
(1995) 11 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1611 of 1994

A. Seshapathi

APPELLANT

Vs

The Divisional Manager, APSRTC and Others

RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 1 ALT 491 : (1996) 2 LLJ 185

Hon'ble Judges : Y. Bhaskar Rao, J;B.S. Raikote, J

Bench : Division Bench

Advocate : C.V. Ramulu and S. Ramakrishna, for the Appellant; I. Agra Reddy and P. Gangarami Reddy, S.C. for RTC, for the Respondent

Judgement

Y. Bhaskar Rao, J.—This batch of writ petitions is filed by the petitioners to declare the action of the respondents in not appointing them in the quota reserved for the children of the employees who died in harness, employees voluntarily retired on medical grounds, employees retired and died, employees who retired and employees who have completed 25 years of service in the Corporation, as arbitrary and violative of Article 14 of the Constitution and to issue a suitable direction to the respondents to consider their cases. The case of the petitioners is that though circulars are issued by the Corporation from time to time to provide employment to the children of the above categories of employees on compassionate grounds, but the respondent Corporation refused to appoint them on the ground that other members of the family of the said categories of employees have already been appointed and working in the Corporation.

2. It is contended by the Standing Counsel for the respondent Corporation that the children of the employees who died in harness have been employed. But, where a member of the family is already employed in the Corporation even prior to the death of the employee, then such a facility is not extended as the family is having means of livelihood and such person is not eligible for employment on compassionate grounds. It is contended that the children of employees, who died

in harness, stand on a different footing than the children of employees of other categories and so the other categories of persons cannot claim the benefit on the same basis. It is further contended that the order dated March 31, 1992 in W.P. No. 11623 of 1991 is no more a good law in view of the decisions of the Supreme Court in *Vmesh Kumar Nagpal v. State of Haryana* (1995ILLJ798) and *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, . Moreover all the earlier circulars have been withdrawn by the latest Circular dated February 15, 1995, except in case of death of an employee who died in harness, that there are no merits in the writ petitions and that they are liable to be dismissed.

3. In view of the above contentions, the point that arises for consideration is whether the children of the employees who died in harness, voluntarily retired on medical grounds, retired and died, retired and have completed 25 years of service in the Corporation are entitled for consideration of appointment in the Andhara Pradesh State Road Transport Corporation on compassionate grounds.

4. To appreciate the above contentions, it is relevant to refer to some of the provisions, regulations and Circulars issued by the Corporation. Section 45(2) of the Andhra Pradesh State Road Transport Corporation Act empowers the Corporation to frame the Regulations. In pursuance of such power, the Corporation has framed the Service Regulations. Regulation 25 of the Service Regulations empowers the Corporation to issue instructions, not inconsistent with the provisions of these regulations, to give effect to and carry out the purpose of these regulations or otherwise to secure effective control over the employees to whom these regulations apply and may, by a resolution, authorise any authority subordinate to it to do so, subject to such conditions and limitations, if any, as may be specified by it. In pursuance of the said powers, the Corporation issued Circulars from time to time governing compassionate appointments of the children of the employees.

5. Following G.O. Ms. No. 1005, Employment & Social Welfare (G) Department, dated December 27, 1974, memo No. 529/G1/75-8 dated August 19, 1975 and G.O.Ms. No. 687, General Administration (Ser.A) Department dated October 3, 1977, the respondent-corporation issued Circular No. PD-204/77-78, dated January 16, 1978 to consider the cases of children of the employees who died in harness for appointment on compassionate grounds without reference to the employment exchange. The sum and substance of the Circular is that when an employee dies in harness, leaving his family in immediate need of assistance and there being no other earning member, the recruiting authority may appoint one child (either son or daughter) or the spouse, or dependent child, if any of the deceased employee in the service of the Corporation. Where the son of such employee was already appointed but has separated from the family and the family is left without a bread winner, one son/daughter out of the remaining or the wife, may be considered for appointment in the service of the Corporation. Circular No. PD/30/79-80, dated May 28, 1979 issued by the Corporation is also

to the same effect. Circular No.PD.63/ 1985, dated June 13, 1985 was issued extending the facility of appointment on compassionate ground to the children of retired employees for the post of Conductor. Circular No. PD-124/1986, dated November 7, 1986 issued by the Corporation provides that the children of employees who died in harness, who retired on medical grounds and who retired on attaining the age of superannuation seeking appointment to the post of Conductor shall fulfil the qualifications, age, height etc. prescribed under the Regulations. Circular No. PD-112/1987 dated October 5, 1987 provided "the order of preference to be given in recruiting the children of employees of different categories and it is: (i) sons of deceased employees (ii) sons of prematurely retired employees on medical grounds, (iii) sons of employees retired on superannuation and expired subsequently, (iv) sons of retired employees and (v) sons of employees in service, who have put in a minimum service of 25 years in the Corporation. More guidelines were issued in the Circular dated July 13, 1988 for considering cases of spouses/children of employees died in harness for appointment in the Corporation. As per Circular dated March 18, 1993, the children of the employees, who died in harness, who retired on medical grounds, who have put in 25 years of service in the Corporation, are eligible to be considered to the posts mentioned therein provided none of the family members is employed earlier in the Corporation.

