

(2003) 06 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6542, 6663, 6943 and 8152 of 2003

K.R. Sulochana Devi and Another

APPELLANT

Vs

Chairman, Railway Board and Others

RESPONDENT

Date of Decision : 10-06-2003

Acts Referred:

Citation : (2003) 4 ALD 332 : (2003) 6 ALT 549

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : J.M. Naidu, in WP No. 6542 of 2003, A. Satya Prasad, in WP No. 6663 of 2003, V. Narayana Reddy, in WP No. 6943 of 2003 and P.V. Krishnaiah, in WP No. 8152 of 2003, for the Appellant; A. Krishnam Raju, SC for Railways Counsel in WP No. 6542 of 2003, Government Pleader for S.W. in WP No. 6663 of 2003 and Posani Venkateswarlu, SC for APSRTC in WP No. 6943 of 2003, for the Respondent

Judgement

L. Narasimha Reddy, J.—In these four writ petitions, the petitioners seek declaration that the action of the respective respondents in not considering their cases for appointment on compassionate grounds is illegal, arbitrary and unconstitutional. They seek appropriate directions to the respondents to consider their cases in accordance with the Schemes prevailing in the respective Organisations.

2. The petitioners in WP.No. 6542/, 2003 are the wife and son respectively of late Mr.K.P.O.Nair. Mr. Nair was working as Assistant Security Commissioner in the Indian Railways. He was to retire on 31-10-2001. It is their claim that on 30-10-2001, Mr. Nair had visited the office of the Standing Counsel for Railways to instruct him in relation to certain pending cases and while he was returning at about 10-00 p.m., he met with an accident. He was treated in the Gandhi Hospital, Secunderabad, and thereafter he was shifted to Nizams Institute of Medical Sciences, Hyderabad. He ultimately died on 8-11-2001. According to the petitioners, they are entitled for the benefit of appointment on compassionate

grounds in terms of Circular dated 30-4-1979 issued by the Railways, they being the dependents of the deceased employee. When the petitioners approached the respondents with an application, the respondents addressed proceedings dated 31-12-2002 informing that the petitioners are not entitled for the benefits. The two grounds mentioned therein are that amounts to the tune of Rs. 8,47,872-00 were paid to them towards the retirement benefits of Mr. Nair and that the death was after retirement from the service.

3. The facts in W.P. No. 6663/2003 are somewhat peculiar. One Mr. Andhru was employed in the Social Welfare Department of the Government of Andhra Pradesh, as a Hostel Warden. He died on 31-3-1996, while in service. The petitioner is his son. On an application submitted by the petitioner, the respondents appointed him as Junior Assistant-cum-Typist, on compassionate grounds, in the A.P. Social Welfare Residential School, at Suryapet, Nalgonda District, through proceedings dated 22-11-2002. The District Collector terminated the services of the petitioner, through proceedings dated 15-3-2003. The reasons stated therefore are that (1) the wife of the petitioner by name Sirisha was appointed as Extension Officer in the Rural Department on 3-8-1997 and later on was promoted as Mandal Parishad Development Officer; and (2) the mother of the petitioner Smt. P. Santhosamma was employed as Teacher in the Z.P. High School, Suryapet and retired on 30-9-2001. These facts were not brought to the notice of the respondents when the petitioner sought employment on compassionate grounds.

4. The petitioner in W.P. No. 6943/ 2003 is the wife of one Mr. T. Sankaraiah, who was employed as Driver in APSRTC. The husband of the petitioner died on 7-6-2002 while in service. On his death, certain benefits were extended to the petitioner and her other family members. Stating that the said amount was utilised in clearing the debts incurred by her husband and to meet the expenses for his treatment, she submitted an application dated 7-9-2002 to provide her appointment on compassionate grounds. She complains that her case was not considered in accordance with the prevailing Scheme.

