

(1996) 07 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23759 of 1995

M. Reddamma

APPELLANT

Vs

APSRTC and Others

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 141, 144

Citation : (1996) 3 ALT 491 : (1997) 1 LLJ 618

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

Bench : Single Bench

Judgement

1. It is an unfortunate case where a widow of a deceased employee is not in a position to get her case for appointment on compassionate ground considered by the respondent-Corporation authorities even after a lapse of more than six years from the date of death of her husband. The husband of the petitioner was an employee in the services of the Corporation and while he was working as Helper died in harness on November 30, 1989. The petitioner-the widow of the employee, without any loss of time, submitted a representation to the third respondent-Zonal Manager, APSRTC, Cuddapah on January 4, 1990 in which she requested the latter to consider her case for appointment to any suitable post on compassionate grounds under the circulars issued by the Corporation from time to time. The third respondent took more than one year (sic. about one month) even to reply. On February 2, 1990 the third respondent sent a letter to the petitioner, a copy of which is produced at page No. 1, of the material papers, which reads as under :

"A.P.S.R.T.C. Office of the Sr. Engineer (Works), Regional Workshop, Cuddapah.

Dated : February 2, 1990.

No. M1/548(2)/90 RWS : CDP,

Smt. M. Reddamma W/o late P. Narayana Reddy, Nehru Nagar, Sankarapuram, Cuddapab 516002.

Madam,

Sub :- GRIEVANCES : Representation of Smt. M. Reddamma, W/o M. Narayana Reddy, E 71096, Helper of RWS Cuddapah expired on is November 30, 1989 Regarding.

Ref :- Your representation dated January 4, 1990 to the Managing Director, APSRTC, Hyderabad. Reference to the representation made by you for providing employment in APSRTC, we would like to inform that it is not possible to consider your case for any employment in APSRTC and as such you may submit an application in the prescribed form for grant of additional monetary benefit in lieu of employment. In this connection, you may attend this Office on any working day for guidance.

Yours faithfully, Dy. Manager (Labour Welfare), RWS : CUDDAPAH".

Again the petitioner on September 3, 1990 sent one more representation to the third respondent. Even this representation went in vain. Hence, this writ petition by the hapless widow of the deceased employee seeking intervention of this Court.

2. On service of notice the counter is filed by the respondents 1 to 3. The counter is as bald and vague as it could be. It does not traverse the material allegations contained in the affidavit filed in support of the writ petition. It also does not disclose any acceptable reason or ground to deny appointment to the petitioner on compassionate so ground. Be that as it may, after hearing the learned counsel for the parties and perusing the pleading of the parties I do not find any justification for the respondents to deny the appointment to the petitioner on compassionate ground. The Apex Court and the High Courts repeatedly emphasized the need to offer appointment to the dependents of the deceased employees without any loss of time to mitigate the hardship that may be caused to the members of the family of the deceased. The authorities are not wanting. They are (i) Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, (ii) Smt. Phoolwati Vs. Union of India and Others, ; (iii) Umesh Kumar Nagpal v. State of Haryana (1995 I LLJ 798) (iv) State of Haryana Vs. Naresh Kumar Bali, (v) Smt A. Radhika Thirumalai v. General Manager Hindustan Aeronautics Ltd. 1995 (2) APLJ 699.

3. In recent times the employers of public sector as well as private sectors, having realised that if an employee dies in harness and leaves his family in penury or without any means of livelihood the members of such family will be subject to hardship, have made provisions either by way of rules framed under statute or by executive orders providing for gainful employment to one of the dependents of the deceased employees who may be eligible for such employment. The whole object of granting compassionate appointment is thus to enable the members of the family tide over the sudden crisis on account of unexpected and untimely death of the employee. In Sushma's Case the Court emphasized the need to make appointments on compassionate ground without

any delay and the Court proceeded to say that even in case where there is no suitable post for appointment, supernumerary post should be created to accommodate the dependent of the deceased employee. Such an action on the part of the employer is absolutely necessary to redeem the family in distress. The same view was reiterated by the three - Judge Bench, of the Apex Court in Smt. Phoolwati's case.

