
(1996) 09 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16580 of 1988

Shaik Ahmad Ali Shah and Another

APPELLANT

Vs

The Divisional Manager, APSRTC and Another

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(1), 16(2)

Citation : (1996) 3 ALT 994 : (1996) 1 APLJ 343

Hon'ble Judges : S.R. Nayak, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : V. Rajagopal Reddy, for the Appellant; A.V. Sivaiah, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The first petitioner, Shaik Ahmad Ali Shah is the father of the second petitioner, namely, Shaik Ali Shah Vali. In this writ petition, the petitioners have sought for a writ of mandamus to the respondents to appoint the second petitioner to the post of Cleaner.

2. The facts leading to the filing of this writ petition be stated briefly as under:

The first petitioner was appointed as Helper in the services of the Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) on 2-9-1960. The first petitioner had put in 28 years of service as Helper even on the date of filing of this writ petition on 3-11-1988. The second petitioner is the son of the first petitioner and his actual name is Shaik Ali Shah Vali. The Vice-Chairman-cum-Managing Director of the A.P.S.R.T.C. issued a Circular No. R6/502(21)/87-PD dated 5-10-1987 providing for preferential treatment to the sons of the deceased or retired and in-service employees. Preference was provided in the matter of employment to the sons of serving employees who had put in 25 years of minimum service in the Corporation. In pursuance of the said circular of the Vice-Chairman-cum-Managing Director, the Divisional Manager, Kakinada issued a

letter dated 29-11-1987 to all the Depot Managers of East Godavari Division incorporating the policy laid down by the Vice-Chairman-cum-Managing Director. As on the date of the circular issued by the Vice-Chairman-cum-Managing Director, the petitioner had put in minimum service of 25 years, the second petitioner made an application to the second respondent-Depot Manager, A.P.S.R.T.C. Ramachandrapuram, East Gadavari district seeking appointment to the post of Cleaner. But, the second respondent kept that application pending on the alleged ground that there is a discrepancy in describing the name of the second petitioner in the application and the bus pass declaration. Under those circumstances, the first petitioner made a representation to the second respondent on 11-12-1987 explaining the circumstances as to how the name of the second petitioner was shown as Shahin Shakeel. In that regard the first petitioner also filed a sworn affidavit. Despite all these, the second respondent has not considered the application of the second petitioner for appointment to the post of Cleaner. Hence this writ petition seeking the relief referred to above.

3. In response to the Rule nisi, a counter-affidavit on behalf of the respondents sworn to by the Senior Law Officer, A.P.S.R.T.C. is filed. In the counter, it is stated that in the application made by the second petitioner his name is shown as Sk. Ali Shah Vali whereas in the bus pass declaration, the first petitioner had declared the name of his son as Shahin Shakeel. The counter claims that the first petitioner has no son by name Shaik Ali Shah Vali. It is further stated in the counter that having noticed the discrepancy in the name of the second petitioner, his application was sent to the Deputy Chief Mechanical Engineer, Vizianagaram and the claim of the second petitioner would be considered after necessary verification.

4. The counsel for the petitioners would contend that by virtue of the circular of the Vice-Chairman-cum-Managing Director of the A.P.S.R.T.C. dated 5-10-1987 and the letter of the Divisional Manager, Kakinada dated 29-11-1987 issued to the Depot Managers of East Godavari division, the second petitioner acquired a right to be considered and appointed to the post of Cleaner or Khalasi and the refusal of the second respondent to appoint the second petitioner was violative of the policy decision taken by the Management of the A.P.S.R.T.C. and hence arbitrary and violative of Articles 14 and 16(1) of the Constitution of India. The learned Counsel would maintain that a case is made out to issue writ of mandamus to command the second respondent to perform the duty cast on him under the afore-mentioned two circulars.

5. The learned standing counsel for the A.P.S.R.T.C. on the other hand, would point out that the Circular dated 5-10-1987 issued by the Vice-Chairman-cum-Managing Director under which the petitioners claim the right of appointment ceased to be in operation with effect from 15-2-1995 in view of the circular issued by the Management of the A.P.S.R.T.C. dated 15-2-1995 and therefore the second petitioner has no existing right to be considered for appointment let alone the right to be appointed. Meeting this argument of the learned standing Counsel

for A.P.S.R.T.C the learned Counsel for the petitioners would contend that the circular dated 15-2-1995 is prospective as held by the Division Bench of this Court in A. Seshapathi Vs. The Divisional Manager, APSRTC and Others, and since the second petitioner acquired the right to be considered when the earlier circulars were in currency, the second respondent is under an obligation to consider the claim of the second petitioner on merit as if the Circulars dated 5-10-1987 and 29-11-1987 had not expired.

