

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.29380 of 2016

ORDER: (per Hon' ble Sri Justice M. Seetharama Murti)

The challenge in this writ petition is to the order dated 25.06.2015 of the Andhra Pradesh Administrative Tribunal, Hyderabad in OA.No.3453 of 2014.

By the said orders, the Tribunal had set aside the proceedings in Memo No.4290/ TE. 1/ A2/ 13-1 and directed the respondents therein/ petitioners herein to consider the case of the 1st respondent herein/ applicant for appointment on compassionate grounds in any suitable post and pass appropriate orders within a period of four months from the date of receipt of a copy of its order.

We have heard the learned Government Pleader for Services I (AP) appearing for the writ petitioners and the learned counsel for the 1st respondent/ applicant. We have perused the material record.

The facts which require consideration and which are not in dispute are as follows:

The father of the applicant, P.V.V. Devanand, Principal, Government Polytechnic, Srikakulam, made a representation dated 31.10.2011 to the Commissioner, Technical Education, Andhra Pradesh, Hyderabad, the 2nd respondent in the O.A, stating that he met with a serious accident on 30.01.2011 and sustained grievous injuries to his head, shoulder, right upper limb and both the lower limbs and that despite several operations in Apex hospital, Visakhapatnam, his condition did not improve and that he has been on leave on medical grounds since then and that he has been suffering from poliomyelitis in his left lower limb since his childhood and that after his involvement in the accident he is totally bedridden and that he is unable to

attend to his daily chores and that because of his incapacity he is unable to maintain the dependant members of his family and that as he was on extraordinary leave he was not getting any monetary support and that therefore he is finding it difficult to make both ends meet and that he and his family members are in helpless and hopeless condition and finally requested to permit him to retire on medical invalidation and provide a job to his only daughter, Ms Likitha Neha, who was pursuing BSc 1st year by then. He sought such appointment on compassionate grounds in terms of G.O.Ms.No.661, General Administration (SER-G) Department, dated 23.10.2008, ('G.O.Ms.No.661, dated 23.10.2008', hereinafter). Pursuant to the said representation, the 2nd respondent *vide* Lr.No.C1/ 17584/ 2011, dated 21.12.2011, referred the applicant's father to the District Medical Board, King George Hospital, Visakhapatnam, for opinion. The District Medical Board, Visakhapatnam, examined the request of the father of the applicant and furnished a report of the Regional Medical Board *vide* Rc.No.72/ G8/ 2012, dated --.02.2012, to the effect that the father of the applicant is suffering from paralysis [on one side affecting upper and lower limbs] and that he may be considered for retirement on the ground of medical invalidation. The Regional Medical Board opined that the applicant's father is completely and permanently incapacitated and is not fit to continue further in service of any kind in the Department in view of his condition. While enclosing copies of the Certificates of the Regional Medical Board and the remarks of the Medical Board, the 2nd respondent, *vide* letter No.C1/ 17584/ 2011 dated 28.02.2012, requested the Government to examine, in terms of Rule 37 of A.P. Revised Pension Rules, 1980 (hereinafter 'the Rules of 1980') and G.O.Ms.No.661, dated 23.10.2008, the request of the applicant's father for retirement on medical invalidation ground with effect from 07.02.2012 as recommended by the District Medical Board, Visakhapatnam. In that letter it was further stated that the date of birth of the individual is 22.08.1959 and therefore the individual

