

THE HON'BLE SRI JUSTICE A.V. SESA SAI

-
WRIT PETITION No.24419 OF 2011
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ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the inaction on the part of the respondents in appointing the petitioner on compassionate grounds.

2. According to the petitioner, his mother, one Smt. Rambai, while working as Sweeper, in the 4th respondent college against an Aided post died due to heart-attack on 22.07.2009, leaving behind the petitioner and his two sisters. Then, the petitioner submitted a representation to respondents 2 and 4 requesting for appointment on compassionate grounds. Vide Memo No.761/Admn.V-2/2009, dated 27.08.2009, the Commissioner of Collegiate Education-2nd respondent herein asked the petitioner to furnish the proposal for compassionate appointment in full shape through the college along with the original documents viz., 1) Death certificate; 2) Legal heir/family member certificate and 3) No objection certificate from family members duly notarized. Thereafter, the 4th respondent college vide letter, dated 17.09.2009 forwarded all the particulars to the 2nd respondent. In the above background, alleging inaction on the part of the respondents, the present writ petition came to be filed.

3. A counter affidavit is filed on the behalf of the respondents 1 to 3, in the direction of justifying the impugned action.

4. Heard Smt. Shalini, learned counsel for the petitioner and learned Government Pleader for Higher Education appearing for the respondents, apart from perusing the material on record.

5. It is contended by learned counsel for the petitioner that the

impugned action on the part of the respondent authorities is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India. It is further submitted that the objections raised in the counter affidavit are neither sustainable nor tenable in the eye of law and completely bereft of legal foundation.

6. On the contrary, it is strenuously contended by learned Government Pleader that absolutely there is no illegality on the part of the respondent authorities in view of various objections raised in the counter affidavit and as there is no evidence to show that the petitioner herein approached the respondents within one year from the date of death of her mother as per Clause-5 of G.O.Ms.No.281, Education (J) Department, dated 25.05.1985.

7. In the light of the above background, now the issue that arises for consideration of this Court is:

‘whether the petitioner herein is entitled to the relief under Article 226 of the Constitution of India and whether the objections raised by the respondent authorities are sustainable and tenable.’

8. According to Clause-5 of G.O.Ms.No.281, dated 25.05.1985, the application for appointment on compassionate grounds shall be entertained within a period of one year from the date of occurrence of death of a Government servant. In the instant case, pursuant to the representation submitted by the petitioner herein, the Commissioner of Collegiate Education- 2nd respondent vide Memo No.761/Admn.V-2/2009, dated 27.08.2009, asked the petitioner to furnish the proposal for compassionate appointment in full shape through the college and the college furnished the same on 17.09.2009, as such, the objection of the respondent that the petitioner did not approach the authority within one year as per G.O.Ms.No. 281, dated 25.05.1985, cannot be sustained and the same is answered in negative.

9. According to the counter affidavit, the respondent authorities refused to extend the benefit of compassionate appointment to the petitioner on three grounds namely 1) petitioner is working in a private organization and earning Rs.60,000/- per annum; 2) post to which he has to be appointed was not stated by the correspondent of 4th respondent college and 3) since the petitioner is more than 34 years, he is age barred and not eligible for appointment.

10. Insofar as the first two objections are concerned, this Court is of the considered opinion that the said objections raised by the respondents are highly irrational and have no reasonable and logical foundation. In fact, no basis for the said refusal could be brought to the notice of this Court by the respondents, which disentitles the petitioner from claiming the benefit under the scheme.

11. The third objection raised by the respondents in their counter is that the petitioner is barred by age. Refuting the said objection, it is submitted by learned counsel for the petitioner herein that the petitioner belongs to B.C. category and in view of Rule 12 (1) (a) (v) and Rule 12 (1) (b) (i) of the Andhra Pradesh State and Subordinate Services Rules, 1996, the said objection cannot be sustained.

12. In this connection, it is appropriate to refer to the said provisions of the Rules, which read as under:

12. Qualifications for direct recruitment: (1) (a) No person shall be eligible for appointment to any service by direct recruitment unless he satisfies the selection authority as well as the appointing authority, that:

(1).....

(ii)

(iii).....

(iv)

(v) No person shall be eligible for direct recruitment if he is

less than 18 years of age and unless otherwise specified in the special or adhoc rules and if he is more than [34 years of age] as on the 1st day of July of the year in which the notification for selection to the relevant post, category or class or a service is made.

Rule 12 (1) (b) (i):

- (b) The maximum age limit prescribed in the Special Rules for direct recruitment to a post shall be raised.
- (i) Uniformly by 5 years in the case of candidates belonging to the S.Cs. or S.Ts. or B.Cs. specified in Schedule-I of these rules.

13. In fact, reply affidavit is filed stating that the petitioner belongs to BC-D category and a copy of the certificate, dated 29.08.2012, obtained from the Tahsildar is also placed on record by learned counsel for the petitioner, which shows that the petitioner belongs to Yadava (BC-D) community.

14. In view of the above legal position, the third objection of the respondents with regard to age cannot be sustained. For the aforesaid reasons, this Court finds absolutely no justification on the part of the respondents in denying the appointment of the petitioner herein on compassionate grounds.

15. Accordingly, the Writ Petition is disposed of, directing the respondents herein to appoint the petitioner on compassionate grounds in any suitable post as per his qualification within a period of four months from the date of receipt of a copy of this order. No costs.

A.V.SESHA SAI, J

FEBRUARY 11, 2016

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THE HON'BLE SRI JUSTICE A.V. SSHA SAI

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Date: 11.02.2016

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