6. Before we consider the contentions of the learned Counsel for the parties, let us have a look at the circulars issued by the management of the A.P.S.R.T.C. from time to time providing for compassionate appointments to the dependants of several categories of employees. Section 45 (2) of the Andhra Pradesh State Road Transport Corporation Act empowers the Corporation to frame Regulations. In pursuance of this delegated power, the Corporation has framed the Service Regulations. Regulation 25 of the Service Regulations empowers the Corporation to issue instructions, not inconsistent with the provisions of the Service Regulations, to give effect to and carry out the purpose of Regulations or otherwise to secure effective control over the employees to whom the Regulations apply and may, by resolution, authorise any authority subordinate to it to do so, subject to such conditions and limitations, if any, as may be specified by it. In pursuance of the said powers, the Corporation issued Circulars from time to time governing compassionate appointments of the children of the employees. The management of the Corporation, following the G.O.Ms. No. 1005, Employment and Social Welfare (G) Department, dated 27-12-1974, Memorandum No. 529/G1/75-8, dated 19-8-1974 and G.O.Ms. No. 687, General Administration (Ser.A) Department, dated 3-10-1977, issued Circular No. PD-204/77-78 dated 16-1-1978 to consider the cases of children of the employees who died in harness for appointment on compassionate grounds without referring to the Employment Exchange. The said circular had provided that when an employee died in harness, the recruiting authority might appoint one child (either son or daughter) or the spouse, or a dependant child if any, of the deceased employee in the service of the Corporation. Then came the Circular No. PD/30/79-80 dated 28-5-1979 providing preferential treatment to the children of the employees who died in harness. Subsequently Circular No. PD/63/1985 dated 13-6-1985 was issued extending the preferential treatment to the children of retired employees also. The next Circular No. PD/124/1986 dated 7-11-1986 extended the preferential treatment to the children of employees who died in harness, or who retired on medical ground or who retired on attaining the age of superannuation. Then came the Circular No. PD-112/1987 dated 5-10-1987 with which we are concerned in this case. This circular provided preferential treatment in the matter of recruitment to five categories of children of the employees, viz., (i) sons of deceased employees, (ii) sons of prematurely retired employees on medical grounds, (iii) sons of employees retired on superannuation and expired subsequently, (iv) sons of retired employees and (v) sons of employees in-service who have put in a minimum service of 25 years in

the Corporation. Subsequent to this circular certain guidelines were issued in the circular dated 13-7-1988 for considering the cases of spouses/children of employees dying in harness. On 18-3-1993 another circular was issued providing that the children of the employees who died in harness, or who retired on medical grounds, or who had put in 25 years of service in the Corporation were eligible to be considered for appointment to the posts mentioned in the circular provided none of the family members was employed earlier in the Corporation. Then came the circular dated 15-2-1995. Under this circular appointment on compassionate grounds is available only to the children of the employees who die in harness and the preferential treatment is not available to the remaining four categories of children of employees referred to in Circular No. PD-112/1987 dated 5-10-1987.

7. Although it was not argued by the learned standing counsel for A.P.S.R.T.C. that the circulars dated 5-10-1987 and 29-11-1987 could not be enforced by the Court, we, after necessary reflection and consideration, are of the considered opinion that these circulars insofar as they provide for preferential treatment/discrimination in favour of the sons of the employees who have put in a minimum service of 25 years in the corporation cannot be enforced by issuing writ of mandamus. Therefore, it is not necessary for us to go into the factual controversy whether the second petitioner is the son of the first petitioner. It is also not necessary for us to go into the legal controversy whether the second petitioner had acquired any enforceable right to appoint him to the post of Cleaner or Khalasi when the circulars dated 5-10-1987 and 29-11-1987 were in force. We say this because even assuming that the second petitioner is the son of the first petitioner and he had acquired an interest to be considered and appointed to the post of Cleaner or Khalasi when those two circulars were in currency, nevertheless, such an interest cannot be enforced for the reasons we state presently. Only those interests of persons or citizens which are recognised as well as protected by a rule of Law can be enforced, not otherwise. All rights are interests; all interests need not be rights. The A.P.S.R.T.C. is a statutory Corporation established under the Andhra Pradesh State Road Transport Corporation Act and therefore is a "State" within the meaning of Article 12 of the Constitution of India; secondly, it is subject to and governed by the provisions of Part III of the Constitution. Article 14 enshrines the fundamental right of equality before the law or the equal protection of laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds - religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Clause (1) of Article 16 guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and Clause (2) of Article 16 prohibits discrimination on grounds only of religion, race, caste, sex, descent place of birth, residence or any of them, in respect of any such employment or appointment. It would thus appear that, Article 14 guarantees