5. The petitioner in W.P. No. 8152/ 2003 is the son of one G.C. Venkateswarlu, who was working as Record Keeper-cum-Cashier in State Bank of India, Kodamuru Branch, Kurnool District. The petitioner's father died while in service on 27-7-1999 after rendering 25 years of service. There exists a Scheme in the State Bank of India for providing appointments on compassionate grounds to the dependents of the employees who die while in service. The petitioner made an application to the respondents for extension of the said benefits. Through letter dated 21-8-2002, the Branch Manager informed the petitioner that the financial condition of the family of the petitioner cannot be treated as penurious and in view of the judgment of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, , he is not entitled for the benefit.

6. All the Organisations, which figured as respondents in these writ petitions, have introduced Schemes for providing appointment on compassionate grounds

to the dependents of the employees who die while in service. The petitioners claim that they fit into the parameters of the respective Schemes and that there did not exist any basis for the respondents in not extending the said benefits.

7. J.M. Naidu, A. Satya Prasad, V. Narayana Reddy and P.V. Krishnaiah, learned Counsel, argued for the respective petitioners. They submit that the Scheme for providing appointment on compassionate grounds was introduced by the State and Central Governments as well as Public Organisations and Undertakings, with a view to help the families of the deceased employees to tide over the calamities resulting on account of the death of the earning member of the family. They submit that the respondents have acted contrary to the spirit of the Scheme in denying the benefits to the respective petitioners. They placed reliance upon the judgments of the Supreme Court, particularly the one in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, .

8. The respective Standing Counsel for the respondents, on the other hand, submit that providing employment on compassionate grounds to the dependents of the employees who die while in service is not a matter of course. According to them, it is only when there does not exist any earning member in the family and that the family is exposed to penury on account of death of the employee, that the claims can be considered. It is their further contention that if there do not exist any vacancies or where the Organisation itself is overstaffed, the claims for appointment on compassionate grounds could not be considered.

9. Recruitment to the services of the State or Central Government or Public Undertakings under their control is governed by the respective Service Rules. Invariably, they provide for selection process where candidates who fulfil qualifications are considered by the recruiting agencies and the best of the available candidates, subject of course to the Rule of Reservation, are selected and appointed. Depending on the nature of the functions attached to the post, the selection process may differ. It is only when the Governments and Organisations are handled by people with necessary competence that they can run on healthy and efficient lines. The emphasis on efficiency is much more in private Organisations, which have greater latitude, be it in the matter of offering higher emoluments or providing necessary perquisites. The endeavour is to choose the eligible and efficient candidates.

10. In the recent past, two major inroads were made into the known methods of recruitment. The one is by resorting to appointment of persons on casual, daily wages or ad hoc basis, and to regularize their services, at a later point of time. The other is by providing for appointments on compassionate grounds to the dependents of the employees, who die, while in service. While the former is accentuated on account of restrictions on recruitments and exigencies of service, the latter was introduced, as a measure of social security to the family, which stands deprived of its breadwinner. There does not exist any statutory basis for these kinds of appointments. The Schemes are introduced on the basis of Government Orders or Circulars issued by respective Organisations, as the case

may be. Except in few instances, appointments on compassionate grounds are made without subjecting the respective candidates to the selection process.

11. It is true that the welfare of the employees is an important concern of the Organisations employing them. It is in this context that the payment of pension, bonus, gratuity, provident fund, etc., are provided for under the respective statutes, as a measure of social security to the employees, while in service as well as after retirement. Employment on compassionate grounds to dependents of deceased employees was viewed almost similar to such benefits. From this point of view, the object may appear to be laudable.

12. However, induction of an individual into a service, without subjecting him to any selection process, will have its own telling effect on the functioning of the Organisation. Even a person appointed in the lower cadre is bound to acquire promotions and hold the posts carrying higher responsibilities. With the increase of each such employee, the efficiency of the Organisation is bound to suffer. It is incidental that some of the incumbents inducted into service otherwise than through process of selection also fare well. This, however, is an exception. This is from the point of view of the quality of service. There is another dimension to the problem.

