

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No. 22527 OF 2008

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Petition is directed against the judgment rendered by the Andhra Pradesh Administrative Tribunal dismissing O.A. No. 3565 of 2004 instituted by the petitioner herein.

The claim of the petitioner for appointment on compassionate grounds due to the death of his father, who was working as a Grade-III Telugu Pandit, who died on 17.04.2000, was denied any such consideration, as, by the time the application was moved by the petitioner, he was 39-year-old and he is a member belonging to the open category and hence, beyond the maximum permissible upper age limit for direct recruitment.

Sri Gopala Rao Gandrakota, learned counsel for the petitioner would strenuously submit that the consideration based upon the request of the petitioner, for appointment on compassionate grounds, has been completely misdirected not only by the Collector but also by the departmental officials, inasmuch as the State Government, as a social welfare measure, has introduced a scheme for appointments to be made on compassionate grounds, wherever a government servant dies in harness. Instead of examining the request from the point of view of the socio-economic benefit, which the State Government contemplated in the scheme, the respondents have examined it in a different perspective.

We are afraid that this contention does not carry much merit. It is true that the State Government has contemplated offering appointment to the dependants of the public servants, on compassionate grounds, wherever one of its existing employees dies in harness. Such a measure itself is an exception to the constitutionally-guaranteed right of all others to have a competitive element in the matter of recruitment to public employment. In other words, all civil posts and all appointments

in public sector are required to be thrown open for equal competition by one and all, provided they possess the necessary qualifications and eligibility, but making appointments on compassionate basis is an exception carved out by the State. The reason is not far to seek. If a government servant, who had contributed his very best during his best years of life in service of the government, should he die in harness leaving behind other dependants, who will find it extremely hard to wade through the difficulties, with a view to come to the rescue of such a family, a succor is sought to be provided to them by considering one of the eligible members of the family for compassionate appointment. However, every such applicant has to necessarily satisfy the eligibility criteria, including the academic qualifications, physical standards of fitness, if any required and also the upper age limit. They cannot be dispensed with or relaxed. Thus, the compassionate appointment scheme itself is only an exception carved out to the normal method of recruitment, but it is not a source of recruitment by itself. Imagine a case where a public servant/civil servant has hardly six months' time left behind for his eventual retirement, but unfortunately, dies leaving behind a mere six months' service to the State, the scheme of compassionate appointment cannot come to the rescue of the dependent family members of such a servant, inasmuch as he would have retired from service eventually in a short time and consequently, he would be entitled to receive such terminal benefits, including a monthly pension. It is, no doubt, true that a spouse of the government servant, who died, would only receive family pension, but nonetheless, the family pension is liable to be paid to the surviving spouse. Thus, when there is an equally efficacious welfare measure put in place, the further measures of socio-economic benefit cannot be pressed into service. Therefore, the scheme of compassionate appointment has got to be understood with self-imposed restrictions by those who are required to consider such cases. We do not wish to sound to be very exhaustive in that regard. We have only taken the above illustration in support of our reasoning. We can also imagine a case where a civil servant dies while physically rendering service for the State, as part of his duty itself. Those cases stand entirely on a different footing because day-in and day-out, we find several public servants not taking a backward step when they are seriously challenged by unruly and anti-social elements to prevent them from discharging their official duties courageously. In such cases, if civil servants die, while in service, they stand on a different footing, inasmuch as they hold the interests of the State not only at their heart but they hold them aloft to make the world know that the interests of the

State are far more paramount. In such cases, even if that particular civil servant were to vacate his office in less than six months' time, but still, the State Government will be viewing the courageous act of the man in facing the most adverse circumstances, with great favour. Therefore, the present case is not one such, which falls within the reasoned-out exceptions, referred to supra. We therefore, do not find any legal infirmity in the order passed by the Tribunal in dismissing the O.A. instituted by the petitioner herein warranting our interference as part of judicial review exercise.

Hence, the Writ Petition stands dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

Mark a copy of this order to the Chief Secretaries of the States of Andhra Pradesh/Telangana so that appropriate policy guidelines can be framed while taking up compassionate appointments.

NOOTY RAMAMOHANA RAO, J

ANIS, J

06th October 2015

Mark LR copy

ksld

