

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

+ WRIT PETITION NO.13371 OF 2013

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% Date: 01-04-2015

The Vice Chairman, Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority, Vijayawada, Krishna District and another.

.... Petitioners

Vs.

\$ V. Padma, W/o Late V. Srinivas and others.

.... Respondents

! Counsel for the petitioners: Ms. K. Mani Deepika, G.P. for Administration & Urban Development.

Municipal

^ Counsel for respondents: Sri S. Satyanarayana Rao

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? Citations:

1. AIR 1998 SC 2230
2. (2008) 15 SCC 560
3. (2007) 8 SCC 549
4. (2007) 6 SCC 162
5. (1994) 4 SCC 138
6. (2004) 7 SCC 271

7. (2004) 7 SCC 265
8. (2007) 2 SCC 481
9. (2008) 8 SCC 475
10. (2012) 11 SCC 307
11. (2013) 11 SCC 178
12. (2012) 9 SCC 545
13. (2011) 4 SCC 209
14. (2010) 11 SCC 661
15. (2012) 13 SCC 412
16. (2008) 13 SCC 730
17. (2007) 4 SCC 778
18. judgment in W.A. No.1119 of 2010 dated 07.12.2011
19. (2001) 10 SCC 560
20. 1993 Supp (1) SCC 714
21. (2008) 7 SCC 153
- 22) (1998) 6 SCC 165

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is filed by the Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority, aggrieved by the order passed by the A.P. Administrative Tribunal in O.A. No.3167 of 2012 dated 28.05.2012 ("Tribunal" for short). The 1st respondent herein invoked the jurisdiction of the Tribunal to declare the action of the petitioners herein, in not considering her case for appointment as an NMR (Last Grade Service employee) on compassionate grounds in the place of her husband who died while working as NMR (Last Grade Service employee) in the office of the 1st petitioner, as arbitrary and illegal. The reason why the 1st respondent was denied such a benefit was that the scheme of compassionate

appointment was not available to persons who died in harness while working as an NMR.

By the order under challenge in this Writ Petition, the Tribunal observed that, following the judgment of the Supreme Court in **Director of Education v. S. Pushpender Kumar**, a Division bench of the High Court, in W.A. No.1119 of 2010 dated 07.12.2011, had confirmed the order of the single judge; and, in the light of the judgment of the Supreme Court in **S. Pushpender Kumar**¹, the 1st respondent was entitled to be appointed as NMR (LGS) on compassionate grounds. The O.A. was disposed of directing the petitioners herein to consider the case of the 1st respondent for appointment as NMR (LGS employee) on compassionate grounds taking into consideration the judgment in W.A. No.1119 of 2010 dated 07.12.2011.

Mrs. K. Mani Deepika, Learned Standing Counsel appearing on behalf of the petitioners, would submit that the 1st respondent has already been provided employment on a petty contract basis; she was not eligible for being extended the benefit of time scale of pay; her husband was not a regular employee, and was only extended the benefit of time scale of pay; he was engaged as NMR on 01.02.1990; he did not complete the required five years of service, for regularisation in terms of G.O.Ms. No.212 dated 22.04.1994, by the cut off date of 25.11.1993; he was, therefore, not entitled for regularisation; the scheme of compassionate appointment is applicable only to regular employees, and not to NMR employees; merely because time scale of pay was granted, did not make an NMR employee a regular employee; his dependents are not entitled to be appointed on compassionate grounds; and the Tribunal had erred in directing that the case of the 1st respondent be considered for compassionate appointment.

On the other hand Sri S. Satyanarayana Rao, Learned Counsel for the 1st respondent, would submit that the 1st respondent is the sole bread winner of her family; she had submitted a representation on 24.11.2009 to the 1st petitioner requesting that she be provided a job on compassionate grounds; the 1st petitioner, by proceedings dated 09.12.2009, had sought permission of the Government to

appoint her as an LGS employee on compassionate grounds; the Government had, vide letter dated 23.02.2010, rejected her request on the ground that her husband had not completed five years of service as on 25.11.1993 which is the minimum period stipulated for regularisation of service in terms of G.O.Ms. No.212; the Tribunal had merely directed that her case be considered for compassionate appointment as an NMR employee, and not as a regular employee; even though her husband worked as an NMR employee, he was extended the benefit of time scale of pay including increments; similarly situated persons, who were also appointed on NMR basis along with her husband, were also extended the benefit of time scale of pay in the last grade service with effect from 12.06.2003; and she was, therefore, entitled to be appointed as an NMR employee in the place of her husband.