13. The Government and Public Undertakings are required to cater to the needs of the Society at large. Where millions of qualified unemployed people are languishing, appointing the persons solely on the ground that the persons on whom they were dependents, died while in service, does not stand to logic or reason. It is in this context that the Hon"ble Supreme Court in Umesh Kumar Nagpal (supra) observed as under:

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute."

14. Exception was carved out to the general Rule of Recruitment for providing appointment on compassionate grounds to the dependents of the deceased employees, who die in harness. Invariably, one condition that is important in such Schemes is that the death of employee shall have the effect of driving the family to penury and helplessness. The dependents are required to be protected from falling into destitution. The Scheme, which was introduced with such a laudable object, has slowly been divorced from the very purpose. A stage has reached wherein every instance of the death of an employee while in service, has resulted in a claim for compassionate appointment, irrespective of the financial condition of the family, extent of financial relief received, and irrespective of the fact that the family had other earning members. W.P. Nos. 6542 and 6663 of 2003 provide lustrous examples in this regard.

15. The husband of the petitioner in W.P. No. 6542/2003 attained the age of superannuation on 31-10-2001. He died on 8-11-2001. Only on the ground that he met with an accident at 10-00 p.m., on 30-10-2001, the petitioners had

claimed the benefit of appointment on compassionate grounds. The family had been extended the financial benefits to the tune of about Rs. 8.50 lakhs.

16. The petitioner in W.P. No. 6663/ 2003 claimed the benefit of appointment on compassionate grounds in view of the death of his father, while in service. The relevant Scheme provides for appointment on compassionate grounds, only on production of certificates to the effect that there is no earning member in the family and that the family does not own movable or immovable properties. The appointment is to be at the lowest level; the object being not to ensure that the member of the family is employed, but to tide the family over the difficulties. In spite of the fact that his mother and wife were employed in the Government, the petitioner could secure "No Earning Member Certificate" as well as "No Property Certificate" and he managed to get appointment as Junior Assistant-cum-Typist in the Residential School. The fraud could be noticed only at a later stage and consequently he was removed from service, through proceedings dated 15-3-2003.

17. If this is the plight of the Schemes, which are introduced carving out exception to the general Rule of Recruitment, and at the cost of millions of qualified unemployed youth, one certainly has to explore the means to curb such misuses.

18. As observed earlier, the welfare of the employees is certainly matter of concern for the employers in the Organisations. However, they have a greater purpose to serve. Each appointment otherwise than through the ordinary channel of recruitment would cut into the efficiency of the Organisation and would also be at the cost of more qualified, deserving and efficient unemployed youth. Therefore, such employment can be provided only when the candidates fulfil the requisite conditions of the schemes in their letter and spirit. Many of the claims have been made on the basis of the observations made by the Hon'ble Supreme Court in Sushma Gosain case (supra). In that judgment, the Supreme Court did not relax the conditions as to eligibility, etc. That was a case where there was no controversy as to the eligibility of the candidate with reference to relevant date. The complaint was as to the inaction and application of the subsequent Rule position. Despite the same, the said judgment was treated as the basis for the claims, irrespective of the financial condition of the family of the deceased employees. The misinterpretation of that judgment was so alarming that within five years, the Supreme Court, in Umesh Kumar Nagpal (supra) had observed as under:

"We are also dismayed to find that the decision of this Court in Sushma Gosain v. Union of India has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV."

