
(2017) 03 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition (PIL) No. 19 of 2017

K. Satish Kumar

APPELLANT

Vs

Union of India, Rep. by its Secretary

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)
Madras Hereditary Village Officers Act, 1895 — Section 6

Citation : (2017) 03 AP CK 0068

Hon'ble Judges : V. Ramasubramanian and Ms. J. Uma Devi, JJ.

Bench : Division Bench

Advocate : S. Satyam Reddy, Senior Counsel, for the Petitioner; B. Narayana Reddy, Assistant Solicitor General, for the Respondent No.1; K. Ramkrishna Reddi, Advocate General, for the Respondents Nos. 2 & 3; G. Vidya Sagar, Senior Counsel, for the Respondent No.4; Ms. Priyanka Singh, Advocate, for the Respondent No.5; K. Vasudeva Reddy, Advocate, for the Respondent No.6; Chidagam Srinivas, Advocate, for the Respondent No.7

Final Decision : Disposed Off

Judgement

V.Ramasubramanian, J.—The petitioner who claims to be an unemployed youth, has come up with the present public interest litigation challenging a Circular dated 20-12-2016 issued by the 3rd respondent-Company, introducing a scheme known as "Voluntary Retirement Scheme on Health Reasons", for its employees.

2. We have heard Mr. S.Satyam Reddy, learned Senior Counsel appearing for the petitioner, Mr. B.Narayana Reddy, learned Assistant Solicitor General of India, appearing for the 1st respondent and Mr. K.Ramkrishna Reddi, learned Advocate General appearing both on behalf of the 2nd respondent-State and on behalf of the 3rd respondent- Company. We have also heard Mr. G.Vidya Sagar, learned Senior Counsel appearing for Trade Unions impleaded as parties to the writ petition.

3. The 3rd respondent herein is a Company wholly owned by the State of Telangana. It is incorporated as a Public Limited Company under the Companies Act, 1956.

4. On 20-12-2016, the 3rd respondent-Company issued a Circular introducing a scheme known as "Voluntary Retirement Scheme on Health Reasons", to enable the eligible National Coal Wage Agreement (NCWA) employees to opt for retirement, in consideration of the Company providing employment to the male dependant of the retiring employee. Before considering the challenge to the scheme, it is necessary to have a look at the broad features of the scheme. Hence, the salient features of the scheme are stated in brief as under:

(i) Permanent NCWA (National Coal Wage Agreement) employees aged between 48 years and 58 years can opt for retirement, to enable the Company to grant employment as Badli Worker (Underground), Category-I to one of the male dependants.

(ii) The grant of the benefit to the eligible NCWA employees is subject to 3 conditions, namely, (a) that they should have a left over service of minimum 2 years as on the date of application, (b) that they are certified as medically infirm by the Company's Medical Board, to continue in service and (c) that those who have more than 2 years of service as on the date of the application should continue to work till the age of 58 years so that they have a clear 2 years of left over service.

(iii) As a one-time measure the stipulation of 2 years left over service will be relaxed in respect of employees having more than one year of left over service as on 11-10-2016, provided they apply within the notified stipulated period i.e. from 01-01-2017 to 31-3-2017.

(iv) If both spouses happen to be employees of the Company, only one of them will be eligible to apply subject to the condition that the other spouses had left the Company's services, for reasons other than the VRS (HR).

(v) Both the employee as well as the dependant will be subject to medical examination and the benefit of the scheme will be available only if the dependant is found to be medically fit for employment. In the case of the employees who have more than 2 years of service and whose application for voluntary retirement on health reasons is provisionally accepted, the employee as well as the dependant will be subjected to medical examination, at the time when the employee completes 58 years of age.

(vi) The expression "dependant", for the purpose of the scheme would mean the son/son-in-law/younger brother of the employee residing with the employee and who is wholly dependant on the earnings of the employee. But a son born to a 2nd wife not legally married and adopted sons are not eligible to claim the benefit.

(vii) In cases where the request for voluntary retirement is made for the purpose

of providing employment to the son-in-law, the marriage should have taken place as on the date of application for VRS.

