

(2017) 04 AP CK 0026
In the Andhra Pradesh High Court
Case No : 8941 of 2016

Smt B. (A) Annapurna

APPELLANT

Vs

The TSRTC, rep.by its Joint Managing Director, and others

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 04 AP CK 0026

Hon'ble Judges : P.Naveen Rao

Bench : SINGLE BENCH

Advocate : SM Subhan, N.Vasudeva Reddy, A.Ravi Bab

Judgement

1. Heard Sri. S.M.Subhan, learned counsel for petitioners in all writ petitions and Sri N.Vasudeva Reddy, learned standing counsel for TSRTC in W.P.No.8941 of 2016, Sri A.Ravi Babu, learned standing counsel for TSRTC in W.P.Nos.9548 and 33563 of 2016.

2. In these three writ petitions, petitioners are aggrieved by not providing employment as Conductors under the Bread Winner Scheme on the ground that petitioners have less height than the height prescribed for the post even after 2 CMs relaxation is extended and, therefore, not entitled to be appointed.

3. State of Andhra Pradesh, when it was united, formulated scheme of compassionate appointment to the dependents of deceased government employees. This scheme was later extended to State Level Public Enterprises. However, having noticed that there were financial constraints and many Public Sector Enterprises are running in losses, Government dispensed with the provision of appointment on compassionate grounds in PSUs and instead, introduced the scheme of granting ex-gratia depending on the category of deceased employee. On a review of this policy, Government reintroduced the

scheme in State Public Sector Enterprises and Cooperatives subject to such Enterprises and Cooperatives are having positive net-worth, which are financially sound and earning profits for the last five years and not dependent on government for any kind of budgetary support.

4. The scheme of compassionate appointment was dispensed with in A.P. State Road Transport Corporation (APSRTC) in the year 1998. When the State was united, the combined APSRTC persuaded the Government to reintroduce the scheme of compassionate appointment. Though the Corporation informed the Government that Corporation is not making profits, but endeavor was being made to improve profitability; that for long time no recruitment was made; and large number of claims have accumulated and requested to grant permission to make appointments on compassionate grounds to all eligible dependents of the employees, who have died in harness. Government was informed that 1120 claims were pending w.e.f. 01.01.1998. Government issued orders in G.O.Ms.No.2, Transport, Roads & Buildings (TS.II) Department, dated 05.01.2013 permitting the Corporation to reintroduce the scheme of compassionate appointments w.e.f. 01.01.1998. Vide orders in G.O.Ms.No.15 Transport, Roads and Buildings (TR.II) Department, dated 07.02.2014, Government clarified that the scheme shall be in force for future claims also.

5. In these Corporations, the scheme is called as Bread Winner Scheme (BWS). Earlier, vide Circular No PD-30/2000 dated 05.05.2000, Corporation notified comprehensive guidelines on provision of employment under the bread winner scheme.

6. With effect from 02.06.2014, State of Andhra Pradesh was bifurcated and separate State of Telangana was carved out with ten (10) districts. However, the APSRTC continued to as common RTC for two States. On processing the applications received, the Corporate Office noticed that though the Corporation intended to fill up 1120 vacancies, only 734 candidates were considered. There were representations from individuals as well as unions that the benefits of the scheme have not reached the truly deserving and requested to provide one more opportunity to consider the request for relaxations and modifications to the scheme. To consider the said request, Committee of Officers was constituted by the Vice Chairman and Managing Director. The report of the Committee was considered and comprehensive guidelines were notified in Notification No.PD-02/2015, dated 10.02.2015, which are in addition to the guidelines notified on 05.05.2000. These instructions prescribe eligibility qualifications for the respective posts and criteria for consideration of eligibility of a claim.

7. Compassionate appointment is restricted to the posts of Driver Grade-II, Conductor Grade-II and Shramik (Cleaner to Khalasi). It is appropriate to note that the posts of Shramik and Driver are offered to male candidates only. Female dependent members are entitled to apply for the post of Conductor Grade-II only.