Before examining the rival contentions, urged by Learned Counsel on either side, it is useful to briefly refer to the principles governing compassionate appointment. Recruitment of employees, for posts under the State, is governed by rules framed under a statute or the proviso to Article 309 of the Constitution of India. In matters of appointment, the State is obligated to give effect to the constitutional scheme of equality under Articles 14 and 16 of the Constitution of India. All appointments must, therefore, conform to these constitutional requirements. (**SAIL v. Madhusudan Das; Mohan Mahto v. Central Coal Field Ltd.; IG (Karmik) v. Prahalad Mani Tripathi**). As a general rule, appointments in public services should be made strictly on the basis of open invitation of applications, and on merit. Neither is any other mode of appointment, nor any other consideration, permissible. However to this general rule, which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of dependants of an employee dying in harness. In such cases, on pure humanitarian considerations, a provision is often made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post, much less the post held by the deceased. (**Umesh Kumar Nagpal v. State of Haryana; SAIL²; GM, (D&PB) v. Kunti Tiwary; Punjab National Bank v. Ashwini Kumar Taneja**). No appointment can, therefore, be made on compassionate grounds to a person other than those for

whose benefit the exception has been carved out. (**SAIL**²; **Mohan Mahto**³; **National Institute of Technology v. Niraj Kumar Singh**).

Appointment on compassionate grounds, offered to a dependant of a deceased employee, is an exception to the mandate of Articles 14 and 16 of the Constitution of India that all eligible candidates should be considered for appointment to the posts which have fallen vacant. It is a concession, and cannot be claimed as a matter of right. It must be provided for in the rules. (**SBI v. Anju Jain**; **SAIL**²; **Union of India v. Shashank Goswami**; **State of U.P. v. Pankaj Kumar Vishnoi**). As it is not simply another method of recruitment, compassionate appointment cannot be claimed as a matter of right. Such a category of employment is, itself, an exception to the constitutional provisions, contained in Articles 14 and 16, which prohibit discrimination in public employment. A claim, to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject. (**Shashank Goswami**¹⁰; **State of Gujarat v. Arvindkumar T. Tiwari**).

A provision for compassionate appointment, which enables appointment being made otherwise than by the prescribed method of appointment to public services, is in the nature of an exception, and can neither subsume the main provision to which it is an exception, nor can it nullify the main provision by completely taking away the right conferred by the main provision. Care has, therefore, to be taken that a provision, for grant of compassionate employment, does not unduly interfere with the right of others, who are eligible for appointment, to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds. (**Pushpendra Kumar**¹). The concept of compassionate appointment is an exception carved out in the interest of justice, by way of a policy of the employer which partakes the character of service rules. That being so, the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. (**Bhawani Prasad Sonkar v. Union of India**).

The claim for compassionate appointment is traceable only to the scheme framed by the employer for such employment and there is no right outside such scheme. (**Pankaj Kumar Vishnoi**¹¹; **SBI v. Raj Kumar**). Norms, laid down for compassionate appointments, should be strictly followed. (**CCE & Customs v. Prabhat Singh**). Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointment should be made strictly in accordance with the scheme governing such appointment, and against existing vacancies. (**V. Sivamurthy v. State of A.P.**). The employer is required to consider the request for compassionate appointment only in accordance with the scheme framed by it. No discretion is conferred on any of the authorities to make compassionate appointment dehors the scheme. The claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in providing employment on compassionate grounds. There is no right to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of a scheme or instructions. (**SAIL**²; **Mohan Mahto**³; **SBI v. Somvir Singh**).