(viii) An employee will not be allowed to retire voluntarily under the scheme to enable a female or differently abled or mentally challenged dependant to seek employment.

(ix) The dependant should be medically fit to work underground.

(x) Employees facing disciplinary proceedings, employees who raised disputes with regard to date of birth and employees imposed with a major penalty such as reversion, removal or dismissal, for charges indicated in Company's Standing Orders 25.1 and 25.2 are disqualified from applying.

(xi) In order to facilitate the processing of the applications under the scheme, the employees will be served with a notice of a duration of 3 years before their retirement on superannuation, to enable them to apply at least 6 months before they are left with a service of 2 years.

(xii) If the dependant is found to be ineligible for appointment, the employee will have to continue in service till the date of retirement on superannuation.

5. The writ petitioner challenges the scheme on the short ground that it seeks to perpetuate heredity in public employment and that it offends Article 16 of the Constitution.

6. As per the counter affidavit filed by the 3rd respondent, the Company had entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947, with the Employees' Unions on 29-01-1981. Clause x of this settlement provides for voluntary retirement of aged and infirm workers who are physically weak, so as to enable their son or other male dependant to get employment. Clause xii of the settlement also provides for employment to widows and dependants.

7. But it appears that a Full Bench of this Court, by a decision rendered on 12-10-2001, set aside a scheme for appointment on compassionate grounds to Government Servants who were sent out on medical invalidation. Therefore, the clause in the settlement providing for employment to the children of the aged and infirm workers, became redundant. However, the decision of the Full Bench of this Court was reversed by the Supreme Court in *V.Siva Murthy v. State of Andhra Pradesh* (2008) 13 SCC 730. According to the 3rd respondent, the recognised Trade Unions of the Company started making representations, after the judgment of the Supreme Court, to revive the voluntary retirement scheme on health reasons. On one such representation of the Trade Union dated 20-5-2016, the State Government advised the Company vide letter dated 26-10-2016. The State Government's advice was placed before the Board of Directors in a meeting held on 04-11-2016 and the Board Unanimously resolved to revive the scheme. Accordingly, the scheme was revived and the impugned Circular issued. Therefore, the contention of the 3rd respondent is that what was

actually a part of the settlement arrived at by the Management with the Trade Unions under Section 12(3) of the Industrial Disputes Act, 1947, way back in the year 1981, is what has now been revived. Hence, it is contended by the 3rd respondent that the scheme is unassailable.

8. We have carefully considered the rival contentions. Before, adverting to the same, it will be useful to extract the relevant provisions of the impugned scheme, as follows:

S.C.C.L. VOLUNTARY RETIREMENT SCHEME (HEALTH REASONS) - DETAILED MODALITIES

Sl.No.

Item

Description

4.

Eligibility of employee

I) Permanent NCWA employees aged between 48 years and 58 years are eligible to retire in favour of their male dependant subject to -

a) Having left over service of minimum 02 years as on the date of application and declared medically infirm as certified by Company Medical Board to continue in service.

b) In respect of employees having more than 02 years left over service as on the date of application they will be allowed to retire from the Company's Services only on attaining the age of 58 years, in other words, they should attend for duty regularly till attaining the age of 58 years so as to ensure clear left over service of 2 years before the date of retirement on superannuation or till the date of termination on Health grounds by the Management whichever is earlier.

III (a)

(b)

(c) If both Husband and Wife happen to be employees of the Company, only one serving spouse is eligible to apply subject to the condition that the other spouse had left Company's services for reasons other than VRS(HR). In other words, only one dependant is eligible for dependant employment per family.

Ex: For Spouse W to be eligible to apply for VRS(HR) in favour of the dependant, her Spouse H should have left the Company's services for reasons other than VRS(HR) to ensure that only one dependant is provided employment or vice-versa.

5.

Dependant

Dependant under this scheme means Son/ Son-in-Law/Younger Brother of the employee residing with the employee and wholly dependent on the earnings of the employee and as per the choice of the employee subject to verification of antecedents.

Son born to a second wife, not legally married and adopted sons are not eligible for dependant employment.