8. To the extent necessary Notification No.PD-02/2015 dated 10.02.2015 reads

as under: 1.Applications shall be invited afresh from the dependents of deceased employees who died from 01- 01-1998 to 04-01-2013 as one time measure subject to the conditions that (i) the family should not have availed AMB and (ii) the family should not have obtained compassionate appointment to any of the family members under BWS even though such family member who received compassionate appointment is separated from the family for whatever reasons that might be. In other words, this notification is applicable to only those families of the deceased employees who have failed to register applications for compassionate appointment of one of the eligible family members during the above mentioned ban period without reference to the stipulated time of registration of 3 years from the date of death of the employee which was later enhanced to 5 years.

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6. Height can be relaxed to the extent of 2 cms only in case of Conductors by the Executive Director concerned in terms of the existing circular instructions. No height relaxation in the case of Drivers is permitted under any circumstances as it is concerned with the safety of operations.

7. Qualifications: No relaxation is permissible in the Educational Qualifications. The qualification required for different posts are reiterated as follow:

Conductors: The existing qualification of having cleared SSC successfully will be continued.

9. For the post of Conductor, minimum height prescribed in the recruitment regulations is 153 Cms. Even prior to re-introduction of the scheme, 2 Cms relaxation was granted to consider the claims of the women dependents of the deceased employees under Bread Winner Scheme. However, having found that in spite of granting relaxation, several women candidates could not be selected because of height restriction and on consideration of the representations of the Unions, further relaxation in height is extended and the height requirement is reduced to 146 Cms, as one time measure. However, this concession is extended only to lady dependents of the deceased employees, whose death occurred on or before 4.11.2000. In other words, for a limited category of lady dependents, this relaxation is extended and the normal relaxation of 2 Cms stands with reference to all other claims.

10. In these writ petitions basic facts are not in dispute. The bread winner of petitioners died while in service and petitioners as members of the respective families are eligible to seek employment under the Bread Winner Scheme. Petitioners are women dependents of deceased employees. Their entitlement for compassionate appointment is recognized, were considered and provisionally selected for appointment as Conductors. When their height measurement was taken, they were found short of the required height for the post of Conductor and, therefore, they were not appointed as Conductors. Height of petitioners in WP No.33563 of 2016 and WP No.9548 of 2016 was measured as 149 Cms,

whereas the height of petitioner in WP No.8941 of 2016 was measured as 147 Cms. Petitioners challenge the said decision in these writ petitions.

11. The justification given by the respondent Corporation in insisting that a woman candidate should have minimum height of 151 CMs is, the conductor is required to issue tickets to the passengers while the Bus is moving and Bus can be subjected to sudden moments and stops. If the Conductors height is less than 151 Cms, though standard height prescribed is 153 Cms, it would be difficult for the Conductor to hold roof guard rail and unless the Conductor can hold roof guard rail, it may result in injuries to the Conductor.

12. On a first blush, this reasoning assigned by the respondent corporation sounds logical. But, on a closer scrutiny, their action is clearly discriminatory and unconstitutional. It is appropriate to note that the height restriction of 151 Cms is relaxed further and minimum height is reduced to 146 Cms. However, such reduced height is extended only to the claims from family members of employee who died before 04.11.2000. It appears on earlier occasion, the recognized Union protested against prescribing height as 151 CMs to women as no person was fulfilling the said requirement and sought for relaxation. It appears a joint meeting was held on 04.11.2000 and the demand of the Union was accepted by the combined Corporation and decision was taken to relax the height. As clarified in Circular No.PD-21-2016, dated 22.07.2016 of TSRTC, this relaxation of 7 CMs is applicable only to the claims of death occurred prior to 04.11.2000 and in all other cases, relaxation is only 2 Cms. No justification is shown as to why such relaxation is extended only to dependents whose bread winner died prior to 04.11.2000. The counter affidavit is blissfully silent on applying different parameters based on cutoff date. The only reason appears for such differentiation is the date of holding meeting with the majority union. It is appropriate to notice that from 01.01.1998 till the Government issued orders in G.O.No.2, there was ban on compassionate appointments. As per the revised policy of the Corporation, claims can be made now to provide compassionate appointment from the dependents of those employees who died on or after 01.01.1998.

