

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 5313 of 2008

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

In this writ petition, the petitioners while assailing the action of the respondents in not considering them for appointment as Village Revenue Officers/Panchayat Secretaries/Junior Assistants in the available vacancies as per the commitment made by the Government, also seek to set aside the orders dated 03.01.2007 in O.A.No.2863 of 2006 and batch, on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

2. The facts, in brief, that led to the filing of this writ petition are as follows:

A batch of Original Applications came to be filed before the Tribunal by the respective applicants therein stating that they were appointed as Panchayat Secretaries on contract basis under the control of respondent authorities, consequent to the retirement of their fathers on the ground of medical invalidation. The applicants contended that at the time of medical invalidation of their fathers, the scheme of compassionate appointment to the next of kin was in force and they made applications to the respondent authorities to

consider their cases for appointment as Panchayat Secretaries, Junior Assistants etc., in the vacancies, but no action was taken on their applications. Consequent to the judgment rendered by this Court in WP No.13489 of 2000, dated 12.10.2001, the Government has issued GOMs.No.202, dated 27.04.2002 dispensing with the scheme of compassionate appointments to the kin of the employees who retire on medical invalidation. However, in addition, the Government has also issued GOMs.No.203, dated 27.04.2002, stating that the cases where applications for compassionate appointments are already pending will be examined separately. Thereafter, the Government issued GOMs.No.305, GAD, dated 17.07.2002, stating that this Court by its judgment dated 12.10.2001 has held that compassionate appointments made on medical invalidation are unconstitutional and hence the compassionate appointments made prior to 12.10.2001 cannot be made lawful because the rationale of the judgment of the High Court applies to pending cases also, and hence no compassionate appointments can be made even in the cases of medical invalidation that arose prior to 12.10.2001 also, and the cases of retirement on medical invalidation will be dealt under the relevant Andhra Pradesh Revised Pension Rules, 1980, only.

Aggrieved by the decision of the Government, the compassionate appointees approached the Tribunal *inter alia* contending that the Government has issued GOMs.No.305, GAD, dated 17.07.2002, on a total misunderstanding about the scheme of compassionate appointments itself and the

effect of the judgment rendered by the Hon'ble High Court. They also contended that in a Welfare State, the Government is duty bound to see the welfare of employees by closely interpreting Parts III and IV of the Constitution of India. And, even if the scheme of compassionate appointments is to be scrapped consequent to the judgment of the Hon'ble High Court, the same could not be done with retrospective effect and that too without putting the applicants/affected persons on notice.

The respondent authorities filed an elaborate counter. The averments in the counter, in brief, are that this Court in **Government of Andhra Pradesh, G.A.D., Hyderabad v. D. Gopaiah & Others**^[1], held that the very scheme of compassionate appointments is unconstitutional and in view of the said judgment, G.O.Ms.No.202 dated 27.04.2002 was issued cancelling the scheme of compassionate appointments. Though a G.O.Ms.No.203 dated 27.04.2002 was issued stating that cases which arose prior to 12.10.2001 will be examined separately, but however, later, G.O.Ms.No.305, dated 17.07.2002, was issued completely doing away with the scheme of compassionate appointments as the rationale of the judgment in **Gopaiah (1 supra)**, applies to pending cases also. Later, the Government issued G.O.Ms.No.44, dated 17.02.2003 stating that cases of dependents of Government employees who retired on medical invalidation and whose cases could not be considered by 27.04.2002 will be considered for appointment on Contract basis to the post of Executive Officer, Special Category-V

(Panchayat Secretary), under Rule 9 of the General Rules. In G.O.Ms.No.144, Panchayat Raj & Rural Development Department, dated 01.05.2003, the Department issued terms and conditions for contractual appointments. As per the said terms and conditions, the contract will be for a period of one year and a person appointed as a contract employee will not form a member of the service in which he is serving on contract basis and he will not have any preferential right to any other appointment in the same service or any other service. Subsequently, the Government issued G.O.Ms.No.100, G.A (Ser.G) Department, dated 3.3.2005 that dependents of Government employees who retired on medical invalidation before 27.04.2002 who possess the academic qualification below X Class only shall be considered for appointment to any posts in A.P. Last Grade Service, on contract basis, on a fixed pay of Rs.2,600/- per month.

The High Court during the hearing of W.P.No.11128 of 2005, noticed that G.O.Ms.No.44 dated 17.02.2003 and G.O.Ms.No.100, dated 03.03.2005 issued by the Government are contrary to the Full Bench judgment rendered in **Gopaiah (1 supra)**; and hence the action of the Government in issuing such G.Os. amounts to contempt of Court and a notice was issued to the Chief Secretary to Government. The Chief Secretary filed an affidavit explaining the circumstances which led to the issuance of the said G.Os. and that the Government is contemplating steps to withdraw the G.Os. and hence the interim orders of the Tribunal cannot be implemented. The respondents contended that the orders issued in

G.O.Ms.No.246 were to withdraw the earlier G.Os. which were issued in violation of the judgment rendered in **Gopaiah (1 supra)** and therefore sought to dismiss the O.A.