has left over service of five years and six months as on that date. The Government *vide* its Memo No.3213/ TE-I/ A2/ 12-1, dated 18.06.2012, requested the 2nd respondent to follow the procedure in G.O.Ms.No.661, dated 23.10.2008, and refer the matter to the District Level Committee of Officers for obtaining its recommendations. Pursuant to the said Memo, the 2nd respondent by letter No.C1/ 17584/ 2011, dated 21.06.2012, referred the matter to the District Collector and Chairman, District Level Committee, Visakhapatnam, the 3rd respondent in the O.A, and requested to examine the request of the applicant's father for retirement on medical invalidation grounds as per the recommendation of the Medical Board and providing employment to his only daughter, the applicant, in terms of Rule No.37 of the Rules of 1980 and G.O.Ms.No.661, dated 23.10.2008, and to issue necessary orders in the matter. The District Level Committee which met on 27.08.2012, *vide* Order in D.Dis.No.2662/ 2012, dated 27.08.2012, resolved for retirement of the applicant's father on grounds of medical invalidation and to provide employment to his daughter, the applicant, on compassionate grounds subject to eligibility as per the terms in G.O.Ms.No.661, dated 23.10.2008, and requested the Principal, Government Polytechnic, Srikakulam, to follow the guidelines in the said order and take necessary action in the matter. The Principal, Government Polytechnic, Srikakulam, *vide* Lr.No.B/ 2862/ 2010, dated 25.02.2013, requested the 2nd respondent to issue necessary orders to retire the applicant's father with effect from 27.08.2012. The 2nd respondent by letter dated 03.04.2013 requested the Government to examine the issue in terms of G.O.Ms.No.661, dated 23.10.2008, and to issue necessary orders. The Government *vide* Memo No.4290/ TE-I/ A2/ 13-1, dated 21.6.2013, informed the 2nd respondent that the benefit of compassionate appointment on medical grounds shall be considered in cases where Government Servant permitted to retire on medical ground has left over service of five years before attaining the age of superannuation irrespective of the age of superannuation prescribed for

the posts and service and that the required period of five years left over service is to be reckoned from the date of issue of orders of retirement on medical invalidation. It is further stated that at the time of meeting of the District Level Committee, that is, on 27.08.2012, the applicant's father was having five years four days left over service but by the date of proposal of the 2nd respondent and the reference to the Government on 03.04.2013, the applicant's father has left over service of less than five years. Hence, the 2nd respondent permitted the applicant's father to retire from service on medical invalidation; however, the appointment of the applicant on compassionate grounds was not considered. Therefore, the applicant filed the O.A before the Tribunal. And, by the orders impugned, the O.A was allowed.

The learned Government Pleader would submit as under:

The applicant's father was permitted to retire from Government Service on medical invalidation on 31.07.2013 AN without prejudice to the right of the Government to take necessary disciplinary action against him before his retirement, if he is found responsible for any lapses during his service in the Department and that as per G.O.Ms.No.182, GAD (Ser.G), dated 22.05.2014, (hereinafter, 'G.O.Ms.No.182, dated 22.05.2014') the required period of five years of left over service appearing in paragraph 15 of G.O.Ms.No.661, dated 23.10.2008, which is to be reckoned from the date of issue of order of retirement on medical invalidation, shall now be reckoned from the date, on which medical board approves the request of medical invalidation provided that the District Level Committee/ State Level Committee approves the recommendation of the Medical Board and that all other conditions stated in G.O.Ms.No.661, dated 23.10.2008, remain unaltered. The orders in G.O.Ms.No.182 came into force with effect from 22.05.2014. The case of the applicant's father was considered as per the then existing orders. Therefore, the applicant cannot take shelter under G.O.Ms.No.182, dated 22.05.2014, and

seek appointment on compassionate grounds. The Tribunal was in error in holding that the counting of the period of five years from the date of issue of orders is arbitrary. As per the orders issued in G.O.Ms.No.182, dated 22.05.2014, the date on which the Medical Board has recommended for medical invalidation is relevant for consideration for reckoning period of five years left over service. Nonetheless, the said G.O has been issued by the Government on 22.05.2014 and the said G.O is prospective in nature. The father of the applicant *vide* proceedings dated 22.07.2015 was permitted to retire from service on 31.07.2013 on medical invalidation grounds. As by that time he was not having the required balance period of service and as his remaining period of service was less than five years, the Tribunal ought to have seen that as per the terms of G.O.Ms.No.661, dated 23.10.2008, the applicant is not entitled for appointment on compassionate grounds as the required period of five years of left over service has to be reckoned from the date of issue of orders of retirement on medical invalidation. Therefore, he finally submitted that the order impugned is liable to be set aside.