In case employee (including the employee having leftover service of more than 1 year but less than 2 years as on 11.10.2016) opts for dependant employment in favour of Son-in- Law, the dependant will be considered for employment subject to the condition that the valid marriage of the daughter takes place as on the date of application for VRS(HR).

Under no circumstances, an employee shall be allowed to retire voluntarily in favour of a female / differently abled / mentally challenged dependant or a dependant who is not fit as certified by Company Medical Board for underground job.

14.

General Conditions

a) In order to facilitate the processing of applications under the Scheme, the employees (who are having more than 3 years of leftover service) will be serviced with 3 years notice before their retirement under superannuation to enable them to apply 6 months before they have 2 years leftover service.

b) If the dependant or the employee otherwise becomes ineligible for the scheme after submitting application, the employee has to continue in service till the date of his/her retirement on superannuation and is not eligible for any other alternative packages such as MMC/Lumpsum amount in lieu of dependant employment.

9. Interestingly, the petitioner as well as the 3rd respondent, both place heavy reliance only upon the decision of the Supreme Court in V.Sivamurthy v. State of A.P., (2008) 13 SCC 730. As we have pointed out earlier, the said decision arose out of a Full Bench decision of this Court, in and by which this Court struck down a scheme for appointment on compassionate grounds to the wards of the medically invalidated Government Servants. Before setting out the principles evolved by the Supreme Court in V.Sivamurthy, it may be necessary to take note of the scheme which gave rise to the controversy in the said case. In the scheme which became the subject matter of controversy in V.Sivamurthy, the Government provided for compassionate appointment to the spouse/son/ daughter of Government Servants who retire on medical invalidation, at least 5 years before attaining the age of superannuation. In order to prevent misuse of the scheme, the Government constituted Medical Boards as well as District and

State Level Committees, for scrutiny of the applications. But in 1999, the Government issued a clarification to the effect that the period of 5 years of left over service would be reckoned from the date of issue of the orders of retirement on medical invalidation. Therefore, Government Servants who made applications at a time when they had a clear left over service of 5 years, but whose applications could be processed with some delay on account of which the left over service was reduced below 5 years, filed applications before the Andhra Pradesh Administrative Tribunal, Hyderabad and succeeded. Such orders of the Tribunal came to be assailed before the High Court at the instance of the State Government. Though the only issue raised in the writ petitions filed by the State, as against the orders of the Tribunal, was as to the date from which the period of left over service should be reckoned, the Full Bench of this Court went into the question as to whether compassionate appointments on the ground of medical invalidation were permissible, in the context of Article 16 of the Constitution of India.

10. In the background of the above facts, the Supreme Court formulated in V.Sivamurthy, 3 questions for consideration, the 2nd and 3rd of which are not relevant for the purpose of our discussion. But the 1st question that was formulated by the Supreme Court for consideration in V.Sivamurthy was as follows:

"Whether the compassionate appointment of sons/ daughters/spouses of Government Servants who retire on medical invalidation is unconstitutional and invalid?

11. Dealing with the question with reference to Article 16 of the Constitution, the Supreme Court observed in para-9 of the report in V.Sivamurthy as follows:

"9. Article 16 of the Constitution bars discrimination in employment on the ground only of descent. If the service rules or any scheme of the Government provides that whenever a government servant retires from service, one of his dependants should be given employment in his place, or provides that the children of government servants will have preference in employment, that would squarely fly in the face of prohibition on the ground of descent. Employment should not be hereditary or by succession. But where the policy provides for compassionate appointment in the case of an employee who dies in harness or an employee who is medically invalidated, such a provision is based on a classification which is not only on the ground of descent. The classification is based on another condition in addition to descent: that is death of the employee in harness, or medical invalidation of the employee while in service."

12. After referring to various other decisions of the Court, the Supreme Court formulated the principles relating to compassionate appointments, in para-18 of the report in V.Sivamurthy as follows:

"18. The principles relating to compassionate appointments may be summarised thus:

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well-recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well-recognised contingencies which are carved out as exceptions to the general rule are:

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.