3. The Tribunal, after hearing the pleas of both the parties, has framed the following issues for consideration:

- (i) **Whether G.O.Ms.No.44 is valid under law, in view of the ratio of the Full Bench judgment of the Hon'ble High Court of Andhra Pradesh in GOPAIAH's case?**
- (ii) **Whether the applicants can claim the benefit of the doctrine of legitimate expectation?**
- (iii) **Whether the rights of the applicants were crystallized and became vested rights and cannot be taken away retrospectively, by way of Statute or Judge made law?**
- (iv) **Whether the rights of the applicants, under the welfare scheme, are guaranteed?**
- (v) **Whether the respondent-authorities are estopped from denying appointments to the applicants on account of the promise made as well as the appointments given to several others right from day one, when the earliest of applications were filed on behalf of the applicants?**
- (vi) **Whether enormous delay on the part of the respondent-authorities, in considering the applicants' request for appointment on compassionate grounds amounts to denial of equal opportunity and, therefore, arbitrariness on the part of the respondents? And**
- (vii) **To what relief?**

5. The Tribunal, after examining the applicability of judgment rendered in Gopaiah's case, dismissed the OAs by the impugned orders observing as under:

"In the result, all these applications are liable to be dismissed and they are accordingly dismissed. The period of three months, during which the Hon'ble High

Court has allowed the appointments to continue, has also elapsed by now. These matters were taken up for final hearing, in view of the interest of the large number of individuals involved as well as the interest of the administration, as the respondents have stated that they have notified the posts for fresh recruitment on contract basis, in accordance with law and we do not want such legally valid processes to be delayed.

In addition to the above issues, the applicants have also sought that they may be considered as the source of appointment, as contemplated under Category-V under G.O.Ms.No.384, Panchayat Raj Department, dated 22-12-01. As can be seen from the said G.O., the source mentioned against Category-V consists of individuals, who were already in regular or temporary Government service and were placed in the surplus manpower, duly maintained by the Finance Department. Obviously, as the posts, against which they were recruited and working, became surplus, nothing in the said G.O. gives any indication that the individuals, appointed on contractual terms can claim to be one of the sources thereunder. Further, when it is the view of this Tribunal that the very contractual appointments, on compassionate grounds, are ab initio illegal, and therefore, void, the question of the applicants claiming any rights, by virtue of such illegal and void appointments, does not arise. Therefore, this contention of the applicants that they should be treated as one of the sources of the applicants that they should be treated as one of the sources as against Category-V, mentioned in G.O.Ms.No.384 cannot be accepted, and therefore, it is rejected.”

6. Aggrieved by the dismissal of the OAs, the present writ petition is filed by the petitioners.

7. This Court, on 01.07.2008, while ordering Rule nisi directed to list WP No.14637 of 2007 along with the present writ petition.

8. When the matter is taken up for hearing, learned counsel for the petitioners submits that the present writ petition is covered by the orders passed by this Court in W.P.No.14637 of 2007, dated 26.07.2010. A copy of the said judgment is placed before this Court. W.P.No.14637 of 2007 is one of the matters of W.P.No.11957 of 2007 & Batch. This Court, while disposing of W.P.No.11957 of 2007 & Batch, observed as under:

“On the analysis above, we conclude that the dismissal of the O.As. (to the extent they pertain to the writ petitioners herein), by the learned Tribunal on the basis of the judgment in D.Gopaiah (1 supra) cannot be sustained in view of the judgment of the Supreme Court in V.Sivamurthy (2 supra). However, the petitioners are not entitled to the specific reliefs they sought in the O.As. in view of the analysis above. For this reason, we find no grounds to interfere with the order of the Tribunal impugned herein.

The writ petitions are, however, disposed of with liberty to the petitioners to represent to the Government for evolving a specifically tailored scheme of compassionate appointment/regular appointment/regularization of their contract appointments, in case the petitioners are advised that their cases cannot be accommodated within the scheme of compassionate appointments spelt out in G.O.Ms.No.661 dated 23.10.2008. No order as to costs.”

9. That being so, learned Government Pleader placed before this Court the proceedings in Roc.No.615/2003 (Pts)A4, dated 11.04.2008, which were issued by the District Collector (PT.Wing), Prakasam District, appointing the petitioners herein as Secretaries in the Gram Panchayat subject to certain conditions therein and that the petitioners are already re-employed.

10. In that view of the matter, this writ petition is disposed of in terms of the orders passed by this Court in W.P.No.14637 of 2007, dated 26.07.2010, and also recording the submission of the learned Government Pleader with regard to the factual position that the petitioners are re-employed in terms of the proceedings dated 11.04.2008. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

01st December, 2015
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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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