Per contra, the learned counsel for the applicant while supporting the order of the Tribunal would contend that admittedly, the minimum required balance period of service of more than five years was available when the Committee of Officers met and passed a resolution recommending for retirement of the applicant's father on medical invalidation grounds and appointment of the applicant on compassionate grounds. Neither the father of the applicant nor the applicant were responsible for the delay on the part of the officers concerned of the State and that the applicant cannot be penalised for the delay on the part of the officers concerned due to administrative or other reasons. For the delay and reasons which are beyond the control of the applicant, she cannot be penalised. The Tribunal having considered the facts and circumstances correctly and in the right perspective granted the relief to the applicant. The order of the Tribunal does not warrant any interference.

The chronology of events that emerge from the facts narrated are as follows: The applicant's father who was working as Principal, Government Polytechnic, Srikakulam met with an accident on 30.01.2011. Since the injury sustained in the accident resulted in permanent partial disability affecting his fitness to continue in service in any capacity, he made a representation on 31.10.2011 for retirement on the ground of medical invalidation and for appointment of the applicant, his daughter, on compassionate grounds. His case was referred to the Medical Board on 27.12.2011. The Medical Board gave a report dated --.02.2012 favourably recommending his case for retirement on medical invalidation. The 2nd respondent addressed a letter dated 28.02.2012 to the Government to examine the case of the applicant's father. The Government by its letter dated 18.06.2012 referred the matter for recommendation of the District Level Committee of Officers. Thereafter, the 2nd respondent addressed a letter dated 21.06.2012 to the said committee. The said Committee resolved on 27.08.2012 recommending retirement of the applicant's father on medical invalidation and to provide employment to the applicant subject to her eligibility as per the terms of G.O.Ms.No.661, dated 23.10.2008. Admittedly, by that date the applicant's father was having the required balance period of service of 5 years and 4 days. Neither the applicant nor her father was responsible either directly or indirectly for the subsequent delays. However, by the time the 2nd respondent issued proceedings dated 22.07.2013 permitting the applicant's father to retire from service on grounds of medical invalidation from 31.07.2013 AN, his left over service is less than five years and therefore, the requirement of minimum service in terms of G.O.Ms.No.661, dated 23.10.2008, is not satisfied. Admittedly, the Medical Board certified even as on 21.12.2011 that the applicant's father is medically unfit for being continued in service. By that date he was having a balance service of more than six years. Further, even by the date, 27.08.2012, on which the Committee recommended for retirement of

the applicant's father on ground of medical invalidation and to provide appointment on compassionate grounds to the applicant, her father was having balance service of more than five years. Therefore, the authorities ought to have taken the said facts into consideration and ought to have considered that the applicant is entitled to appointment on compassionate grounds. Even as per the terms of G.O.Ms.No.182, dated 22.05.2014, whereby G.O.Ms.No.661, dated 23.10.2008, was revived, the required period of five years of left over service mentioned in G.O.Ms.No.661, dated 23.10.2008, has to be reckoned from the date on which the Medical Board approves the request of medical invalidation though it is reiterated that all other conditions in G.O.Ms.No.661, dated 23.10.2008, remain unaltered. Therefore, the contention that G.O.Ms.No.182, dated 22.05.2014, is prospective in operation cannot be countenanced in the afore-stated facts and circumstances peculiar to the case. Any contrary view would only be arbitrary, unjust and unfair and would be in violation of equity and principles of natural justice.

On the above analysis, we agree with the view of the Tribunal, which is justified and which sub-serves the ends of justice.

In the result, the Writ Petition is dismissed confirming the order of the Tribunal. The writ petitioners are granted one month time from the date of receipt of a copy of this order to do the needful in the matter as per the orders of the Tribunal.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

23.09.2016

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