narrated hereinabove both, the Tribunal and the High Court have committed a serious error in directing the appellant to appoint the respondent's daughter on the post of LDC.

6. When the respondent made an application for compassionate appointment on 23.03.2010, her daughter was not graduate and the requisite qualification for appointment on the post of LDC was Graduation. Therefore, the date on which the respondent applied for compassionate appointment, her daughter was not having the requisite qualification for the post of LDC. As per settled position of law, the qualification prevailing on the date of applying for compassionate appointment is to be considered and not the date on which the application for compassionate appointment is considered.

7. The submission on behalf of the respondent that as the application for compassionate appointment was permissible within a period of five years and the respondent's daughter acquired the graduation qualification within a period of five years, the respondent's daughter can be said to be eligible for appointment on the post of LDC. The aforesaid submission cannot be accepted. Once the application for compassionate appointment is made, the qualification which the applicant possess on the date of application is to be considered. Similarly, the submission on behalf of the respondent that for compassionate appointments, only the bar with respect to age shall be applicable and not with respect to educational qualification cannot be accepted. The compassionate appointment is required to be made on the post considering the educational qualification of the applicant on the date of application/dependant of the deceased employee. Therefore, in the facts and circumstances of the case, the department rightly appointed the respondent's daughter on the post of Assistant Meter Reader considering her qualification at the time of making the application for compassionate appointment.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court dated 05.03.2021 in Writ Petition (Civil) No. 2871/2021 and that of the Central Administrative Tribunal, Principal Bench, New Delhi dated 03.05.2019 passed in O.A. No. 1420/2017 directing the appellant herein to consider the candidature of the respondent's daughter for the post of LDC are unsustainable and the same deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently, the Original Application No. 1420/2017 preferred by the respondent herein for appointment of her daughter on the post of LDC stands dismissed.

9. The instant appeal is allowed accordingly. However, there shall be no order as to costs.