6. The prime object of providing compassionate appointment to the member of family of the employee, who died in harness, is to enable the family to get over the crisis there being no other earning member. The Corporation through its circulars extended the benefit of compassionate employment to the children of employees who, voluntarily retired on medical grounds, who have put in 25 years of service, who have retired and expired and who have retired from service on superannuation. According to the Corporation, first priority must be given to the children of employees, who died in harness. There is no dispute that all the petitioners are either the children of employees who died in harness, or voluntarily retired on medical grounds, or have put in 25 years of service, or retired and expired. The question is whether they are entitled to compassionate appointment or not. One of the conditions imposed by the Corporation in its circular dated March 18, 1993 is that the children of the above said employees can be considered for compassionate appointment if none of the family member is employed earlier in the organization. It is a different case if the said employed member is residing separately. As the corporation on itself extended the provision of compassionate appointment to all the above said categories of employees and followed the said practice for a long time, now the said benefit cannot be denied to the petitioners.

7. A candidate, whose father was an employee of the Corporation and retired on medical grounds, filed Writ Petition No. 11623 of 1991 in this Court contending that he applied for the post of Conductor and was selected, but he was not appointed on the ground that one of the sons of the retired employee (his father) was already working in the Corporation. A learned single Judge of this Court,

justice Jagannatha Raju, who had an occasion to interpret the Circulars and regulations earlier in his order dated September 4, 1991 in W.P. No. 8949 of 1990 considering the above said writ petition held that the petitioner cannot be denied employment in the Corporation of his own merit for the reason that his brother is already employed in the Corporation and that monetary compensation will be paid to the retired employee.

8. By its order dated September 12, 1995 in Writ Appeal No. 337 of 1994, a Division Bench of this Court held that the fact that the mother of the appellant was already working in the Corporation, but living separately, is not a bar for considering the claim of the appellant.

9. It is relevant to refer to the decisions of the Supreme Court on aspect of provision of Compassionate employment. The facts of Asha Ramachandra Ambedkar's (II supra) are that one Ramachandra Ambedkar was employed in the respondent - Corporation and he expired on September 11, 1987. His widow was not given employment on compassionate ground on the ground that she exceeded the upper age-limit. Her son's request to provide him employment on compassionate ground was also rejected. So, she filed a writ petition and the High Court directed the Corporation to appoint the son of deceased employee on compassionate grounds. The Corporation went in appeal before the Supreme Court. The Supreme Court in the circumstances of that case held that Life Insurance Corporation Recruitment (of Class III and Class IV staff) Instructions, 1979 are statutory in character and in view of the provision that no appointment be made on compassionate grounds in case of any member of the family is employed, the High Court should not have directed appointment on compassionate grounds, but should have directed consideration of the claim of the second respondent therein.

10. The Supreme Court in Umesh Kumar Nagpal's case (I supra) while considering the object, of and the factors necessary to be taken into account before offering, compassionate appointment, held: Page 799.

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family".

11. In State of Rajasthan Vs. Umrao Singh, the Supreme Court was considering a case of a child of the deceased employee, who having accepted the appointment as L.D.C., on compassionate ground, sought for appointment as Sub-Inspector. Then, the Supreme Court held: Page 909

"Having accepted the appointment as L.D.C., the respondent's right to be

considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion".

12. From the above said decisions, it is clear that generally an appointment should be made in open competition and provision of employment to the children of the employees, who died in harness is an exception to the general rule. Where a member of the said family is already gainfully employed, the other member of such family cannot be appointed on compassionate grounds. In view of the above decisions of the Supreme Court, the Judgment of a single Judge of this Court in Writ Petition No. 11623 of 1991 is no more a good law.

13. In the cases on hand, the provision of appointment on compassionate grounds is available only to the children of the employees, who died in harness in view of Circular dated February 15, 1995 and the cases of children of other categories of employees for consideration of appointment on compassionate grounds do not arise after the issue of the said circular. But the effect of the said Circular is only prospective. The action of the respondents in refusing to consider the case of the petitioners on the sole ground that other member of the family is employed, without verifying the fact whether the other member is living with the family or not and the family is in immediate need of assistance there being no other earning member, when they have provided employment in similar cases, is violative of principle of equality enshrined in Article 226 of the Constitution. Therefore by exercising power under Article 226 of the Constitution, we direct the respondents to consider the cases of the petitioners according to the preference given in the Circular dated October 5, 1987, provided their cases arose earlier to February 15, 1995 and no other member of the family is gainfully employed in the Corporation and is assisting the family.

14. For the foregoing reasons, we dispose of the writ petitions with the following directions:

(1) The respondents are directed to consider the cases of the petitioners for appointment on compassionate grounds keeping in view the following directions:

(i) the priority laid down in circular No. PD-112/1987 dated October 5, 1987.

(ii) Whether any member of the family, who is already employed either on compassionate grounds or otherwise, is not residing with the family and not assisting the family on the date of death or retirement of employees as the case may be or the date of completion of 25 years of service and

(iii) the petitioners fulfil all other requirements viz., qualifications, age, etc., as per the circulars issued from time to time.

(2) The respondents shall complete this exercise within a period of three months from the date of receipt a copy of this order.

15. There will be no order as to costs.