
(1996) 05 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1315 of 1995

General Manager, District Central Co-operative Bank Ltd.

APPELLANT

Vs

S. Vasudeva Reddy

RESPONDENT

Date of Decision : 07-05-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1996) 4 ALT 92

Hon'ble Judges : P.S. Mishra, C.J.;M.H.S. Ansari, J

Bench : Division Bench

Advocate : R.V. Subba Rao, for the Appellant; K. Padmanabha Goud, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—Writ-petitioner-respondent's father was working as Supervisor in the establishment of the appellant when he died on 7-10-86 in harness leaving behind the son (writ petitioner) who was then only about 12 years old. After a lapse, however, of 8 years, i.e., after obtaining the age of 19 years plus, he sought appointment on compassionate ground in lieu of his father who had died in harness. The appellants however, delayed any decision on the same. In the writ petition they however, state that his application was rejected on 8-11-94 as his request cannot be considered under the rules since it was time barred. Learned Single Judge, however, has ordered as follows:

"The learned counsel for the petitioner submits that this circumstance stood in the way of the consideration of the petitioner's case as a blanket rule of two years cannot be regarded as a matter of course in this case.

The learned counsel for the respondent submitted that if the petitioner was a minor at the time of death nothing prevented the petitioner's mother to seek for employment and it is now too late for the consideration of the said application.

I am unable to accept mis contention because obviously the spouse was not in a

position to get an employment perhaps due to the fact that she was not educated and has waited for her son to grow up and become qualified for appointment. The rule of two years in respect of minors is arbitrary where minor children would not become majors within two years. Simply because the minor son of the deceased was too young to apply for appointment at that time, it is not possible to deny him that chance for ever."

2. Aggrieved by the aid directions this appeal has been preferred by the appellant-employer.

3. The point for consideration in this appeal, therefore, is whether the application of writ petitioner-resppndent for appointment on compassionate grounds could be considered after a lapse of 8 years after the death of his father. The rules prescribe that the application for employment on compassionate grounds should be made immediately and in case where the child of the deceased was a minor or had not attained educational qualifications a reasonable time for seeking employment was stipulated as two years from the date of demise of the employee.

4. Article 14 of the Constitution of India guarantees equality before the law and equal protection of the laws to every person. Article 16 of the Constitution of India provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office or to promotion from one office to a higher office under the State. Article 16, thus, gives effect to the doctrine of equality under Article 14 and prohibition of discrimination under Article 15(1) of the Constitution of India. These three articles form part of a string of constitutionally guaranteed fundamental rights and they supplement each other. Clause (2) of Article 16 of the Constitution of India guarantees that no citizen shall on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them be discriminated against in respect of any employment or office under the State. Therefore where there is discrimination on the ground of only descent this clause will come into play. Granting preference in favour of sons or near relations in matters of employment by the State or its instrumentalities has been considered void after the commencement of the Constitution as it is discriminatory on the ground of descent.

5. While considering the principle, why a compassionate ground appointment would be permissible notwithstanding the guarantee under Article 16 of the Constitution of India to afford equality of opportunity of employment, the Supreme Court in *Yogender Pal Singh and others Vs. Union of India others*, . has observed:

"While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the police department, a provision which confers a preferential right to appointment on the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution."

6. Reiterating this law in a case in which a widow had applied for appointment on compassionate grounds, the Supreme Court in *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*, has observed:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

7. In *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*, another important observation of the Apex Court needs to be noticed in the light of the facts of that case. The widow *Smt. Sushma* had sought appointment on compassionate grounds in January 1982. She was entitled for appointment in terms of Government Memorandum dated 25-11-1978 issued by Ministry of Home Affairs. But nevertheless she was not appointed primarily on the ground that the appointment of ladies was prohibited by a notification dated 25-1-1985 issued by Central Government. Considering the contention urged before the Court on the above facts it was observed:

"*Sushma Gosain* made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid Government Memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter."

8. In *Smt. Phoolwati Vs. Union of India and Others*, three Judge bench of the Apex Court considered the case in "*Sushma Gosain v. Union of India (2 supra)*" and affirmed and reiterated the ratio laid down therein.

9. In *Auditor General of India and others Vs. G. Ananta Rajeswara Rao*, . it was clearly laid down that if the appointment on compassionate grounds are confined to the son, daughter, widow of the deceased State employee who died in harness and needs immediate appointment on ground of immediate need of assistance in the event of their being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family such appointment would be unexceptionable and would not be violative of Article 16(2) of the Constitution of India as it is not an employment on the ground of descent simpliciter.

10. In *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, . the learned Judges of the Supreme Court expressed concern over the directions issued by courts in which appointment on compassionate ground

was directed by Mandamus. It was considered necessary to lay down the law in this regard and in that context it was observed that the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic consideration disregarding statutory regulations in that behalf and in para 13 of the said judgment it was observed:

"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. Disregarding of law, however hard the case may be, it should never be done. In the very case itself, there are Regulations and Instructions which we have extracted above. The Court, below has not even, examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the Circular dated 20-1-1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and instructions. They cannot be put aside and compassionate appointment be ordered."

11. Further, referring to the well settled principle of law that no mandamus will be issued directing to do what is forbidden by-law it was observed that there may be pitiable situations but on that score, the statutory provisions cannot be put aside. The Supreme Court also considered the nature of directions that can be issued by Courts in exercise of its powers under writ jurisdiction and laid down that.

"Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The Jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. The straightway direct the appointment would only put the appellant Corporation in piquant situation."

The aforesaid view of the Apex Court was affirmed and reiterated by a Bench of Three Judges in a decision in State of Haryana Vs. Naresh Kumar Bali, .

12. The Supreme Court in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, . dealt with the question relating to the considerations which should guide while giving appointment in public services on compassionate ground. Their Lordships observed that they were dismayed to find that the decision of the Supreme Court in Sushma Gosein v. Union of India" case (2 supra) has been misinterpreted to the point of distortion. The Lordship observed that

"The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes 111 and IV."

It was further observed that the object of granting compassionate employment is to enable the family to tide over the sudden crisis and that the object is not to

give a member of such family a post, much less a post held by the deceased. Their Lordships underlined the nexus with the object sought to be achieved in the matter of affording compassionate appointments in giving favourable treatment to a dependent of the deceased employee who died in harness, in the following terms:

"The favourable treatment to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relieve against destitution"

and categorically laid down the law as under:

"The compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

It was further emphasised in that decision by the Apex Court that the provisions for compassionate appointment have necessarily to be made by the rules or by executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an adhoc basis.

13. In *Arputha Mary v. The Chairman, Neyveli Lignite Corporation, Neyveli*" 1990 (2) L.W 518 the scheme for appointment on compassionate grounds which provided that preference should be given to the son over the widow and to the widow over the daughter fell for consideration before a Single Judge of the Madras High Court. In that case the son invoked the preference in his favour the widow made representation to the employer that the son who had appropriated for himself the deposits which the father had made for the family, would deny to the family the needed support if granted compassionate appointment. Finding that the representation made by her was not attended to, the widow moved the Court. One of us (Mishra, J as he then was) observed that the principle laid down in *Sushma Gosain's* case (2 supra) had not been kept in mind to provide immediate employment to the widow and on account of delay, the step-son who meanwhile attained majority was allowed to raise the rival claim and invoke the preference in his favour. Reiterating the object of the scheme framed for providing employment on compassionate grounds and the observation made in *Sushma Gosain's* case, it was observed as under:

"The main question to be considered in all such cases is, who, if given appointment, would, as observed by the Supreme Court, provide the needed bread to the family. If the step-son is likely to neglect the step- mother and step brothers and step-sisters, and even his own sister, who is presently staying with the mother evidently, he would not provide that needed bread to the family. He

would corner the benefit of compassion for himself, and thus defeat the very purpose for which such considerations have been introduced and appointments on compassionate grounds have been sanctioned. If, on the other hand, it is only because the son of the deceased is the step-son of the petitioner, that she has chosen to object to the appointment given to him, she is acting more against the basics of the compassion, mainly guided by her, prejudices. The son, in such a case, would deserve the appointment if he is found to be ready and willing to provide the bread as the deceased provided to the family,"

and it was finally held:

"This is a fit case, in my opinion, in which this Court should direct the first respondent to personally enquire into matter and decide whether to give appointment to the petitioner or to the third respondent keeping in view the basis behind the scheme that it is the next bread-winner to the family who should be given appointment and not to one who wanted to use the scheme to benefit himself."

14. *Arputha Mary v. The Chairman, Neyveli Lignite Corporation, Neyveli* case (8 *supra*) emphasises the object and purpose behind providing employment on compassionate grounds to mitigate the hardship to the family and the urgency with which the same should be made as also to the person to whom such appointment should be afforded by the employer viz. the next bread-winner to the family.

15. Based on the authoritative pronouncements of the Supreme Court the following principles emerge which should guide while considering cases relating to appointment in public services on compassionate grounds:

(a) Appointment on compassionate ground is an exception to the general rule of equality enshrined in Articles 14 and 16 of Constitution of India. That too, only, in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means.

(b) The employment on compassionate ground can be made only to classes III and IV posts notwithstanding the higher qualifications of the dependent or the post held by the deceased employee.

(c) The consideration for employment in post on compassionate ground is not a vested right which can be exercised at any time or offered after whatever lapse of time.

(d) Compassionate employment has necessarily to be made in accordance with rules or executive instructions issued by the Government or public authority concerned.

(e) And above all, such appointment should be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to

accommodate the applicant. Denial of appointment of dependent on compassionate ground on account of any ban imposed for fresh appointments would be arbitrary.

And, as regards the nature of orders to be passed it should not be forgotten that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot issue a Writ of Mandamus to an employer to provide appointments on compassionate ground. It can only direct consideration of the claim of the dependent in accordance with the rules.

16. Applying the above principles, to the instant case, we are forced to interfere with the directions issued by the Learned Single Judge. The writ petitioner-respondent has filed the application for compassionate appointment after a lapse of eight years though for the reason that he was too young to apply for appointment at the time of death of his father - deceased employee. The rule of two years prescribed by the scheme framed for affording appointment on compassionate ground could not be waived in the light of the principles, as above. The consideration for such employment on compassionate ground is not a vested right which could be exercised at any time. We are, therefore, of the view that the writ petitioner - respondent cannot claim compassionate employment, nor can the same be offered to him after the lapse of a period of 8 years, more so when the rules prescribing the scheme do not so provide.

17. In the result the writ appeal is allowed and the writ petition is dismissed by in the circumstances without costs.