13. By applying the cut-off date the respondent Corporations introduced mini-classification based on the date of death of bread winner to provide employment as Conductor. The mini- classification on the basis of cut-off date, when appointment to the post of Conductor is made presently is not valid and falls foul of constitutional norm of equal treatment and non-discrimination of persons similarly situated enshrined in Articles 14, 15 & 16 of the Constitution of India.

14. Article 14 of the Constitution of India strikes at the route of arbitrary exercise of power and not treating similarly situated persons equally or not extending the benefit of a provision of law, in the instant case employment, to similarly situated persons. Article 14 read with Article 16 are the sentinel of equality before law and equal protection of laws. Certain exceptions are carved out to the broad principle of equality before law. It is permissible to apply different principles to

different people, provided they can be easily differentiated. However, there must be sufficient justification for such classification or mini-classification extending different benefits to different groups. In other words, while acceding to the discretion of the State or its instrumentality in treating the two groups of people differently, it is their primary responsibility to justify as to how such classification/mini-classification is made and how those two persons are different or distinct so that different criteria can be applied. Such a differentiation cannot be artificial, but must be real. It must have nexus to the object sought to be achieved. Unless the State or its instrumentality passes this test, the action of such authority falls foul of the mandate of Article 14 of the Constitution of India.

15. There is plethora of precedent decisions on this issue. However, it is suffice to note three leading decisions on the subject.

16. 1. In *G.M, South Central Railway v. A.V.R. Siddantti* , Supreme Court held as under: 20. The fundamental right of equality means that persons in like situation, under like circumstances are entitled to be treated alike. The constitutional code of equality and equal opportunity, observed this Court in *State of Jammu and Kashmir v. Triloki Nath Khosla* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49] is a charter for equals. So long as employees similarly circumstanced in the same class of service are treated alike, the question of hostile discrimination does not arise. The equality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained. A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a classless and undiscerning equality where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible. That is to say, reasonable classification according to some principle, to recognise intelligible inequalities or to avoid or correct inequalities is allowed, but not mini-classification which creates inequality among the similarly circumstanced members of the same class or group.(emphasis supplied)

16.2. In *E.P. Royappa v. State of Tamil Nadu* , Supreme Court held as under:

85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office

under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., a way of life, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16. (emphasis supplied)

16.3.1. In *State of Jammu & Kashmir v Triloki Nath Khosa* , in the majority opinion, Supreme Court held as under:

29. This argument, as presented, is attractive but it assumes in the Court a right of scrutiny somewhat wider than is generally recognized. Article 16 of the Constitution which ensures to all citizens equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in Article 14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension. But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

30. Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved. (emphasis supplied)

16.3.2. The minority view expressed by Justice V.R. Krishna Iyer is also appropriate to note. Honble Justice V.R. Krishna Iyer observed as under:

57. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70 per cent marks could become Chief Engineers and those with 60 per cent alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it. (emphasis supplied)

17. Further more, it is also appropriate to notice that in individual cases, such relaxation was extended and persons with less than 151 CMs are appointed. Petitioners relied on the orders of the Joint Managing Director, TSRTC dated 19.01.2016, directing the Regional Manager, Nalgonda Region, to appoint Smt. K.Aruna as Conductor Grade-II by relaxing her height by 4 Cms. The justification shown in the counter-affidavit is, such appointment is made prior to Circular No.PD-21. This circular has not changed the cut-off date. It only seeks to clarify subordinate authorities on the application of cut-off date to relaxation of height, where as relaxation was extended by the corporate office. I do not see any justification for such distinction sought to be brought by the respondent corporation and it is clearly intended to cover up their arbitrary decisions.