the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also relevant to note that Article 15 does not mention "descent" as one of the prohibited grounds of discrimination, whereas Article 16 does. Article 16 does not debar a reasonable classification of the employees in the matter of appointment or promotion provided the classification is made with reference to the objective to be achieved. The Court will interfere where there is no reasonable basis for the classification. The guarantee in Clause (1) of Article 16 is violated only when discrimination or preference is made between persons belonging to same class or group. The Court may also interfere where the differences between the two groups of recruits are not sufficient to give preferential treatment to one against the other; or, in other words where there is no reasonable nexus between the differences and the recruitment. What Article 16(1) guarantees is an equal opportunity to all citizens to apply for employment under the State. The right guaranteed by Article 16(1) includes the right to make an application for any post under the State; it further includes a right to be considered on the merits for the post for which an application has been made.

8. Clause (2) of Article 16 prohibits discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them and thus assures the effective enforcement of the fundamental right to equality of opportunity guaranteed by Clause (1) of Article 16. Clause (2) emphatically brings out in a negative form what is guaranteed affirmatively by Clause (1). The scope of Clause (2) is, therefore, co-extensive with that of Clause (1). As pointed out by Gajendragadkar, J. in *The General Manager, Southern Railway Vs. Rangachari*, the right to equality of opportunity is conferred positively by Article 16(1) and its enforcement is made effective by Article 16(2) which though negative in form is positive in effect. The injunction in Article 16(2) is necessarily addressed to the State although the State is not mentioned therein, because it is only the State which can discriminate against a citizen on the prohibited grounds in respect of any employment or office under the State. Article 16(1) and (2) is as much as an injunction against the State as is Article 14. In fact, Article 13(2) makes every fundamental right an injunction against the State not to violate it. Therefore, Article 16(2) would invalidate a law, or a rule or an order if it authorises discrimination in the matter of appointment under the State on any of the grounds specified therein.

9. In the back-drop of these Constitutional principles, rather limitations, let us scrutinize the Circulars dated 5-10-1987 and 29-11-1987 issued by the authorities of the A.P.S.R.T.C. providing for preferential treatment/ discrimination in favour of the sons of the serving employees of the corporation who have put in minimum service of twenty-five years. Each and every qualified, eligible citizen is entitled to make an application for the post of Cleaner or Khalasi in the A.P.S.R.T.C. Sons of the serving employees of the A.P.S.R.T.C. who have put in

minimum service of 25 years can also make such applications and all those applications are required to be considered for appointment on merits subject to permissible protective discrimination by force of Clause (1) of Article 16. These two circulars provided for preferential treatment/discrimination or one may call it reservation, in favour of sons of serving employees of the corporation who have put in minimum service of twenty-five years. What is the basis or ground for this discrimination? Is it based only on any of the prohibited grounds specified in Clause (2) of Article 16? The obvious answer is that the discrimination in favour of the sons of the serving employees is based on the ground only of descent and it is banned by Clause (2) of Article 16. Although Article 16 does not debar a reasonable classification of the applicants in the matter of employment, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differentia, must have a rational relation to the object sought to be achieved by the statute or the rule or the order in question. What is necessary is that there must be a nexus between the basis of classification and the object sought to be achieved. Adverting to the facts of this case, we must say that we find none of the two essential conditions to sustain the classification of the applicants into (i) sons of the serving employees of the A.P.S.R.T.C. who have put in 25 years of minimum service and (ii) others left out. Therefore, we hold that the preferential treatment/discrimination provided in favour of the sons of the serving employees of the A.P.S.R.T.C. in the two circulars is not saved by permissible classification and consequently it is debarred by Clause (2) of Article 16.