Another contingency, though less recognised, is where landholders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project-affected persons. (Particularly where the law under which the acquisition is made does not provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of the family of the employee concerned, that is, spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, Classes III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts."

13. After emphasizing in paragraph-23 of the report in V.Sivamurthy that compassionate appointment is not restricted to cases of death in harness only, the Supreme Court dealt exhaustively with the question of compassionate appointment on medical invalidation, in paragraphs-26 and 27 as follows:

"26. As an incidental reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court has observed that death stands on a "higher footing" when compared to sickness. The inference is compassionate appointment in case of medical invalidation cannot be equated with death-in-harness cases, as medical invalidation is not of the same degree of importance or gravity as that of death; and that as medical invalidation is not as serious as death-in-harness, exception can be made only in cases of employees dying-in-harness. But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bedridden due to

paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences for his family may be much more serious than the consequences of an employee dying-in-harness.

27. When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact far more than the consequences of death-inharness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia, serious incapacitating illness, etc."

14. After pointing out in para-29 of the report that the case of dependants of medically invalidated employees stands on an equal footing with that of dependants of employees who die in harness, the Supreme Court issued a note of caution in paragraph-30 of the report as follows:

"30. There are of course safeguards to be taken to ensure the scheme is not misused. One is to ensure that mere medical unfitness to continue in a post is not treated as medical invalidation for the purposes of compassionate appointment. A government servant should totally cease to be employable and become a burden on his family, to warrant compassionate appointment to a member of his family. Another is barring compassionate appointment to dependants of an employee who seeks voluntary retirement on medical grounds on the verge of superannuation. This Court observed in Ram Kesh Yadav as follows: (SCC p. 535, para 9)

"9. ... But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the scheme and seek voluntary retirement at the fag end of their service on `succession". It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut-off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory."

We find that in this case stringent safeguards were in fact built into the scheme on both counts by GMs dated 4-7-1985 and 9-6-1998."

15. Therefore, from a careful analysis of the decision of the Supreme Court in V.Sivamurthy, the following principles could be culled out:

(i) The appointment on compassionate grounds, of the dependants of a medically invalidated employee, does not fall foul of Article 16, since it is not based merely upon descent.

(ii) Compassionate appointments are permissible only in the case of a dependant member of the family such as spouse, son or daughter and not other relatives (para-18(d) of the judgment).

(iii) Any scheme for compassionate appointment on the ground of medical invalidation should contain adequate safeguards, to ensure that mere medical unfitness to continue is not treated as medical invalidation and that such appointments may be warranted only in cases where the Government Servant ceased totally to be employable and became a burden on his family.

(iv) Any such scheme should also ensure that employees on the verge of retirement do not take advantage of the scheme for the purpose of creating employment by succession.

16. Keeping the above principles in mind, if we test the validity of the scheme that is under challenge, the following points would emerge:

(i) While the scheme that was approved by the Supreme Court in V.Sivamurthy is a scheme for compassionate appointment on the ground of medical invalidation, the scheme under challenge is for compassionate appointment on the ground of medical unfitness. Therefore, the safeguard indicated in para-30 of the report in V.Sivamurthy to the effect that one should ensure that mere medical unfitness to continue in a post is not treated as medical invalidation for the purpose of compassionate appointment, is completely absent in the scheme under challenge.

(ii) That the scheme impugned in this writ petition is not merely for the benefit of the medically invalidated but also for the benefit of persons found medically unfit, is made clear by several clauses in the scheme which require the employees to continue in service up to the age of 58 years even if they are found to be medically unfit, so that they just have 2 years of left over service. Yet another clause in the scheme makes it mandatory for the employees who are found medically unfit, to continue to be in service up to the age of retirement, if the dependant for whose benefit they seek to retire, is found to be medically unfit. Therefore, it is very clear that the scheme seeks to confer a benefit upon persons who are medically claimed to be unfit, but who can serve either up to 58 years of age to pave way for their ward to get appointment or up to 60 years of age in case the ward is found to be medically unfit. Such a scheme clearly offends Article 16 of the Constitution, since the two pre-requisites indicated in V.Sivamurthy, namely, (a) unemployability due to medical invalidation and (b) becoming a burden on the family due to such unemployability, will not be satisfied in cases covered by the scheme.

