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New Delhi this the 15th day of October, 1999

(1) Shri Manish Kumar,
S/o late Shri Gulshan Kumar,
R/o G-629, Srinivas Puri,
New Delhi-110 024.

(2) Smt. Indu,
W/o late Shri Gulshan Kumar,
R/o G-629, Srinivas Puri,
New Delhi-110 024.

... Applicants.

By Advocate R. P. Kapur.

Versus

(1) The Directorate of Estates,
through its Director,
Nirman Bhawan, Maulana Azad Road,
New Delhi-1.

(2) The Assistant Director of Estates,
Nirman Bhawan, Maulana Azad Road,
New Delhi-1.

(3) The Union Ministry of Information and Broadcasting,
through its Director,
through Administrative Officer,
Photo Division Soochana Bhawan,
CGO Complex, Lodhi Road,
New Delhi-3.

... Respondents.

By Advocate Shri Gajender Giri.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants are aggrieved by the respondents' order dated 5.4.199 (Annexure A-1) informing them that ¹³any extension ^{of time} to occupy the Government Quarter No. G-629, S.N. Puri, has not been granted and asking them to vacate the Quarter on or before 6.5.1999.

2. The brief facts of the case are that the father of Applicant 1 died on 6.5.1997 while in service. Applicant 2 is his mother i.e. widow of the deceased Government servant who was allotted the aforesaid

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Government quarter while in-service. The Delhi High Court by order dated 3.3.1999 had allowed the petition filed by the applicants and permitted them to stay in the Government accommodation till 5.5.1999. The respondents have accordingly allowed the family of late Shri Gulshan Kumar to retain the Government accommodation for a period of two years i.e. upto 6.5.1999 and thereafter they have asked the applicants to vacate the same.

3. Shri R.P. Kapur, learned counsel for the applicants, has relied on the letter issued by Respondent 3 i.e. the Ministry of Information and Broad Casting dated 5.5.1999 to Respondent 2 that they are considering the case of applicant 1 for appointment as Peon on compassionate ground, subject to completion of certain formalities. In this letter, they have also requested that the family of the deceased may be allowed to retain the aforesaid quarter till his son, applicant 1, is allotted his entitled type of accommodation. Learned counsel has submitted that this letter shows that applicant 1 is on the verge of being appointed on compassionate ground with Respondent 2. His contention is that even though the appointment may be after the period of two years after the death of the father on sympathetic grounds the family should be allowed to retain the Quarter as otherwise it will cause hardship to them. He has also very vehemently submitted that the respondents should be restrained from evicting the family from the Government quarter till applicant 1 gets his appointment on extreme sympathetic grounds. He has also relied on the judgement of the Tribunal in **Bahadur Singh Vs. Union of India & Ors.** (OA 2970/97), decided on 29.7.1998. He has submitted that in this case the Tribunal had held that it will not be fair nor just to deny applicants the benefits

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contained in respondents' O.M. dated 22.5.1996 to regularise the aforesaid quarter. He claims that in the present case also the Tribunal should review the matter sympathetically taking into account the letter issued by Respondent 3 dated 5.4.1999.

4. The learned counsel for the respondents has opposed the aforesaid prayer, on the ground that even after giving the applicants the benefit of continuing in the Government accommodation for a period of two years, as ordered by the High Court, the applicants are not entitled for regularisation of the quarter on out of turn basis as applicant 1 has still not got any compassionate appointment order. He has submitted that the letter relied upon by the applicant from Respondent 3 dated 5.5.1999 merely states that applicant 1 is being considered for appointment as Peon and no such offer has been made so far. In the circumstances, he has submitted that the applicants have no right to continue in the Government accommodation even after the period of two years after the death of the Government servant whom the accommodation was allotted, which is also in accordance with the order passed by the High Court dated 3.3.99 and the O.M. dated 19.11.1998. Shri Giri, learned counsel has, therefore, submitted that the applicant has failed to secure the employment within two years from the date of death of the allottee. He has prayed that the interim order may be vacated and the O.A. may be dismissed.

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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6. The Tribunal by interim order dated 27.5.1999 had ordered status quo to be maintained regarding the accommodation which order has been continued till date.

7. In accordance with the order of the Hon'ble High Court dated 3.3.1993, the respondents have permitted the applicants to retain the Government accommodation allotted to the deceased Government employee till 5.5.1999. The respondents' OM dated 19.11.1998 also permits the ward/spouse of the allottee to retain the Government accommodation for a period of two years, on payment of normal licence fee instead of the previous one year. In this O.M. it is further stated that the ward/spouse may be allotted Government accommodation on ad hoc basis in cases where the eligible dependent secured employment within a period of two years from the date of death, subject to fulfilment of the other prescribed conditions. On perusal of the letter dated 5.5.1999 issued by Respondent 3, who has not filed reply in spite of notice having been issued, it is seen that they are considering appointment of applicant 1 as Peon on compassionate grounds, subject to completion of certain formalities. They have no doubt requested Respondent 2 to allow the applicants to retain the aforesaid Government accommodation till applicant 1 is allotted his entitled type of accommodation. We agree with the contentions of the learned counsel for Respondents 1 and 2 that the regularisation of the quarter on out of turn basis can be done only in accordance with the Rules and instructions. The letter of 5.5.1999 clearly shows that applicant 1, has yet to secure his employment which would, therefore, be beyond the period of two years from the date of death of his father. Therefore, the conditions prescribed in O.M. dated 19.11.1998 is not fulfilled. The

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contentions of the learned counsel for the applicant that the case has to be looked at sympathetically de hors the rules cannot be accepted because that by itself could lead to arbitrary decisions. The Supreme Court in **LIC of India Vs. Mrs. Asha Ramachandra Ambedkar & Anr.** (JT 1994(4) SC 183 reads as follows:

"...Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered law is the embodiment of all wisdom. Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however inconvenient it may be... The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. Further it is well settled in law that no mandamus will be issued directing to do a thing forbidden by law. It is true that there may be pitiable situations but on the score, the statutory provisions cannot be put aside".

(Emphasis added)

8. In the facts and circumstances of the case, as the applicant does not fulfil the criteria for out of turn ~~promotion~~ ^{allotment}, the claim of the applicants to regularise the aforesaid Government accommodation cannot be allowed merely on sympathetic grounds. The judgement in **Bahadur Singh's** case (supra) is distinguishable from the facts in the present case, as no appointment, or even decision for appointment of applicant 1 to the post of Peon has been taken within the prescribed period of two years.

9. In the result, the application fails and is dismissed, leaving it open to the respondents to proceed in the matter in accordance with law. Interim order accordingly stands vacated. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'