10. In *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, a Constitution Bench of the Supreme Court held that Section 6(1) of the Madras Hereditary Village Offices Act, 1895 in so far it directed that the person considered best qualified from "among the family of the last holders of the offices" should be selected, infringes the fundamental right of the citizens of India guaranteed under Article 16 of the Constitution. In that case the Revenue Divisional Officer, Tenali invited applications for the post of Village Munsif of Peravalipalem. Eight applications were made including one by the petitioner, Dasaratha Rama Rao and another by the fourth respondent, namely, V. Chandramowleswara Rao. Chandramowleswara Rao was a son of the Village Munsif of the old village Pervali. The Revenue Divisional Officer by his order dated October 18, 1956 appointed Dasaratha Rama Rao as Village Munsif of Peravalipalem. From the order of the Revenue Divisional Officer, Chandramowleswara Rao and some of the other unsuccessful applicants preferred appeals to the Collector of Guntur. The Collector of Guntur by his order dated April 1, 1957 allowed the appeal of V. Chandramowleswara Rao and appointed him as Village Munsif of Peravalipalem. Dasaratha Rama Rao then carried an appeal from the order of the Collector of Guntur to the Board of Revenue, and the Board of Revenue dismissed the appeal. Dasaratha Rama Rao

then moved the State Government without success. Thereafterwards she filed the writ petition. Before the Supreme Court two questions arose for consideration and resolution. They were (i) Whether the office of Village Munsif under the Madras Hereditary Village Offices Act is an office under the State within the meaning of Clauses (1) and (2) of Article 16 of the Constitution and (ii) whether the discrimination provided u/s 6(1) of the Madras Hereditary Village Offices Act was grounded only on descent. The Supreme Court answering the first question held that the office of Village Office under the Act is an office under the State within the meaning of Clauses (1) and (2) of Article 16. Section 6(1) of the Madras Hereditary Village Offices Act read as under:

"Section 6(1). In any local area in which this Act is in force the Board of Revenue may, subject to rules made in this behalf u/s 20, group or amalgamate any two or more villages or portions thereof so as to form a single new village or divide any village into two or more villages and, thereupon, all hereditary village offices (of the classes defined in Section 3, Clause (1), of this Act) in the villages or portions of villages or village grouped, amalgamated or divided as aforesaid, shall cease to exist and new offices, which shall also be hereditary shall be created for the new village or villages. In choosing persons to fill such new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished."

The Supreme Court, noticing that that part of Section 6(1) which provided that in choosing persons to fill the offices, the Collector should select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished, held that Section 6(1) does embody a principle of discrimination on the ground of descent only and therefore that part of the Sub-section is violative of Article 16(2) of the Constitution. In the light of these findings, the Supreme Court allowed the writ petition and set aside the appointment of V. Chandramowleswara Rao and directed that the application of Dasaratha Rama Rao should be considered on merit by the Revenue authorities concerned on the footing that Section 6(1) of the Act in so far as it infringes the fundamental right of the citizens of India under Article 16 of the Constitution is void.

11. In *Miss P.S. Geeta and Ors. v. The Central Bank of India, Bombay and Anr.* 1978 (2) SLR 856 the petitioners therein who were the children of employees in the Central Bank of India, sought for the issue of a writ of mandamus to the management of the Central Bank of India to consider their applications for appointment to the post of clerks and other subordinate staff as per circular dated 6-5-1968. The management of the Bank had issued a circular dt. 6-5-1968 governing recruitment to the post of clerks and other subordinate staff. In the case of the children of the employees of the Bank, qualifications were relaxed and certain percentage of posts were also reserved in that circular. In the writ petition, the petitioners sought enforcement of those relaxations and reservation provided in favour of the children of the employees. 25% of posts were reserved

