

(1997) 12 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17692 of 1997

S. Venkata Subbamma

APPELLANT

Vs

Vice Chairman and Managing Director, APSIDC Ltd., Hyd and
Another

RESPONDENT

Date of Decision : 29-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 1 ALD 699 : (1998) 2 ALT 47

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : Mr. D. Linga Rao, for the Appellant; Mrs. P. Balarani, for the Respondent

Judgement

1. The petitioner, claiming to be the wife of one Brahmachary, who died in harness in the respondent-Corporation on 11-1-1997, filed an application for compassionate appointment, as an Attender or in any other suitable post, since the death of the sole earning member left her and her family in dire consequences. Since the petitioner was not considered for such appointment on compassionate grounds, the petitioner approached this Court by way of this writ petition.

2. While admitting the writ petition an ad interim direction was issued by this Court by order dated 1-8-1997 directing the respondents to consider the case of the petitioner for compassionate appointment.

3. The respondents without complying with the order of ad-interim direction, came forward with an application to vacate the interim direction, stating in the counter affidavit that the petitioner's husband was appointed as Work Inspector, Grade-FV under work charged establishment which was purely temporary appointment and the post subsists till there is work. After the employee expired, the Corporation paid G.S.L.I.S., Group Gratuity, P.P., E.L. encashment and Funeral expenses, amounting to Rs. 1,70,769.30ps. It was further stated in the

counter affidavit that as per the policy of the Government all the schemes were handed over to Beneficiary Committees and as such most of the work charged staff including nearly 50% of the Provincial staff have become surplus. Hence about 1000 regular employees had to be discharged on Voluntary Retirement Scheme. On receipt of representation of the petitioner, the Corporation addressed a letter to the Government dated 5-5-97, explaining the present position of the Corporation, along with other applications, for consideration at the Government level for appointment on compassionate ground. It was also submitted that the action of the Corporation in retrenching surplus workers from 1992 onwards was also upheld by the Division Bench of this Court in its judgment dated 25-2-1993 in W.A.1497/92 and batch and the Supreme Court also dismissed the SLP filed against the above judgment. It was further submitted that for the above indicated reasons, the Board of Directors in its 109th meeting held on 30-3-1996 created an embargo in all kinds of compassionate appointments till a decision is taken by the Government and the policy was formulated at Government level. Hence, the Corporation was not in a position to make any further appointments including compassionate appointments- Hence, it was stated that the petitioner's application has been considered, but she could not be appointed in view of the above circumstances.

4. Learned Counsel for the petitioner contends that the petitioner, the wife of the employee died in harness and thus his dependant, and there being no other earning member in the family, the petitioner is entitled for appointment on compassionate grounds.

5. However, learned Standing Counsel for the respondent-Corporation strenuously contends that the Corporation being not in a sound financial position to make any fresh appointment as it has already discharged about 1000 regular employees on V.R Scheme as the schemes have been handed over to the Beneficiary Committees, all the applications made for appointment on compassionate ground have been forwarded to the Government, requesting to provide employment to them. It is also further contended that in view of the Board's resolution dated 30-3-96, the scheme of appointing on compassionate ground has been shelved. Hence the petitioner is not entitled for appointment on compassionate ground.

6. The facts are not in dispute. Immediately after the employee died in harness, the petitioner made an application for appointment on compassionate grounds and it was in fact considered by the Corporation but as alleged, in view of the financial status of the Corporation, the petitioner could not be appointed and the applications have now been forwarded to the Government for providing suitable appointments to them. However, the question that assumes importance in this case is whether the petitioner is at all entitled for compassionate appointment in view of the resolution dated 30-3-96 stopping all the compassionate appointments.

7. Law is well settled that there is no right under law for appointment on

compassionate grounds for the dependents of the employees who died in harness. In fact such appointment offends Articles 14 and 16 of the Constitution. However, law recognised such appointment as an exception to the general rule of equity if such appointments are made in favour of the dependents of the employees, who died in harness and only in cases where the family was left in penury without any earning member. A Bench of this Court in *General Manager, District Central Co-operative Bank Ltd. Vs. S. Vasudeva Reddy*, , after surveying the law on this subject and based upon the authoritative pronouncements of the Supreme Court, culled out the principles governing compassionate appointments, in its words:

"(1) Appointment on compassionate ground is an exception to the general rule of equality enshrined in Articles 14 and 16 of Constitution of India. That too, only, in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means.

(2) The employment on compassionate ground can be made only to classes III and IV posts notwithstanding the higher qualifications of the dependent or the post held by the deceased employee.

(3) The consideration for employment in post on compassionate ground is not a vested right which can be exercised at any time or offered after whatever lapse of time.

(4) Compassionate employment has necessarily to be made in accordance with rules or executive instructions issued by the Government or public authority concerned.

(5) And above all, such appointment should be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant. Denial of appointment of dependent on compassionate ground on account of any ban imposed for fresh appointments would be arbitrary.""

8. In the instant case the employee died on 11-1-1997. Only thereafter the petitioner could make an application and accordingly she made an application to the employer. But by that time, in view of the Board's resolution dated 30-3-1996, the Corporation could not make any appointment on compassionate ground. However, it was open to the Vice Chairman and Managing Director to approach the Board, "in truly exceptional cases", for suitable decision. Since the Corporation felt that its financial position was in shambles and already regular employees have been discharged as there was no work in the Corporation, the Corporation has sent the applications to the Government for suitable action. It is also clear from the above decision that compassionate appointment can be made only strictly in accordance with the rules/ circular instructions enabling the Corporation for providing appointment on compassionate grounds. In the absence of any such rules and regulations, the Corporation is not liable to make

appointments on compassionate grounds. The resolution of the Board dated 30-3-1996 reads as follows:

"Item No.8 :--APSIDC Ltd., Estt. Appointment of eligible members of the deceased Corporation employees to suitable posts on compassionate grounds-Payment of consolidated salary instead of appointment-Proposal-Regd.

The Board considered the proposal in detail and keeping the precarious financial position of the Corporation in view, decided that henceforth all new cases of compassionate appointments shall be stopped, till the policy, being formulated at Government level, is finalised and implemented.

However, in truly exceptional cases, the Vice-Chairman and Managing Director may come to the Board for a suitable decision."

A perusal of the resolution, makes it clear that the compassionate appointments have been stopped. The petitioner cannot seek a writ of Mandamus from this Court to compel the Corporation to appoint her on compassionate grounds, as the Corporation is not enjoined under law to make such appointments. The writ petition fails on this ground. It should be, however, stated that the Vice-Chairman and Managing Director has to approach the Board in exceptional cases and the Corporation should reconsider, if the financial position is improved. As it is clearly stated in the resolution that the scheme was only stopped till a policy was finalised by the Government and implemented, I direct that the case of the petitioner be considered along with other applications made for compassionate appointments in terms of such policy as and when it was formulated.

9. With the above directions, the writ petition is disposed of. In the circumstances, no costs.