
(2008) 10 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19682 of 1999

The District Collector (Pt. Wing) and Others

APPELLANT

Vs

A. Saidulu

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 ALT 147

Hon'ble Judges : Ghulam Mohammed, J;G. Bhavani, J

Bench : Division Bench

Advocate : GP for Services II, for the Appellant;

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This writ petition is filed seeking to quash the order dated 14-12- 2005 passed in O.A. No. 3363 of 2004 on the file of Andhra Pradesh Administrative Tribunal, Hyderabad.

2. The respondent-applicant filed the above O.A. challenging the rejection of his appointment as Panchayat Secretary vide proceedings No. 2865/2003, dated 08-04-2004 issued by the District Collector, Nalgonda. The case of the respondent is that his father, while working as Attender, had submitted a representation on 08-11-1999 seeking retirement from service on the ground of medical invalidation. The request was allowed with effect from 28- 01-2000, being the date of issue of certificate of medical invalidation by the District Medical Board, Nalgonda. The respondent claims that he is entitled to appointment on compassionate grounds in terms of G.O.Ms. No. 44, dated 17-02-2003 and G.O.Ms. No. 144, dated 01-05-2003. When his case was not considered, he filed O.A. No. 6119 of 2003 before the Tribunal and the same was disposed of directing the respondent to examine the representation in terms of the said GOs. Pursuant thereto, the representation made by the respondent was rejected vide proceedings dated 08-04-2004, which was impugned in the present O.A. The Tribunal after considering the rival contentions, directed the petitioners

- official respondents to appoint the respondent as Panchayat Secretary. Aggrieved thereby, the present writ petition is filed by the official respondents in the O.A.

3. Heard learned Government Pleader for petitioners and learned Counsel for the respondent.

4. Learned Government Pleader contended that the scheme of compassionate appointment to the dependents of the employees retired on the ground of medical invalidation, has been dispensed with vide G.O.Ms. No. 202, GAD, dated 27-04-2002 and as such, the respondent could not be considered for appointment.

5. Learned Counsel for the respondent has brought to our notice the judgment of the Supreme Court in Civil Appeal No. 4210 of 2003 dated 12-08-2008 and contended that the compassionate appointment to the dependents of a Government servant retired on medical invalidation are also entitled to such appointment.

6. We have considered the rival submissions of both the counsel and also perused the judgment of the Supreme Court in Civil Appeal No. 4210 of 2003 dated 12-08-2008. Admittedly, the father of the respondent was allowed to retire from service on medical invalidation with effect from 28-01-2000 and the respondent made a representation seeking compassionate appointment on 18-11-1999. It is seen from the writ affidavit that the scheme of compassionate appointment to the dependents, who have retired on medical invalidation, has been dispensed with, with effect from 27-04-2000 vide G.O.Ms. No. 202, GAD, dated 27-04-2002, prior to which the respondent's father retired from service and the representation seeking compassionate appointment was made and as such, the said G.O. cannot be made applicable to the respondent.

7. Apart from the above, it is to be noted that G.O.Ms. No. 202 dated 27-04-2002 was issued on the basis of the Full Bench decision of this Court in Writ Petition No. 13489 of 2000 and batch, dated 12-10-2001, wherein it was held that appointment on compassionate grounds in cases other than death of a Government servant in harness and that any scheme for compassionate appointment on medical invalidation of a Government servant, is unconstitutional. This decision of the Full Bench was subject matter of Civil Appeal No. 4210 of 2003 in the case of V. Sivamurthy v. State of Andhra Pradesh, and the Apex Court ultimately set aside the judgment of the Full Bench of this Court. The concluding part of the judgment of the Apex Court reads as follows:

21. We therefore allow these appeals, set aside the judgment of the High Court. We also set aside the orders of the Tribunal though on different grounds. We uphold the validity of the compassionate appointment scheme (contained in the GOs dated 30-07-1980, 04-07-1985 and 09-06-1998 as clarified by Memo dated 25-06-1999) providing that the period of five years of left over service should be

reckoned from the date of issue of the order of retirement on medical invalidation and not from the date of application for retirement on medical invalidation.

22. As the scheme was withdrawn by GM dated 27-04-2002 to give effect to the impugned decision of the High Court, the State Government is at liberty to revive the scheme with or without modifications.

8. Having regard to the facts and circumstances, for the foregoing reasons and in view of the judgment of the Apex Court setting aside the Full Bench decision of this Court, which held the scheme of compassionate appointment on medical invalidation as unconstitutional, on the basis of which G.O.Ms. No. 202, dated 27-04-2002 was issued withdrawing such scheme, we do not find any error of jurisdiction in the impugned order warranting interference in exercise of certiorari jurisdiction under Article 226 of the Constitution of India.

9. Accordingly, the writ petition is dismissed. No order as to costs.