in favour of the sons and daughters of the employees. While the minimum age of every other candidate applying for the post was prescribed as 18 years and the maximum age as 25 years, in the case of children of employees it was relaxed by five years. So also in the matter of educational qualifications; while all others were required to possess a degree from a recognised University it was enough if the children of the employees of the Bank passed matriculation examination with English and Mathematics. Further, while among the graduates only those who had secured 45% of marks and above were called for interview, from among the non-graduates those who had secured 40% of marks also were entitled to be called for interview. There were certain other relaxations provided in favour of the employees of the Bank. The Division Bench of this Court noticing these discriminations in favour of the children of the employees of the Bank held that reservation was based solely on the ground of descent. The Court also held that reservation of 25% of posts and the concessions to the children of the employees of the Bank has no reasonable nexus to the objects sought to be achieved in the matter of recruitment to the post of clerks and subordinate staff of the Bank and consequently held that the circular so far it provided reservation in favour of the children of the employees of the Bank is discriminatory and violative of Article 16(2) of the Constitution.

12. In *Auditor General of India and others Vs. G. Ananta Rajeswara Rao*, a two-Judge Bench of the Supreme Court cited the decision of the Division Bench of this Court in *Miss. P.S. Geeta v. Central Bank of India, Bombay and Anr.* (4supra) with approval. However, the Supreme Court in that case held that appointment of a son, daughter, or widow of an employee who dies in harness on compassionate grounds is valid by explaining that such appointment on compassionate ground is not based on the ground only of descent and the object of such appointment is to relieve the members of the family of the deceased employee from economic distress caused on account of the untimely and unexpected death of the bread winner in the family.

13. In the light of these decisions it should be held that the circular issued by the Vice-Chairman-cum-Managing Director of the A.P.S.R.T.C. dated 5-10-1987 in so far it provided preferential treatment/discrimination in favour of the children of the serving employees who had put in 25 years of minimum service in the Corporation should be held to be based on the ground only of descent and consequently is void being violative of Article 16(2) of the Constitution. If that is so, whether we can enforce such invalid, unconstitutional circular by issuing a writ of mandamus? It cannot be done. It is settled law by the decisions of the Apex Court in *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, and in *State of Bihar and others Vs. Ramdeo Yadav and others*, that no mandamus would be issued directing the State to disobey the law.

14. Generally speaking, equality of rights, privileges, and capacities should be the aim of the law; special privileges are obnoxious, and discriminations against persons or classes are still more so. There are unquestionably cases in which the

State may grant privileges or favours to specified individuals or groups without violating any Constitutional principle or limitation, because, from the nature of the case, it is impossible they should be possessed and enjoyed by all; but, in all such cases the Constitution itself sanctions departure from the general rule of equality, for example, Article 15(3) and (4) and Article 16(4) and (4-A). Any departure from the general rule without Constitutional sanction would be a nullity.

15. Notwithstanding this position, it was quite startling that the management of the A.P. State Road Transport Corporation 37 years after the Republican Constitution came into force, thought it legal and proper to practise hereditarianism in the matter of public employment by issuing the circular dated 5-10-1987 to thwart the Constitutional injunction embodied in Clause (2) of Article 16 of the Constitution. We do not know the cause for this Constitutionally abhorrent practice; whether it is a voluntary act of the management to appease the work-force in the corporation or whether it is the out-come of collective bargaining between the management and the labour. Whatever may be the cause, the practice is liable to be condemned as unconstitutional and retrograde. Hereditary appointment has no place in public employment. If this practice were to continue, the establishment of the APSRTC, in course of time, would have emerged as a "closed shop" consisting only or mainly of the descendents of the serving or retired or deceased employees of the Corporation. This scheme, whether it is planned or innocent, should be thwarted to uphold the republican character of the Constitution. It is a matter of satisfaction that the Corporation has realised its mistake though lately and disbanded the unconstitutional circular in 1995.

16. In the result and for the foregoing reasons we dismiss the writ petition. No costs. However, we make it clear that this order shall not come in the way of the respondents considering the case of the second petitioner for the post of Cleaner or Khalasi or any other post on merit and in accordance with the statutory service regulations governing recruitment provided the second petitioner fulfills" the prescribed qualifications, along with other applicants similarly circumstanced. The second petitioner is not entitled for any preferential treatment on the ground that he is the son of a serving employee of the Corporation.

17. At the same time, we would also like to make it clear that if the second petitioner has already been appointed after due consideration of his case in the light of the circular we do not want to disturb that appointment at this distance of time, as we feel that the petitioner shall not suffer prejudice merely because he has filed the writ petition.