(iii) If the scheme is intended for the benefit of employees who are medically invalidated, they cannot be expected to continue in service either up to the age

of 58 years in cases where one of their wards are selected for appointment or up to 60 years of age when the ward is found to be unfit for employment.

(iv) Clause-III(c) in column No.3 of the scheme as against serial No.4 relating to "Eligibility of Employee" makes it mandatory for both spouses, wherever both spouses are employed in the 3rd respondent-Company, to lose employment, if they have to get employment for one person in the family. We have already extracted Clause-III(c). As per this clause, if one spouse retires for other than the health reasons, the other spouse can avail the benefit of this scheme. Therefore, the scheme demands two lives for one, in cases where both spouses are employed in the 3rd respondent-Company. Hence, it offends Article 14 of the Constitution, since in the case of only one spouse being employed in the 3rd respondent-Company there is no such requirement.

(v) Interestingly, the scheme is also insensitive to gender equality. A dependant is defined in column No.3 of the table contained in the scheme as against serial No.5 to mean only the son or son-in-law or younger brother. No female dependant is made eligible to claim the benefit of the scheme. Therefore, the scheme offends Articles 15 and 16 of the Constitution. The justification sought to be given by the 3rd respondent for this gender discrimination is that the job offered is only that of a Badli Worker, who is to work in the Mine, 400 metres below ground level and that women are not suited to perform this task. If this rationale is correct, then the scheme could not have contained Clause-III(c) demanding both spouses to lose employment, one under the scheme and the other outside the purview of the scheme, for providing compassionate appointment. If for sending out the employees, the scheme can treat both spouses equally under Clause-III(c), it cannot treat women dependants differently under Clause-V.

(vi) Under column No.3 as against serial No.5 of the table contained in the scheme, adopted sons are excluded. We do not know how this discrimination can be accepted, especially after the advent of the Juvenile Justice Act, under which an adoption is permissible for all persons cutting across religion. To think that an adopted son can never be a dependant, offends law as well as commonsense.

(vii) The impugned scheme is also violative of the provisions of the Persons with Disabilities Act, 1995. The last paragraph of column No.3 at serial No.5 of the table contained in the scheme states that a female or a differently abled person or a mentally challenged person will not be treated as a dependant under any circumstances. To place all differently abled persons in the same group who will not be able to perform underground job, also offends the principle of equality. In fact, if the scheme is a pure and simple scheme for compassionate appointment to the wards of medically invalidated employees, no differentiation could have been made between a male dependant and a female dependant or a normal person and a differently abled person. The very fact that the scheme impugned in the writ petition keeps out of this purview, female employees and differently abled persons, apart from adopted sons would show that the scheme suffers

from the vice of hostile discrimination.

17. It is too long in the day to highlight that no public employment can be granted solely on the basis of descent. In *Gazula Dasaratha Rama Rao v. State of A.P.*, AIR 1961 SC 564, a Constitution Bench of the Supreme Court was concerned with the validity of Section 6 of the Madras Hereditary Village Officers Act, 1895, which empowered the District Collector to select persons for appointment as Village Munsifs, Karnam, Talayari and Vettian, from among the members of the families of the last holders of the offices, which had been abolished. A careful look at paragraph-6 of the said decision of the Constitution Bench would show that the appointment of Village Officers was originally governed by Madras Regulation VI of 1831. These Regulations were replaced by Madras Act III of 1895. It will be of interest to note that under Section 10 of the said Act as it originally stood, only persons of the male sex could be appointed to these posts. But after the coming into force of the Constitution, this discrimination on the basis of sex was deleted by the Adaptation (Amendment) Order of 1950, to bring the provisions of the Act purportedly to be in conformity with Articles 15 and 16 of the Constitution, which prohibit discrimination on the ground of sex.