While considering a claim, for employment on compassionate grounds, the following factors should be borne in mind (i) Compassionate employment cannot be made in the absence of rules or regulations issued, or a scheme framed, by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme; (ii) An application for compassionate employment must be preferred without undue delay, and has to be considered within a reasonable period of time; (iii) appointment on compassionate grounds is to meet the sudden crisis occurring in the family on account of the death of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course, or as a largesse, irrespective of the financial condition of the deceased employee's family at the time of his death; (iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts. (**Bhawani Prasad Sonkar**¹³).

In **Sports Authority of Andhra Pradesh v. Sri Yala Asirayya @ Asiri Appalaraju**, reliance on which was placed by the Tribunal, the father of the 1st respondent therein had worked as a temporary watchman; on his death, his son sought compassionate appointment; and, pursuant to an interim order passed in W.P. No.24322 of 2009 directing that the case of the 1st respondent be considered for compassionate appointment, the appellant had rejected the claim of the 1st respondent on the ground that the scheme of compassionate appointment, issued in G.O.Ms. No.6877 dated 03.10.1973, was applicable only to Government employees, it could not be extended to employees of the Sports Authority, and, as the father of the 1st respondent was appointed only as a temporary watchman, he was not entitled to claim appointment on compassionate grounds. On the Writ Petition being allowed, the matter was carried in appeal. In its order dated 07.12.2011, the Division bench noted that the Learned Single judge had followed the law declared by the Supreme Court in **S. Pushpendra Kumar**¹ wherein it was held that the scheme of compassionate appointment was an exception, made with the object of enabling the family of the deceased to tide over the sudden crisis resulting due to the death of the bread winner. The appellants were directed to consider the case of the 1st respondent for appointment as a temporary watchman so that the family could tide over the crisis resulting from the death of his father. The aforesaid order of the Division Bench, passed on humanitarian considerations, cannot be a precedent in other cases, (**Food Corpn. of India v. FCI Paribahan Thikadhari Karmachari Samity**), more so in the absence of any scheme providing for appointment on compassionate grounds for such categories of employees.

It is not in dispute that there is no scheme in existence which provides for compassionate appointment of dependants of deceased NMR employees whose services have not been regularised. Yet the jurisdiction of the Tribunal was invoked claiming compassionate appointment. No person can approach the court seeking a relief when he does not have a right which can be enforced through the Court. (**Prit Singh v. S.K. Mangal**; **Pramod Kumar v. U.P. Secondary Education Services Commission**; and **Arvindkumar T. Tiwari**¹²). It may be that a provision for compassionate appointment is made as a measure of social benefit, but it does not

mean that the court should pass an order for compassionate appointment despite the fact that the conditions precedent therefor have not been satisfied. (**SAIL²**). Courts and Tribunals cannot ignore the mandatory provisions of the Rules, and direct compassionate appointment, on sympathetic considerations. (**State of M.P. v. Dharam Bir; Arvindkumar T. Tiwari¹²**). They do not have the power to issue direction to make appointment granting relaxation of the eligibility criteria or in contravention thereof. (**Arvindkumar T. Tiwari¹²**).

Courts and Tribunals should not fall prey to the sympathy syndrome, and issue directions for compassionate appointments, without reference to the prescribed norms. Every such act of undue sympathy and compassion, whereby directions are issued for appointment on compassionate grounds dehors the prescribed procedure, could deprive a needy family, requiring financial support, of the opportunity of seeking employment, and thereby pushing into penury a truly indigent, destitute and impoverished family. Discretion is, therefore, ruled out. So are misplaced sympathy and compassion. (**Prabhat Singh¹⁵**). In the absence of any scheme, providing for compassionate appointment for dependants of deceased NMR employees, the Tribunal has erred in directing the petitioners herein to consider the case of the 1st respondent on compassionate grounds.

The order of the Tribunal must therefore be and is, accordingly, set aside. The Writ Petition is allowed. Miscellaneous Petitions pending, if any, shall stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date: 01.04.2015

Note: L.R. copy to be marked.

B/o

MRKR/CS