18. It is also appropriate to note at this stage the observations of learned single Judge of this Court in W.P.No.9191 of 2015, which propelled grant of such relaxation. It was also the case of claiming employment as Conductor by granting relaxation of height. Learned single Judge observed as under: While entertaining applications on compassionate grounds, certain amount of relaxation of the standards is called for some times. That would only enhance the spirit behind the beneficial scheme of providing employment under the bread winners

scheme to mitigate the hardship caused to the family of the employees of the Corporation, who died, while in service, in harness. I am confident and sure that the respondents would maintain the same spirit and consider the case of the petitioner also on the same lines as that of the case of Smt. D. Satyabhama and they would be passing appropriate orders within a period of 30 days from the date of receipt of a copy of this order.

19. It appears, Smt. K.Aruna was granted relaxation duly taking note of the said observation of the learned single Judge. This observation would apply to all similarly situated persons.

20. Guided by the principle of law laid down by Supreme Court on equality clause and artificial classification in the above decisions, when the action of the respondent corporation is tested, classification brought about by the respondent corporation by applying different height criteria based on date of death of ex-employee is not sustainable. Further, it is appropriate to note that once appointed, irrespective of source of recruitment, a Conductor shall have to discharge the same duties and responsibilities, whether the bread winner of the family died before 04.11.2000 or after 04.11.2000. When, according to the respondent corporation, a women dependant of employee deceased prior to 04.11.2000 with less than 151 CMs of height can discharge the functions of post of Conductor effectively, I see no good reason to hold that others cannot discharge such duties effectively. The said action cannot stand the test of judicial scrutiny.

21. It is also appropriate to notice that TSRTC restricted provision of compassionate appointment only to three categories of posts i.e., Driver, Conductor and Shramik. In TSRTC, women are eligible to compete only to the post of Conductor. Thus, a woman dependent of deceased employee can claim employment in TSRTC only to the post of Conductor. The appointment is subject to fulfillment of all other requirements. Prima facie, excluding the women dependents for consideration to other posts may be discriminatory against women, having regard to the Constitutional norm and the commitment of the Country to the United Nations convention on the elimination of discrimination against women. Since that is not the issue raised in this batch of writ petitions, the Court is not expressing any opinion.

22. However, since only one post is offered and a woman cannot have height as comparable to men and average height of women in India is 150 Cms, most of the women get excluded from consideration for appointment to the post of Conductor. With advancement of technology and better amenities provided in the Buses operated by the State Road Transport Corporations, it cannot be said that short in height would come in the way of discharge of functions of a Conductor by a woman. The fact that the respondent corporation extending the height relaxation to 146 Cms to a section of dependents of deceased employees would show that a person with 146 Cms can discharge the duties of Conductor effectively.

23. It is also appropriate to note that women with height of less than 150 Cms were appointed and are working. No material is placed on record to show that on account of less height injuries are caused to them. The statement of respondent-corporation of possible injury is only on assumption and presumption. Furthermore, if a Conductor having lesser height than what is prescribed would have difficulty in holding roof guard, measures can be taken to introduce other means, where a women conductor can hold the balance while Bus is moving and can still discharge her functions effectively.

24. India is signatory to United Nations convention on the elimination of discrimination against women. Convention adopted in the year 1979 by the United Nations General Assembly, is often described as an international bill of rights for women. It sets up an agenda for national action to end discrimination against women.

25. As a State established entity involved in important public function, it is necessary and imperative for the TSRTC to take all measures to eliminate discrimination in providing employment and create employment opportunities to women and create conducive atmosphere for women to work.

26. On the ground of less height, the claim for provision of compassionate appointment cannot be denied to a woman. This Court is of the opinion that decision of the respondents in not considering the claims of petitioners, though they were selected, merely on the ground that they were falling short of height of less than 151 Cms is arbitrary, discriminatory and unconstitutional.

27. Writ Petitions are accordingly allowed and respondents are directed to consider the petitioners to provide employment as Conductors under the BRS without regard to objection on height. The entire exercise shall be completed within two months from the date of receipt of copy of this order. Miscellaneous petitions if any pending in these writ petitions shall stand closed.

There shall be no order as to costs.