18. But even after the Adaptation Order, the provisions of Section 6 of Madras Act III of 1895 remained the same and hence the Supreme Court tested its validity in the light of Articles 15 and 16. After noting that Article 15 does not mention "descent" as one of the prohibited grounds of discrimination in contra distinction to Article 16 which does make a mention of descent, the Supreme Court held in the aforesaid decision that a discrimination on the ground of descent only is in contravention of Article 16(2) of the Constitution. As a matter of fact, the decision of the Constitution Bench in *Gazula Dasaratha Rama Rao* was noted by the Supreme Court in its decision in *V.Sivamurthy*. However, the Supreme Court stated in *V.Sivamurthy* that if the classification is not merely based upon descent, but also based upon an additional factor such as death in harness or medical invalidation, such a classification may not fall within the mischief sought to be attacked in the decision of the Constitution Bench.

19. As a matter of fact, the hereditary system of appointment of Village Officers came to be abolished by the State of Tamil Nadu under Tamil Nadu Ordinance No.10/1980, which later became an Act under the title "Tamil Nadu Abolition of Posts of Part-time Village Officers Act, 1981". Persons who were holding the posts of Part-time Village Officers in the State of Tamil Nadu directly filed writ petitions under Article 32 of the Constitution before the Supreme Court challenging the validity of the Act. While dismissing the writ petitions with some small reprieve for persons who were affected by the abolition, the Supreme Court pointed out in its decision in *K.Rajendran v. State of Tamil Nadu*, AIR 1982 SC 1107 that appointments to posts in public service, made on the basis of the rule of primogeniture, are alien to modern administrative service and opposed to Articles 14 and 16. In paragraph-37 of the report, the Supreme Court held as

follows:

"37. While dealing with the first point it is to be observed that the posts of village officers which were governed by the Madras Act II of 1894, the Madras Act III of 1895 and the Board's Standing Orders were feudalistic in character and the appointments to those posts were governed by the law of primogeniture, the family in which the applicant was born, the village in which he was born, and the fact whether he owned any property in the village or not. These factors are alien to modern administrative service and are clearly opposed to Arts. 14 and 16 of the Constitution."

20. Therefore, it is clear that the scheme floated by the 3rd respondent, which is impugned in the present public interest litigation is clearly violative of Articles 14 and 16 of the Constitution for the following reasons:

(i) That it is a scheme not intended for the benefit of the medically invalidated employees, but intended to benefit employees found to be medically unfit, but who can continue in service up to the normal date of retirement, if their dependant is found to be unfit or disqualified,

(ii) That the scheme itself is a device to perpetuate succession, by easing out employees on the verge of retirement, just two years prior to their retirement so that they can pass on the baton to their chosen dependant,

(iii) that the scheme discriminates between male and female dependants on the specious plea that females cannot perform the task required of a Badli Worker, thereby violating the commitment of the country to the Convention on the Elimination of Discrimination Against Women (CEDAW),

(iv) That the scheme discriminates between persons who are employed singly in the Organisation and those who are employed along with their spouses in the Organisation,

(v) That the scheme discriminates physically disabled dependants on the ground that they may not be able to perform the job that is now offered under the scheme, without reference to different kinds of disabilities and

(vi) that the scheme keeps out of its purview adopted sons, without keeping in mind the societal obligations under the Juvenile Justice Act, especially Chapter VIII and Section 63 of the said Act.

21. The contention of Mr. G.Vidya Sagar, learned Senior Counsel appearing for the newly impleaded party, that the scheme was nothing but a replacement of a clause in the settlement arrived at under Section 12(3) of the Industrial Disputes Act, 1947, is nothing but an apology of a reason. We have already dealt with clause 10 of the Memorandum of Settlement. The settlement is not under challenge before us. We are testing the vires of the scheme. None of the clauses now we have found fault with, are found in the settlement entered into in the year 1981 under Section 12(3) of the Industrial Disputes Act, 1947. Therefore,

we are not convinced with the argument that the scheme is a replica of the settlement.

22. Therefore, the writ petition is allowed and the impugned Circular and the scheme set aside. However, we make it clear that if there is actually a scheme for compassionate appointment to the wards of those who are really medically invalidated and if such a scheme does not fall foul of Articles 14 to 16 of the Constitution, the same may pass the tests indicated by the Supreme Court in V.Sivamurthy. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.