4. Now advertent to the facts it may be noted that though the petitioner made the application as far back as on January 14, 1990, her request was not properly considered by the respondents. In the reply sent to the petitioner by the Deputy Manager (Labour Welfare), RWS, Cuddapah dated February 2, 1990, it is stated that it was not possible for the respondent to consider the case of the petitioner for any employment in A.P.S.R.T.C. and the petitioner may submit her application in the prescribed form for grant of additional monetary benefit in lieu of employment. No reason is forthcoming from this letter as to under what circumstances it was not possible for the respondents to consider the case of the petitioner for appointment on compassionate ground. The Court would have appreciated if it is the case of the respondents that for certain reasons the petitioner could not be appointed on compassionate grounds and in that view of the matter the petitioner was asked to opt for additional monetary benefits. In the counter also no acceptable reasons or grounds are set-out as to why the petitioner could not be appointed to any suitable post in the services of the Corporation.

5. The stand taken in the counter-affidavit is quite objectionable and it highlights total lack of introspection on the part of the respondents. In para of the counter it is stated as under :

"It is respectfully submitted that the object of compassionate employment is to enable the family to meet the sudden crisis and to provide financial assistance to the bereaved family. In the instant case the employee died on November 30, 1989 and after a lapse of six years the necessity of employment to the petitioner cannot be a dire necessity which is the prime object of employment on compassionate grounds".

It is hardly necessary to point out that though the husband of the petitioner died on November 30, 1989 and the petitioner made application on January 4, 1990, till date the petitioner is denied appointment on compassionate ground without any valid reason, and for this denial the respondents are solely responsible. It seems that without realising this lapse on their part, the respondents have taken a plea that the object of offering appointment on compassionate ground is to mitigate the hardship caused to the family of the deceased employee immediately after the death and since six years have elapsed, now there is no need to offer appointment to the petitioner. Such a stand by the respondent-Corporation which is a "State" within the meaning of Article 12 of the Constitution should be outright disapproved and should be rejected in toto.

6. In the light of what is stated above a case is made out for interference. Normally this Court in exercise of power of judicial review under Article 226 directs the authorities to consider and to take a decision if there is any delay or failure in considering or taking a decision on an application or a representation. Only in extraordinary circumstances the Courts issue writ of mandamus to the authorities commanding them to do or not to do certain things specifically. Here is a case where despite lapse of nearly six years from the date of death of her husband, the petitioner was not given appointment on compassionate grounds. At this distance of time if the Court directs the respondents to consider her case it will only delay the petitioner getting an appointment. As already pointed out supra the Apex Court and this Court held that appointment on compassionate grounds should be provided to the dependents of the deceased employees immediately after the death of the bread-winner to enable the family to tide over the sudden crisis. The respondents have not set out any reason or ground to satisfy the Court that the petitioner is ineligible to be appointed to any suitable post in the services of the Corporation. Taking into account the dictum of the Apex Court and the facts and circumstances of the case the Court thinks that a case is made out to issue writ of mandamus to the respondents to appoint the petitioner forthwith without any further loss of time. This had become absolutely necessary to respect the law of the land. In A. Radhika Thirumalai's case this Court had pointed out that the law laid down by the Apex Court in para 9 of the Judgment in Sushma's Case is a judgment in rem and not a judgment in persona and if that is so, the said declaration of law is required to be respected and followed by all the authorities, civil and judicial, in the territory of India by virtue of the provisions contained in Articles 141 and 144 of the Constitution of India. The Corporation is found to be guilty of disobeying the mandate of the law declared in Sushma's Case and followed and reiterated in subsequent decisions of the Apex Court referred to above.

7. In the result and for the foregoing reasons the writ petition is allowed with costs. Advocate's fee is fixed at Rs. 2,000/-. A writ of mandamus shall issue to the respondents to appoint the petitioner to any suitable post in the services of the Corporation within a period of three weeks from the date of receipt of a copy of this order. Costs should be paid to the petitioner within two weeks from today.

8. The Registry is directed to send copies of this order to the respondents forthwith.