
(1997) 12 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6094 of 1997 and C.C. No. 1236 of 1997

Medikoti Satyanarayana

APPELLANT

Vs

Depot Manager, APSRTC, Paderu and Others

RESPONDENT

Date of Decision : 15-12-1997

Acts Referred:

Citation : (1998) 2 ALD 395

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. T. Dasaradha Ramayya, for the Appellant; Mr. Y.V. Swamy, SC for APSRTC, for the Respondent

Judgement

1. The petitioner, son of late M.T.V.K. Subba Rao who died in harness while working as a Driver in the respondent-Corporation on 1-12-1988, filed this writ petition seeking a direction to the respondents to appoint him as a Cleaner or in any other suitable post in Visakhapatnam region or West Godavari region of the respondent-Corporation, in March 1997.

2. This writ petition was filed by contending that the respondent-Corporation did not given appointment on the ground that there is a dispute between the mother of late Subba Rao and the mother of the petitioner herein with regard to the legal heirship and even if there is a dispute regarding the legal heirship between the wife and mother of late Subba Rao, the respondent-Corporation cannot refuse to give appointment to the petitioner. Hence, I gave a direction in WPMP.No.7302 of 1997 dated 29-4-1997 directing the Corporation to consider his case for appointment within four weeks from the date of receipt of the order. While the respondent-Corporation filed a petition to vacate the interim orders, the petitioner filed CC.No: 1236 of 1997 to punish the respondents by contending that the order of this Court was not implemented. After receipt of the notice, the respondents filed counter in the contempt case and during the course of arguments in the contempt case, it came to light that Sri Subba Rao died on 1-12-1988. As per the policy of the respondent-Corporation, the dependents of

(he employee who died in harness have to file an application for appointment on compassionate grounds within one year as per the Circular No.PD-204/77-78 dated 16-1-1978. Later, lime-limit was enhanced to three years in Circular No: PD-89/1989 dated 24-7-1989. Admittedly, the petitioner being a minor has not filed any application seeking appointment on compassionate grounds.

3. It is not in dispute that his mother was going round the office of the respondents for settlement of the terminal benefits from the date of death of Subba Kao. But, she did not ask for appointment. At this stage, the learned Counsel for the petitioner submits that the petitioner's mother sought for employment also immediately after the death of her husband. But, he is not able to produce any evidence to show that she filed an application seeking appointment. Hence, this Court cannot take note of the same. But, under the policy of the respondent-Corporation, if the spouse or the children of the deceased employee are not eligible for appointment, the respondent Corporation has to provide monetary benefit of Rs.25,500/- in lieu of employment in addition to the amounts payable for the services rendered by the deceased employee.

4. Clauses 4 and 5 of the policy as contained in Circular No. PD-63/1988 dated 14-7-1988, read thus:

"4. The additional monetary benefit is payable to spouse/children of employees died in harness only if one of the children or spouse is already employed. If Corporation has made an offer of employment to either spouse or one of the children of employee, the additional monetary benefit shall not be paid irrespective of the fact whether employment offer has been accepted or not. However, if the spouse or one of the children is found medically unfit after accepting the offer of employment, the additional monetary benefit shall be arranged in lieu of employment

5. The Depot Manager/Unit Officer is required to obtain a declaration from the spouse or Head of the family if spouse is not alive, for sanction of additional monetary benefit in Annexure-B enclosed to this Circular. The particulars furnished by the spouse/head of the family in Annexure-B have to be scrutinised by the Depot Manager/Unit Officer with reference to the particulars available in office in Service Record, "P" case, Bus Pass Declaration, Family Declaration for Medical Attendance etc. The particulars furnished in Annexure-B have to be authenticated by two (2) serving employees who are having the knowledge of the family members of the employee died in harness."

From the above, it is seen that the Corporation has to make an offer of employment either to the spouse or children of the employee. If one of the children or spouse is already employed the Corporation need not pay any additional monetary benefit to them. On the other hand, if no offer is made, the Unit Officer is required to obtain a declaration from the spouse or the head of the family for sanction of additional monetary benefit in Annexure-B enclosed to that Circular. Thereafter, the particulars furnished in Annexure-B are to be scrutinised

