
(2001) 04 AP CK 0122

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25333 of 1999

Zilla Parishad, Warangal

APPELLANT

Vs

L. Shiva Kumar and another

RESPONDENT

Date of Decision : 06-04-2001

Acts Referred:

Constitution of India, 1950 — Article 16, 162, 226

Citation : (2001) 4 ALD 143 : (2004) 7 ALT 369

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. P. Raghavender Reddy, for the Appellant; Mr. V. Srinivas, for the Respondent

Judgement

S.B. Sinha, C.J.—The petitioner herein being aggrieved by and dissatisfied with the judgment and order dated 7-9-1998 passed in OA No.307 of 1998 has filed this writ application. The said OA was filed by the 1st respondent herein for a direction to the respondents therein to provide employment to the applicant on compassionate ground in view of retirement of his father on medical grounds on 27-4-1991.

2. It is admitted that on 27-4-1991 when the father of the respondent was permitted to retire on medical grounds the respondent was aged only 16 years 8 months and 25 days. Inter alia on the afore mentioned ground the Collector, Warangal by an order dated 14-5-1991 refused to pass any order of appointment in his favour.

3. It further appears that the matter came up for consideration before the Government of Andhra Pradesh and an appropriate authority by an order dated 11-7-1997 directed:

"Sri L. Shiva Kumar s/o late L.V. Narsimha Rao, Ex. Village Development Officer, Mandal Parishad, Bhoopalapalli is informed that his father Sri L.V. Narsimha Rao, Ex. Village Development Officer, retired on 27-4-1991 on medical invalidation

sand at that time he was not having 5 years service as per rules. Further the applicant was a minor at the time of retirement of his father. He does not fulfil the condition laid down in the rules for compassionate appointment. Government have issued instructions not to entertain any cases of relaxation under compassionate grounds as a matter of policy vide G.O. Ms. No.400, GAD, dated 12-9-1996. Hence the request of the applicant for appointment on compassionate grounds is hereby rejected."

4. The aforementioned order dated 11-7-1997 had not been questioned. The learned Tribunal relying on or on the basis of G.O. Ms. No.165, dated 20-3-1989 and G.O. Ms. No.349, GAD, dated 12-6-1984 observed that as thereunder the dependents of the deceased Government servant may be held to be entitled to be considered for appointment even if they are 16 years of age subject to the condition that the service rendered prior to attaining majority should not be counted till attaining majority held that "the said G.O. is applicable in the case of the Government servants retired on medical invalidation." Paragraph 4 of the aforementioned Government order reads thus:

"After careful consideration, direct that dependent of a Government employee who dies in harness or retires on medical invalidation grounds, who is a minor seeking employment on Compassionate grounds should apply for appointment only after attaining the age of 18 years, subject to the condition stipulated in item No. 13 in Government Memo No.Ser.A/ 78/11, GAD, dated 20-3-1979 viz., the relief can be asked for within a reasonable time which may be two years from the date of demise of the Government servant, but the spouse or the child of the deceased Government servant should immediately apply for this relief."

5. It is not in dispute that the matter relating to grant of appointment on compassionate ground to the ward of an employee who had retired on medical invalidation, is covered by the G.O. Ms. No.309, GAD, dated 4-7-1985. The said order issued under Article 162 of the Constitution is a policy decision and is a distinct one. The learned Tribunal, therefore, in our opinion, erred in applying the policy decision that the dependents of the deceased Government servant must be given appointment even if they are 16 years of age as it cannot be held to be applicable in a case of retirement on the ground of medical invalidation. An appointment on compassionate ground is an exception to clause (2) of Article 16 of the Constitution of India.

6. Normally under the Constitution an appointment by way of descent is prohibited. By way of exception only a widow, son or an unmarried daughter of an employee who dies in harness may be provided employment if they fulfil the conditions laid down under a statute, statutory rule or a policy decision therefore.

7. The grant of appointment on compassionate ground to a dependent of an employee who takes retirement on medical invalidation must be construed more strictly. Unless and until it is clearly stated in the policy decision that the benefit granted thereunder would also be applicable in relation to another policy

decision, the same cannot be applied to the latter. Even in a case involving death in harness, an appointment is normally not to be directed by a High Court in exercise of jurisdiction under Article 226 of the Constitution after a long time.

8. For the reasons afore mentioned, we are of the opinion that the learned Tribunal committed an error in passing the impugned order and it cannot be sustained. It is set aside accordingly and the writ application is allowed. There shall be no order as to costs.