
(1999) 12 AP CK 0030
In the Andhra Pradesh High Court
Case No : WA No. 1820 of 1999

APSRTC, Imliban, Hyderabad and others	APPELLANT
Vs	
Abidha Khanam	RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Citation : (2000) 4 ALD 435 : (2000) 4 ALT 196

Hon'ble Judges : M.S. Liberhan, C.J; R. Ramanujam, J

Bench : Division Bench

Advocate : Mrs. Nanda Ramachandra Rao, SC for APSRTC, for the Appellant; Mr. Mirza Nusrath Ali Baig, for the Respondent

Judgement

M.S. Liberhan, CJ

1. The respondent-writ petitioner's husband died in harness when employed with the appellant-Corporation as a mechanic. As usual the Corporation, for lip sympathy and to assuage the feeling of the poor workers, floated a scheme of compassionate appointment, which, in the facts and circumstances, appears to be only a scheme on the paper in view of the defence taken by the Corporation that there being a ban by the Government with respect to recruitment to the posts of sweeper and attender, no person can be appointed on compassionate ground especially in view of the judgment of the Supreme Court which has laid down that appointment on compassionate ground can be offered only for Class IV and Class III posts.

2. The very object of compassionate appointment to mitigate the hardship of life of the dependants of a deceased employee stands frustrated by giving with one hand and taking away with the other and in conformity with the famous saying "rob Peter and pay Paul". Admittedly, the writ petitioner belongs to the most down trodden class of the society and the deceased employee was doing a job, which, at one point of time, was considered to be a menial job. The authorities, with the object of providing solace to the dependants of deceased employees floated a

scheme providing for appointment on compassionate ground to the posts of sweeper and attender which do not carry any eligibility conditions of education, etc.

3. It is submitted by the learned Counsel for the Corporation that there are no vacant posts available with the Corporation.

4. The ban on recruitment to the posts of sweeper and attender was enforced in 1988. We are in 1999. It is very difficult to assume, in ordinary course of human conduct, that in ten years no post of sweeper or attender has fallen vacant with the State Road Transport Corporation having more than 10,000 workers.

5. Be that as it may, the Corporation has specifically stated in its counter-affidavit that it has imposed ban on the recruitment of sweepers and attenders on compassionate ground with effect from 7-12-1990 and no recruitment has been made on compassionate ground since 12-6-1988. From a reading of the counter in totality it is categorically inferable that the ban is impose""', only on appointment on compassionate ground and there appears to be no ban for the general recruitment. At this stage the learned Counsel for the Corporation vehemently contends that the ban is an absolute ban for recruitment to the said category and not for appointment on compassionate ground alone. Assuming to be so, appointment on compassionate ground cannot be raised to the pedestal of general recruitment. Compassionate appointment being peculiar to the facts and circumstances and even otherwise a scheme having been framed to ameliorate the miseries of the dependants of the deceased employees, the benefit of appointment on compassionate ground cannot be denied solely on the ground that there is a general ban. The scheme for appointment on compassionate ground is an exception to the general mode of recruitment. Consequently, the ban cannot govern the appointment on compassionate ground.

6. The learned Counsel for the Corporation relied on A.P.S.R.T.C. and Ors Vs. Kaiser Begum, , in order to contend that no order for creating special post or for appointment on compassionate ground in violation of the ban can be passed. The observations have been made in the facts and circumstances of that case wherein a direction was issued for creation of a supernumerary post or a post when there was no post available with the authorities, which is not the case in hand. There is no averment that there is no post available. The only argument advanced is that there being a ban, no appointment even on compassionate ground can be made. There is no additional financial liability. There are sanctioned posts. The work exists. Necessity for cleanliness in the Corporation, which should be the foremost motive of the Corporation, exists. The job of a sweeper or attender is primal in nature, which cannot be dispensed with on mere excuse that there is a ban especially when the appointment sought is on compassionate ground, which is an exception to the general rule of recruitment. Right to life and food cannot be rendered otiose especially when the Corporation itself has floated a scheme of compassionate appointment. The just expectations of the employees cannot be permitted to be rendered otiose and make the

people live in hallucination that in case of death of the employee in harness, his dependants will be taken care of on compassionate grounds.

7. The learned Counsel for the appellant has relied on West Bengal State Electricity Board and Others Vs. Samir K. Sarkar, , wherein the question considered was whether the scheme can provide that application for appointment on compassionate ground has to be made within two years. The Supreme Court observed that compassionate appointment is to meet the eventuality of providing financial aid and food to the needy at the time of death of an employee and not for all times to come when the situation has passed over. Thus the law laid down by the Supreme Court does not apply to the facts and circumstances of this case. Lastly, but not leastly, the learned Counsel for the Corporation has relied upon an order in Writ Appeal No.285 of 1999, dated 3-2-1999 where the writ appeal was dismissed declining to issue a writ directing appointment of an illiterate person on compassionate ground against a post which required the eligibility condition, that is not the case in hand. Such a request was not accepted in the said case, which was not interfered within the appeal. Here the writ petitioner has sought appointment to the post of sweeper or attender, which does not carry any eligibility conditions. There is no direction issued for creation of a post.

8. The learned single Judge has further observed, as a fact, that when the learned Counsel for the Corporation was directed to file an affidavit that no appointment was made since 1990 in view of the ban to class IV posts but the affidavit filed is that no person was appointed to the class IV post on compassionate ground. Thus the learned single Judge assumed that the appointments might have been made though not on compassionate ground. Be that as it may, it is beyond our comprehension that no post of sweeper, either ad hoc, temporary, regular, was filled up by the Corporation for the last more than ten years. Thus considering the peculiar facts and circumstances of this case, we find no ground to interfere with the impugned order of the learned single Judge wherein substantial justice has been done directing the Corporation to consider the case of the writ petitioner for appointment on compassionate ground for the post of sweeper after complying with the rules and regulations and any permission required from the State.

9. The learned Counsel for the Corporation submits that persons are being appointed on compassionate ground to the post of cleaner after obtaining special permission from the Managing Director. We fail to comprehend why this privilege be denied to the post of sweeper.

10. In the result, the writ appeal is dismissed. No order as to costs.