and if they are found to be correct by the Unit Officer, further action will be taken for the grant of the amount" by various authorities mentioned therein. If the legal heirs of the deceased employee are ultimately found to be eligible to get the additional monetary benefit, the Unit Officer shall arrange to deposit the same with the APSRTC Employees Co-operative Society Limited, Hyderabad or pay the same to them as per their wish. In this case, the respondent-Corporation did not take any such action on the ground that one Narasamma, the mother of the deceased Subba Rao filed OS No-3 of 1992 on the file of the Subordinate Judge, Kowur seeking declaration that she alone is entitled to receive the pensionary benefits of late Subba Rao and the petitioner did not choose to produce succession certificate as directed by the Corporation. But, at the same time, on 15-3-1989, the respondent-Corporation paid Rs.22,088/- by way of cheque towards SBT amount to the petitioner through the Depot Manager, Paderu. As per Para 5 of the Circular No.PD-204/77-78 dated 16-1-1978, it is sufficient if the legal heirs of the deceased employee produce a certificate from the authority in the Revenue Department not lower in rank than that of Revenue Divisional Officer. Subsequently, it seems that the power to issue the legal heir certificate was conferred on the M.R.O. and accordingly, he M.R.O. in his proceedings D.Dis.58/89 dated 17-1-1989, while issuing the legal heir certificate, categorically stated:

"This certificate is valid to enable her to receive all kinds of amounts towards gratuity and provident fund etc., due to the deceased from A.P.S.R.T.C., only, but not for any civil or criminal litigations."

It is also seen that till the contempt case is filed, the respondent-Corporation was not restrained by any competent Court from paying the amounts to the petitioner's mother

5. As far as the payment of pensionary benefits and other benefits that follow either after retirement or death of an employee, I am of the firm view that the employer has to effect payments as per the nominations made by the deceased employee in the declarations made for that purpose and he is no way concerned with the interse dispute between the legal heirs unless he is restrained from doing so. From the record, it is seen that initially on 16-5-1972, the deceased employee nominated his mother as the nominee to receive the gratuity. Perhaps after marriage, he has given a separate declaration in February 1984. A xerox copy of the same is available in the file maintained by the Corporation at Page No.83, from which, it is evident that Simhachalam, the wife of the deceased was declared as nominee and she is nominated to receive the terminal benefits. Hence, on the ground that the mother of the deceased filed a suit, the respondent-Corporation is not justified in withholding the payments due to the petitioner's mother. The learned Standing Counsel for the Corporation contended that Narasamma, mother of the deceased filed a suit for restraining payments to the petitioner's mother. At the same time, the Counsel categorically admitted that the Corporation did not receive any orders, except the repeated letters of

the Counsel for Smt Narasamma, which the Corporation ought not to have taken into consideration. The respondent's Counsel brought to my notice that after the present contempt case was filed, Smt. Narasamma seemed to have obtained an ex parte injunction restraining the Corporation from effecting payment of the amounts to the petitioner's mother. Further, the claim of Narasamma is doubtful from her conduct. Initially, she seemed to have filed an application claiming these amounts on 7-1-1989. Thereafter, she filed a bond before the Depot Manager, Paderu on 24-1-1989 agreeing for payment of amounts to the petitioner's mother. But, subsequently three years later, she approached the Court perhaps at the instigation of some outsider, and filed O.S.No.3 of 1992 and also an application seeking to restrain the respondent-Corporation from effecting payment to the petitioner's mother. She did not pursue the injunction petition. It is only after this writ petition was filed and after the contempt case for flouting the orders of this Court in the writ Petition was filed, she seemed to have obtained ex parte orders in that injunction petition. The petitioner's Counsel stated that after receipt of suit summons, he filed a written statement as well as counter-affidavit in the I.A. and to his knowledge, till 24-7-1997, no orders are passed in the injunction petition. The Counsel for the respondent-Corporation, except relying upon the letter written by the Counsel for Narasamma in the lower Court, did not produce any order of the lower Court. If really, the Subordinate Judge passed such an order after five years of filing of the suit, by which time the suit itself would have been disposed of, the action of the Subordinate Judge is deplorable.

6. Be that as it may, in the light of the contention of the Counsel for the respondent-Corporation that the Subordinate Judge passed an order, the petitioner's Counsel is directed to verify the same and if really any ex parte orders are passed by the Subordinate Judge, he is directed to immediately file an application. As and when such an application is filed, the concerned Presiding Officer is directed to dispose of the injunction petition on merits within two weeks from the date of filing of the application without allowing time to the Counsel appearing for the plaintiff in the suit. After disposal of the injunction petition, the respondent-Corporation shall take steps to pay the pensionary benefits to the petitioner's mother including the additional monetary benefit of Rs.25,000/-with interest at 18 per cent from the date of death of the deceased employee, as the officials of the Corporation miserably failed in their duty.

7. As far as the claim of the petitioner for employment is concerned, this Court cannot give any such direction as the petitioner's mother did not choose to ask for appointment even though the petitioner has become major within three years for her own reasons. The petitioner also did not approach the Court for appointment. However, this order does not preclude the respondent-Corporation from considering the case of the petitioner with sympathy that it deserves in lieu of the additional monetary benefit. If any appointment is offered to the petitioner, the question of payment of interest also does not arise. But, this direction will not give scope for further litigation in this Court. The writ petition is

accordingly disposed of. No costs.