
(2000) 06 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10557 of 2000

J. Chandrasekhar

APPELLANT

Vs

APSRTC, Hyd. and another

RESPONDENT

Date of Decision : 29-06-2000

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2000) 4 ALD 476 : (2000) 4 ALT 247

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. D. Vijaya Chandra Reddy, for the Appellant; Mr. A.V. Sivaiah, SC for APSRTC, for the Respondent

Judgement

1. The father of the petitioner was working as a Driver in the respondent Corporation, He died in harness on 2nd November, 1981. On the date of death of his father the petitioner's age was 5 years. He passed his X Class examination and for the first time on 17-7-1998 he made an application to respondents to consider his case for appointment on compassionate grounds. This application was made after 17 years of the death of the father of the petitioner. The application was rejected by an order dated 7-10-1999. The order of rejection is impugned in this writ petition, which reads as under:

mother Smt. J. C. Manilamma is already appointed in the Corporation and presently working as Sweeper at Chittoor-I Depot".

The petitioner has annexed some documents showing that the petitioner's mother was not appointed on compassionate grounds but had been appointed on merit after due selection and was regularised along with others. Therefore, the petitioner submits that, his case should not be rejected on the ground that his mother was already in the employment of the Corporation. The petitioner has relied on two circulars, one being Circular No.PD13/95, dated 15-2-1995 and another being Circular No PD 0/93 dated 18-3-1993. The first circular of 1995 revoked one earlier circular by which reservation had been given to the children

of the employees of the Corporation. However, it created an exception that children of employees died in harness were to be appointed in terms of Circular No.PD64/1988. This further stated that a child of a person died in harness would only be considered for appointment on compassionate grounds when none of the family members is considered for employment irrespective of the mode of the recruitment. The 1993 circular was a circular which had created reservation for the children of the employees of the Corporation. The 1988 Circular i.e., PD64/1988 states that, children of the employees died in harness on or after 13-8-1981 would be considered for the post of Driver and Conductor on compassionate grounds. Following guidelines were also given in the Circular:

1. The spouse or one child of employee died in harness be considered for appointment in APSRTC for the posts as given below:

(i) none of the children or spouse of the employee died in harness is already employed:

(ii) the candidate is in possession of requisite qualifications as specified in Recruitment regulations; and

(iii) there is a sanctioned vacancy.

2. The son of employee died in harness is eligible to be considered for the posts of Driver, Conductor cleaner depending upon the qualifications of the candidate.

3. The spouse or daughter is eligible to be considered for the post of Stenographer, Typist subject to passing in the proficiency test.

4. The spouse or unmarried daughter or son of deceased employee in possession of degree in any discipline of recognised university is eligible to be considered for the post of Junior Clerk if vacancies exist.

5. If the son is graduate and in possession of NCC "C" certificate, he is eligible to be considered for the post of Traffic Apprentice or Junior Clerk.

6. Appointment to the post of cleaner is subject to the terms and conditions specified in Circular No.PD 112/87, dated 15-10-1987.

7. The spouse/children of employees died in harness are not eligible for any relaxations for consideration of their cases for appointment as stated above, except age relaxation.

8. Since there are no vacancies of Office Girls, sweepers, the cases of spouse/children of employees died in harness shall not be considered for appointment to the post of sweeper/ office boy or office girl.

9. The cases of children of employees, died in harness between 1975 and 1981 will be considered for the posts of driver and conductor only in deserving cases after examination of the case thoroughly at Head office and after obtaining the orders of Vice-Chairman and Managing Director.

10. The additional monetary benefit will be sanctioned wherever it is not possible to provide employment to the spouse/children of employee died in harness on or after 13-8-1981."