19. That the dependents of the deceased employees cannot claim the employment on compassionate grounds as of right was never in doubt. It was

never treated as a vested right, to be exercised at any point of time and under any circumstances. If the family of an employee cannot be said to be in penury, as a consequence of his death, the claim of his dependents, cannot fit into the Scheme. None of the Schemes have defined as to what constitutes "penury". Though it is true that the term "penury" is abstract in nature and is "not susceptible of any definition, for the purpose of the Scheme, certain parameters are required to be delineated. In the absence of the same, the Scheme is likely to be hijacked by unscrupulous elements and in all likelihood; the Scheme may prove to be counter productive. In fact, it has proved to be so in many cases. Instead of being social measure, it may turn out to be a fertile source of employment, without there being any selection process and without there being any rival contender. To borrow the language of the Supreme Court in Umesh Kumar Nagpal case (supra)-

"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 employee of the deceased, and it is only if it is satisfied, that but for the provision for employment, the family will not be able to meet the crisis that job is offered to the eligible member of the family..."

The Supreme Court deprecated the practice of indiscriminate appointment of persons on compassionate grounds in the following terms:

"Unmindful of this legal position, some Government and Public Authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Class III and IV. That is legally impermissible."

20. What then are the limits to be taken into account for this purpose?

21. Invariably, ever since the commencement of service, an employee gets the wages as well as the right to be paid the pension, provident fund, gratuity and other such benefits. In catena of decisions, the Supreme Court treated such right of the employee as right to property. On the death of the employee, his family and dependents are paid the benefits, which have accrued till the date of the death of the employee. If the family members get the meagre amounts towards the benefits, the family would certainly face penury.

22. However, where there exists any other earning member within the family or where the amounts received by the family on the death of the employee are substantial, penurious conditions cannot be said to have prevailed. It is true that the amounts received by the family on the death of the employee have to be considered from the point of view of size of the family, its immediate necessities etc. Since what is in question is extension of a social measure, the availability of funds, which can take care of the family for a reasonable period, needs to be taken into account In *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India*

(UOI) and Others, , the Supreme Court has this to say:

"Having regard to the human condition of a large percentage of pavement dwellers and slum dwellers in our urban areas and proletarian miseries in our rural vastnesses, any one who gets Rs. 2 lakhs can well be regarded as having got something substantial to go by. In a society where half of humanity lives below the breadline, to regard Rs. 2 lakhs as a farthing is farewell to poignant facts and difficult to accept."

That was a case dealing with the limits on holdings of Urban Land as well as the compensation payable for the lands vested with the Government.

23. Having regard to the fact that the family of the deceased employee had the benefit of the employment for quite sometime, which benefit millions of unemployed qualified youth did not have, it can reasonably be said that a family which receives an amount of Rs. 1,00,000/- (Rs. One lakh only) towards the benefits which accrued to the deceased employee, is outside the limits of penury. This is not to suggest that this amount of Rs. 1,00,000/- will take care of the family for rest of the period. The consideration is purely from the point of view of tiding the family from immediate necessity vis-a-vis granting precedence to the member of that family over other qualified persons; and clearing the ground for him in the matter of competition. It is also in comparison with those families, which did not have the benefit of employment for generations, and which are subjected to continuous poverty.

24. A word needs to be said about the extent to which such employments can be provided. In the recent past, recruitment to Government services are almost banned. So is the case with many Public Corporations. In fact measures are being taken to reduce the existing strength of employees. VRS is introduced in many Organisations. Under these circumstances, the only opening appears to be for appointment on compassionate grounds; be it on account of the death of an employee while in service, or medical invalidation. If such appointments are to be resorted to indiscriminately, situations may emerge where Organisations are manned by the legal heirs of its former employees. When all hereditary rights, which were otherwise recognised in certain cases for generations, are being taken away by law in various fields, such a course of action cannot be permitted.

25. The Supreme Court deprecated indiscriminate appointments on compassionate grounds. The Governments or Public Undertakings have a greater purpose to serve, than mere ensuring welfare of their employees, at any cost. Therefore, public interest demands that the extent of such appointments be restricted to a reasonable level. Having regard to the acute unemployment problem and keeping in view the efficient functioning of such Organisations or departments, it is felt appropriate that at no point of time, the employment on compassionate ground, either on account of death of a service employee or on account of medical invalidation, shall exceed 10% of the cadre, to which such employments are made.

