

(1998) 03 AP CK 0054
In the Andhra Pradesh High Court
Case No : WP. No. 10467 of 1997

K. Apsara

APPELLANT

Vs

APSRTC, Musheerabad, Hyd. and another

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 3 ALD 74 : (1998) 2 ALT 404 : (1998) 2 APLJ 15

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. V.S.R. Anjaneyulu, for the Appellant; Mr. C.V. Ramulu, for the Respondent

Judgement

1. The petitioner is the widow of one late K. V. Rao who was serving in the APSRTC, as driver. K. V. Rao died in harness in the year 1993. According to the petitioner immediately after the death of her husband, she made several representations including the latest one dated 15-7-96 seeking her appointment to a suitable post in the Corporation on compassionate ground under the Scheme framed by the Corporation. Her request was turned down by the Deputy Chief Traffic Manager (Rural), Vijayawada region of the APSRTC, Vijayawada, Hence, this writ petition assailing the validity of the order of the Deputy Chief Traffic Manager (Rural), Vijayawada and seeking a direction to the respondents to appoint her to a suitable post.

2. Heard. The writ petition is finally disposed of with the consent of the learned Counsel for the parties.

3. The learned Counsel for the petitioner contends that the reason given by the Deputy Chief Traffic Manager (Rural) for rejecting the application of the petition is untenable and violative of Articles 14 and 16 of the Constitution India, On the other hand, the learned Standing Counsel appearing for the APSRTC, would contend that atleast for two reasons the petitioner is not entitled for appointment on compassionate ground. Elaborating the submission, the learned Standing

Counsel would contend that as per the circular No.204/77-78 PD dated 16-1-1978 the dependant of the deceased employee should make an application seeking appointment on compassionate grounds within a period of one year from the date of occurrence of the death of the employee and in the present case the petitioner made application on 15-7-1996 whereas her husband died in the year 1993 and, therefore, the application was belated. Secondly, the learned Standing Counsel for APSRTC, would contend that under paragraph No. 10 of the aforementioned circular, the appointment on compassionate ground cannot be provided to the dependants of the employee who was under suspension and who died while under such suspension and in the present case the husband of the petitioner died when he was placed under suspension pending departmental enquiry.

4. The Circular No. 204/77-78 PD dated 16-1-1978 makes a classification among the employees of the Corporation : one class comprising dependants of the employees who die in harness and the second class comprising the dependants of the employees who die in harness while they are under suspension pending a departmental enquiry.

5. Although Article 14 does not debar the APSRTC, from making reasonable classification, the classification that may be made by the Corporation should satisfy two tests - (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the objective sought to be achieved by the statute in question. Therefore, the question for consideration is whether the aforementioned classification made by the Management of the Corporation in the circular satisfies the aforementioned two tests. In my considered opinion, it does not satisfy two tests. Suspension of an employee does not sever the relationship between the employer and employee. Suspension pending departmental enquiry itself does not disable an employee, in service law, from claiming any benefits or advantages which are otherwise available to all the employees. Suspension, as such cannot be treated as a disability to claim any privilege, right or advantages which are otherwise available to the employees in general. There is no such bar in service law jurisprudence. Adverting to the facts of the present case, the husband of the petitioner died in harness when he was placed under suspension. Whether the husband of the petitioner was guilty or not in respect of the misconduct attributed to him was never determined obviously on account of untimely death of the husband of the petitioner. If that is so, it would be safely said that the husband of the petitioner was not guilty of the misconduct. Mere charges levelled against the husband of the petitioner cannot be taken to be a proved misconduct against the husband of the petitioner. As already pointed out supra, the classification made by the Corporation should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and such a differentia must have a rational relation to the objects sought to be achieved. I fail to find any intelligible differentia on the

basis of which the classification between the dependants of the employee who die in harness and the dependants of the employees who are under suspension and die in harness. Equally, this Court does not find any object to be achieved by making this classification. One may say that the petitioner being the widow of an employee who died in harness when he was charged with a misconduct should be treated differently. But, such argument cannot have any rationale inasmuch as the charge levelled against the husband of the petitioner was never proved in accordance with the APSRTC., CCA regulations before he died in the year 1993. Refusal to consider for appointment only on the ground of descent is impermissible in the light of the bar contained in Article 16 of the Constitution. Coming to the contention of the learned Standing Counsel for the APSRTC, that the petitioner did not make application within a period of one year from the date of death of her husband, suffice it to state that the sworn statement of the petitioner that she made several representations to the respondents immediately after the death of her husband is not denied.

6. Be that as it may, the limitation prescribed under the administrative instructions cannot be treated on par with a statutory limitation. It shall not come in the way of the respondents considering the application of the petitioner on merits and in terms of the scheme though such an application was filed for the first time only on 15-7-1996.

7. In the light of the discussion above, it should be held that the classification made by the Corporation referred to above suffers from vice of invidious discrimination violating Article 14 postulates. A case is made out for interference.

8. In the result the writ petition is allowed. A direction shall issue to the respondents to consider the claim of the petitioner for appointment to some suitable post having regard to the qualifications possessed by the petitioner in terms of the scheme. Respondents shall communicate the decision to the petitioner within a period of one month from the date of receipt of a copy of this order. No costs.