

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION No.20983 of 2016

Date:15.7.2016

Between:

B.Veera Venkatarao,
S/o Late China Sattiyya

.....Petitioner

And:

The State of A.P., repled by its
Principal Secretary, Municipal Admn
and Urban Development Department,
Hyderabad and four others.

....Respondents

Counsel for the petitioner: Mr. N.Ramesh

Counsel for Respondent Nos.1 to 3: GP for Services (AP)

Counsel for Respondent No.4: Mr. Venkateswarlu
Nimmagadda

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

When the petitioner who was appointed, under the
Compassionate Appointment Scheme, as Junior
Assistant in Bhimavaram Municipality, West Godavari
District, subject to the condition of his acquiring the

required qualification for the said post within the stipulated time, purportedly, failed to acquire the qualification, a show cause notice, dated 20.12.2007, was issued by respondent No.4 calling upon him to show cause as to why his services shall not be terminated as Junior Assistant. The petitioner was also informed in the said notice that he will be appointed in the lower post as Attender and in case, he is willing to join the said post, he should submit his consent within three days from the date of receipt of the said notice. As the petitioner failed to respond within the stipulated time of three days, respondent No.3 discharged him from services, vide proceedings in Roc.No.264/2004-A3, dated 18.01.2008. Wisdom appeared to have dawned on the petitioner late and he made a representation to respondent No.4 on 31.01.2008 giving his consent for reversion as Attender, with a request to post him in Kakinada Municipal Corporation as a fresh candidate, on humanitarian grounds. Respondent No.2 has forwarded the said request to respondent No.1, which, vide its memo, No.5018/D1/2009, dated 06.11.2009, rejected the petitioner's request. Feeling aggrieved by the said rejection, the petitioner filed O.A.No.9530 of 2010 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal'). The Tribunal by order, dated 27.8.2012, disposed of the said O.A., wherein it has observed that as, the petitioner was appointed on compassionate grounds, on account of sudden demise of his mother while working in Government service, his delayed communication of willingness deserves consideration on humanitarian grounds. Accordingly, a direction was given to respondent No.1 to pass fresh orders by taking into consideration its observations made in the said order. In compliance with the said order of the Tribunal, respondent No.1 has issued proceedings, dated 18.3.2013, whereby it has rejected the petitioner's

request. The substantive reason for such a rejection is that even though the petitioner was given notice more than one year nine months, after expiry of the grace period for acquiring the requisite qualification, he has not responded in time to accept the Attender post offered in the show cause notice, resulting in issuance of termination order on 18.01.2008. In conclusion, respondent No.1 has held that as the petitioner has neither shown any interest nor taken any action to opt for the lower post, as per G.O.Ms.No.969, General Administration (Ser.A) Department, dated 27.10.1995, it shall be presumed that there are no compelling reasons such as poverty for the petitioner and hence, he stands discharged from services on the said ground. This order questioned by the petitioner in O.A.No.1385 of 2016 before the Tribunal came to be confirmed. Assailing these two orders, the petitioner filed the present Writ Petition.

The reasons assigned by respondent No.1 in the impugned proceedings disclose that it failed to take into consideration the positive observations made by the Tribunal in order, dated 27.8.2012, in O.A.No.9530 of 2010.

As noted above, the Tribunal observed that out of his ignorance, the petitioner failed to accept the offer for Attender post and that, since he is willing to accept the said post if fresh appointment is given on humanitarian grounds, respondent No.1 shall consider the same.

In our opinion, respondent No.1 was swayed by the irrelevant considerations and ignored the observations of the Tribunal, as noted above.

We feel that giving only three days time to the petitioner for communicating his acceptance for reversion to the post of Attender is not reasonable. At least, when

the petitioner has responded within less than three weeks after receipt of the notice, respondent No.1 should have made a liberal approach by condoning the lapse of the petitioner in not responding within the stipulated time, more so, when the Tribunal has taken into consideration the plight of the petitioner and directed respondent No.1 to reconsider the petitioner's case afresh.

Learned Government Pleader for Services (Andhra Pradesh) submitted that as the petitioner was appointed in Bhimavaram Municipality of West Godavari District, he ought not to have made a request for posting him as Attender in Kakinada Municipal Corporation.

Even if the petitioner was indiscreet in making such a request, respondent No.1 ought to have taken a matured decision while turning down his request for such posting and given a conditional order appointing him as Attender in West Godavari District. Instead of doing so, respondent No.1 has made a highly technical and pedantic approach in denying the down-graded post to the petitioner as Attender.

In our opinion, the Tribunal also fell into a serious error in dismissing the O.A. without considering the facts of the case from proper perspective.

For the afore-mentioned reasons, the Writ Petition is partly allowed by setting aside order, dated 11.4.2016, of the Tribunal in O.A.No.1385 of 2016 and the order, dated 18.3.2012, of respondent No.1.

Respondent No.1 is directed to appoint the petitioner as Attender in any of the Municipalities/Municipal Corporations in West Godavari District within one month from the date of receipt of a copy of this order. It is made clear that the petitioner will not be entitled to any benefits, service or financial, pertaining to the period anterior to his appointment as

Attender.

As a sequel to disposal of the Writ Petition, WPMP.No.25731 of 2016 filed by the petitioner for interim relief is disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE G.SHYAM PRASAD

*15th July 2016
DR*