

(1995) 08 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1103 of 1995

M. Subrahmanyeswara Rao

APPELLANT

Vs

Divisional Manager, APSRTC and Another

RESPONDENT

Date of Decision : 14-08-1995

Acts Referred:

Citation : (1995) 3 ALD 55 : (1995) 3 ALT 75 : (1996) 1 LLJ 745

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

Bench : Single Bench

Advocate : G. Rajani, for the Appellant; P. Gangirami Reddy, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The petitioner's father was working as mechanic in the service of the respondent-Corporation and died in harness on May 8, 1973. When his father died, the petitioner was a minor. The widow of the deceased-employee made an application to the respondent- authority in the year 1973 itself seeking appointment on compassionate ground. It is averred in the writ petition that the widow was told orally by the officers of the Corporation that she was not eligible for appointment. Thereafter the petitioner attained the age of majority only in the year 1990. On March 14, 1990 the petitioner made an application to the respondents seeking appointment to the post of cleaner on compassionate ground under the scheme framed by the Corporation providing appointment to the dependents of the deceased employees on compassionate grounds. In pursuance of the said request of the petitioner the petitioner was called for interview. The petitioner did not hear anything from the Corporation authorities. However, again the petitioner was called for the interview on March 25, 1991 and at this time he was called for interview for considering his candidature for the post of conductor. It is asserted that the petitioner was interviewed on March 25, 1991 and he was orally told by the authorities that he was selected for the post of cleaner in pursuance of his earlier request. However, the petitioner was not appointed as cleaner nor as conductor. On the other hand, on December 3, 1993

the petitioner was again called for interview by the corporation authorities for considering his candidature for the post of cleaner or conductor. The petitioner appeared for the interview. Even this did not result in issuance of any appointment order to the petitioner. Under those circumstances the petitioner has approached this Court by way of this writ petition seeking a declaration that the inaction of the respondents is illegal and arbitrary and seeking further consequential direction to the respondents to appoint him to suitable post on compassionate ground.

2. On service of notice the respondents have filed counter. It is contended in the counter that the claim made by the petitioner is quite stale and he laid the claim nearly after 17 years from the date of death of the employee. It is also claimed, quite vaguely, that there was no provision to provide employment on compassionate ground to the children of the deceased employees in the year 1973 when the father of the petitioner died in harness and the scheme was introduced only in the year 1975.

3. At the time of hearing the learned counsel appearing for the petitioner made available to the Court a copy of the circular instruction, dated July 7, 1978. It is necessary to incorporate that circular for the purpose of deciding this writ petition which reads thus:

"Office of the A.P.S.R.T.C.,

Musheerabad,

Hyderabad-20.

502 (13)/76/HD.

Order No.40/78-79 dated July 7, 1978.

Sub : Recruitment-Appointment of children of employees against 30 quota reserved for and appointment by transfer in the post of Kalasis-Further instructions-Issued.

Ref : Cir No. R1/463/175-69, dated April 1, 1970.

Cir.No. RD-56-75-76, dated September 19, 1971.

Memorandum No. P1/582/(9)75-PD, dated September 24, 1975.

Cir.No.RD-81/76-77, dated January 6, 1977.

1. While giving clarification to para 2,3 (i) of the circular first cited, it was mentioned in the circular 2nd cited, that for considering the son/daughter of ex-employees for appointment by selection in the services of the corporation the ex-employees should have died/retired in the recent past and not earlier than 5 years.

2. Subsequent to the issue of clarifications, a doubt has been raised whether the

son/daughter of an ex-employee, who was minor at the time of death of his/her father/mother and subsequently became major after the lapse of 5 years period prescribed under para 1 above, may be considered for selection and appointment to the service of the corporation.

3. Keeping in view the above doubts the following further instructions are issued for compliance by all the recruiting authorities:

(i) If a child of a deceased/retired employee applied for a post of Cleaner/Khalasi whose parent either died or retired more than 5 years back on the date of selection, the unit officer under whose control the ex-employees had last worked, shall cause an investigation into the bona fides of the candidate, duly verifying with the other colleagues of the ex-employee and other documentary evidence, if any, and after satisfying himself of the bona fides of the candidate forward the application to the recruiting authority with a certificate to the effect that:

(a) the candidate was minor at the time of death/retirement of his parent and;

(b) there is no other son of such employee, who has been recruited against the quota reserved for ex-employees children and working in the corporation and;

(c) the candidate was born before retirement/death of the parent.

(ii) the recruiting authority concerned to act upon the recommendations of the unit officers.....candidates processed through the selection committee for consideration of his case for appointment.

.....

....."

4. As could be seen from this circular even in the year 1970 the Corporation management had issued circular instructions, dated April 1, 1970, providing for appointment of the dependents of the deceased employees on compassionate grounds. As could be seen from clause 2 of the said circular the management of the corporation was requested to lay down guidelines as to what should be done in a case where a son or daughter of an ex-employee who was a minor at the time of the death of his/her father or mother and subsequently becoming major after the lapse of five years from the date of death of his/her father or mother. To this precise question the circular in Clause 3 has laid down the guidelines. The reading of provisions of Clause 3 of the circular makes it very clear that even a minor dependent who became major even after the expiry of five years from the date of death of the employees is entitled to be considered for appointment on compassionate ground but subject to the verification of the facts which are enumerated in Sub-clauses (a), (b) and (c) in Clause 3(i).

5. It is not disputed that the petitioner became major only in the year 1990. Without any loss of time the petitioner laid the claim for appointment on compassionate ground. The petitioner was interviewed thrice by the Corporation authorities on March 14, 1990, March 25, 1991 and December 3, 1993. At no

stage of these developments the petitioner was told by the Corporation authorities that he was not entitled to be considered for appointment on compassionate ground. In the light of the stand taken by the Corporation it seems that the management of the Corporation is not in the knowledge of its own circulars issued from time to time. The stand taken by the Corporation in paragraph 3 of the counter indicates that the Corporation authorities were oblivious of the circulars earlier issued in the year 1970 providing for compassionate appointment. The contention that the scheme for compassionate appointment was introduced only in the year 1975 seems to be factually incorrect having regard to the copy of the circular now made available to me at the time of hearing. There is a reference to circular issued on April 1, 1970 providing for compassionate appointments. Therefore, the right to be considered to the suitable post on compassionate ground accrued to the petitioner on the date of death of his father-employee on May 8, 1973. 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 July 7, 1978.

6. In the result for the foregoing reasons, the writ petition is allowed with costs. Advocate's fee Rs. 1,000/-. A writ of mandamus shall issue to the respondents directing them to consider the candidature of the petitioner for appointment on compassionate ground under the scheme framed by it and if the petitioner is found suitable and eligible then to appoint him to any suitable post in Class III or Class IV services of the Corporation. This exercise should be carried out by the respondent-Corporation within a period of six weeks from the date of receipt of a copy of this order.

7. The Registry is directed to send copies of this order to the respondent - authorities forthwith. The counsel for the petitioner be supplied with a copy of this order within a week.