Since the mother of the petitioner is already in service though she had been appointed on her own merit in the year 1989, even according to the Circulars the petitioner has no claim for appointment on compassionate grounds and the impugned order cannot be faulted. The second aspect of the case is that the petitioner admittedly applied for compassionate appointment after 17 years of the death of his father. Admittedly he was a minor when his father died. His father died in November, 1981. According to the petitioner he was of five years age in 1981. So, in 1994 the petitioner would have attained the age of majority. He did not even apply in 1994 but applied in 1998. Whether an application for compassionate appointment should be considered after a long time of the death of the parent on the ground that the applicant was minor at the time of death of his parent is no longer *res Integra*. However, the learned Counsel for the petitioner submits that, there is a judgment of this Court reported in *M. Subrahmanyeswara Rao v. Divisional Manager, APSRTC* 1995 (3) ALD 55 In that case, the father of the application had died in harness on 8-5-1973. The applicant had been a minor when his father "died and he attained majority in the year 1990. Immediately after attaining the majority he applied for compassionate appointment. The Court allowed the Writ petition. The Court found that the right to get a compassionate appointment had accrued to the applicant on the date his father died but he could exercise his right only after attaining the majority. Then, the Court observed :

"Since he was a minor at that time he could not lay a claim and therefore he rightly laid a claim immediately after he attained the age of majority. Therefore, the contention of the Corporation that the claim is very stale and there is inordinate delay is not at all tenable. The claim of the petitioner is required to be considered on merits and in the light of the guidelines laid down by the Corporation management vide circular dated 7-7-1978."

Basically, appointment on compassionate grounds is an appointment *de hors* the rules. It is an exception. The only mode of appointment permissible into public services is by considering all eligible candidates and by offering the appointment to the most suitable candidate. The mandate for observing such a course is given by the Constitution itself and Article 16 of the Constitution has to be followed in all modes of appointment. The appointments on compassionate grounds is an exception to the modes prescribed by Article 16 and this exception has been accepted by law Courts only with a view that, if a family loses an earning member suddenly they should be provided some financial succour and help. The father of the petitioner had died in the year 1981. Almost two decades have passed. So, there is no question of providing immediate financial help to the family whose earning member has died. The petitioner and his family has come out of the financial difficulties that they might have gone in at the time of death

of the father of the petitioner. The petitioner has in between gone to school and passed his X class examination, his mother had got a job in the year 1989 and is working in the Corporation. Even according to the Circulars, if a member of the family is working with the Corporation, the children of a deceased employee has no right to claim compassionate appointment. The judgment (supra) to which a reference has been made, has been passed on 14th August, 1995. It appears that the Court was not apprised of the fact that the law had been laid down by Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, . The Supreme Court laid down :

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception dying is in favour of the dependants of an employee in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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....."

The Court farther laid down in Paragraph 6 that:

"For these very reasons, the compassionate employment cannot be granted after a lapse of 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 bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

Even after this judgment, the Supreme Court in Union of India (UOI) and Others Vs. Bhagwan Singh, , reiterated its view and in similar set of facts where an application had been made after 20 years of the death of the father of the applicant the rules in that case prescribed that the application may be made

within 5 years and the Tribunal had ordered appointment, the Supreme Court struck it down with the following observations:

"It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September, 1972. At the time Ram Singh died on 12-9-1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated 22-2-1993. The appeal is allowed. There shall be no order as to costs."

The view that, appointment on compassionate grounds is an appointment exceptional to the rules and is only permissible when the purpose is to obviate the financial difficulties of the family of whose an earning member dies in harness, is consistently followed by the Supreme Court from the year 1994. In Haryana State Electricity Board v. Naresh Tanwar 1996 (2) SLR 11 the Supreme Court again in similar set of facts when the son was not major at the time of death of his father and he sought compassionate appointment on attaining majority, relied on the Nagpal "s case (supra). The Supreme Court also relied on another judgment in Jagdish Prasad v. State of Bihar, CA No.10682 of 1995 decided on 13-11-1995, which was not reported. In this judgment, the Supreme Court held :

"The very object of appointment of a dependant of the deceased employees who the in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules."

Following the Nagpal"s judgment (supra) the Supreme Court again ruled that, compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee.

2. Again in State of U.P. and Others Vs. Paras Nath, the Supreme Court stuck to the law laid down by it. In this case, application was made 17 years after the death of the employee. The Court held that:

"The purpose of providing employment to a dependant of a Government servant

dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case."

3. Following all these judgments of the Supreme Court, I am of the view that the law laid down by this Court in *M. Subrahmanyeswara Rao v. Divisional Manager, APSRTC* (supra) is no longer good law and this Court is bound to follow the Supreme Court. Therefore, following the judgments of the Supreme Court, I hold that the petitioner has no right whatsoever to claim compassionate appointment after twenty years of death of his father. The writ petition is misconceived and is accordingly dismissed.