26. The greed for employment or for that matter to secure any benefit, has acquired disturbing proportions even to the extent of bringing about artificial separations of family. The petitioner in W.P. No. 6663/2003 that his mother who was employed as a teacher as on the date of the death of his father was divorced and that his wife was appointed as Extension Officer of the Mandal, while his application for providing him employment on compassionate ground was pending. If at all anything, it would only demonstrate the extent to which the Scheme was misused. Even if what the petitioner pleaded is true, the so-called divorce between his father and mother does not result in severance of his relationship with his mother.

27. Similar are the claims based on so-called partitions, where one of the children of the deceased employee is already employed. The Schemes do not deal with Law of Succession, nor do they confer vested rights in any one. Therefore, for the purpose of implementation of the Scheme, the family comprising of the surviving spouse and children of deceased employee shall be treated as a Unit, irrespective of any separations or partitions.

28. Though the Supreme Court took exception to the method of providing compassionate appointment on the basis of Executive Instructions way back in the year 1984, the same practice continues unhindered. With the imposition of ban on fresh recruitment in Government as well as various Organisations, the only prevailing entry into service appears to be through compassionate appointments. It should not be forgotten that Governments and Organisations have a larger and more important purpose to serve the society in an effective and efficient manner.

29. For the foregoing reasons, it is held that:

(a) Any Organisation where the Scheme for providing employment on compassionate grounds to the dependents of employees who die in harness, is prevalent, the Scheme should be extended to only those families where there does not exist any other earning member in the family. For this purpose, the family shall include mother, father and their children. The fact that there was any divorce between father and mother or that the employed children are living separately shall not be of any consequence.

(b) If on the death of such employee, the benefit extended to the dependents of the employee is Rs. 1,00,000/- (Rs. One lakh only) or more, in any form, such as, pension, gratuity, provident fund, no member of the family of the deceased employee shall be entitled for compassionate appointment.

(c) Where any Organisation is undertaking reduction of its employees by introducing VRS or other Schemes, the cases of candidates, who are otherwise eligible, need not be considered on compassionate grounds. However, as and when recruitment takes place, the cases of such candidates shall be considered by giving relaxation of age, if required, in favour of such candidates to the extent of the period between the date of the death of the employee and the date of

recruitment, if the financial condition of the family continues to be so.

(d) Appointment of eligible candidates on compassionate grounds will be only to Class IV posts and not beyond that; irrespective of the qualifications held by the candidates.

(e) At any given point of time, the extent of such appointments shall not exceed 10% of the cadre to which the appointment is made

30. In the result, W.P. No. 6542/2003 is dismissed since the concerned employee died after the age of superannuation and since the family had received an amount of Rs. 8,47,872/- towards retirement benefits.

31. The father of the petitioner in W.P. No. 6663/2003 died on 31-3-1996. By that time, his mother was employed as a Teacher in Z.P. School. Shortly thereafter i.e., on 3-8-1997, his wife was appointed as Extension Officer and thereafter promoted as Mandal Parishad Development Officer. Hence, appointment of the petitioner as Junior Assistant cum-Typist on 22-11-2002 was illegal. Therefore, no exception can be taken to the proceedings dated 15-3-2003 terminating his services. W.P. No. 6663/ 2003 is accordingly dismissed.

32. It is not mentioned in W.P. No. 6943/2003 as to what amount was paid to the petitioner on the death of her husband. If the said amount exceeds Rs. 1,00,000/-, she shall not be entitled to be considered for appointment Similarly, the petitioner in W.P. No. 8152/2003 did not state the amount, which he and his family received on the death of his father. The proceedings dated 21-8-2002 are also silent on this aspect. In that view of the matter, if the said amounts received by the families of the petitioner in these two writ petitions are Rs. 1,00,000/- and above, they shall not be entitled to be considered for appointment. In case the amounts are less than Rs. 1,00,000/-, their cases shall be considered in the manner indicated above. These two writ petitions are disposed of accordingly. No costs.