

**HON'BLE SRI JUSTICE M.S.K. JAISWAL**

**WRIT PETITION No.23807 of 2004**

**ORDER:**

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This writ petition is filed under Article 226 of the Constitution of India, declaring the termination order dated 31.05.1997 as well as the Award dated 08.09.2003 in I.D.No.144 of 2001 passed by the Industrial Tribunal-cum-Labour Court, Warangal are illegal and arbitrary and consequently direct the respondents to reinstate the petitioner as cleaner with all consequential benefits.

Head both sides and perused the record.

The case of the petitioner in brief are as follows:

The father of the petitioner, by name N.Narasimha worked as Mechanic Grade I in the respondent Corporation and after 40 years long service, he retired on 31.12.1998. As per circular dated 05.10.1987 of the Respondent Corporation, the father of the petitioner had applied for the appointment of his second son, the petitioner, as Cleaner. The petitioner was called for interview in the year 1990. The petitioner was selected, but his selection was rejected on the ground that his brother was already in service of the respondent Corporation and hence the rule of reservation is not applicable to the second son of the retired employee. Aggrieved by the action of the respondents, the father of the petitioner had filed W.P.No.11064/1992 and this Court, vide orders dated 24.03.1994 directed the respondent corporation to consider the appointment of the petitioner afresh on merits. As the Corporation has not taken action, the father of the petitioner filed Contempt case in CC No.794/1994. The respondent Corporation preferred Writ Appeal in W.A.No.70/1995 against orders dated 24.03.1994 passed in W.P.No.11064/1992, and simultaneously issued appointment orders to the petitioner on 25.01.1995, subject to the result of the writ appeal. The writ appeal filed by the Respondent

Corporation was allowed vide judgment dated 12.03.1997 by setting aside the orders in W.P.No.11064/1992. Pursuant to the said judgment, the respondent Corporation terminated the services of the petitioners vide proceedings dated 31.05.1997. The petitioner, aggrieved by the judgment in W.A.No.70/1995, preferred SLP No.23/1997 before the Supreme Court, and the same was dismissed on 08.05.1997. Aggrieved by the action of the respondent Corporation, the petitioner filed W.P.No.2508/2001 and subsequently withdrew the same with permission to pursue the remedies under Industrial Disputes Act. Thereafter, the petitioner filed I.D.No.144/2001 before the Labour Court, Warangal and the Tribunal after hearing both sides, passed award on 08.09.2003 confirming the termination order dated 31.05.1997. Questioning the said award, the present writ petition is filed.

No counter is filed by the respondents.

The admitted fact is that the father of the writ petitioner – Narsimha retired as a Cleaner in APSRTC on 31-12-1988 having joined the Corporation as such. As per the scheme in vogue, certain percentage of jobs in the Corporation are to be filled up by taking into consideration the family members of the retired employee. Accordingly, the father of the writ petitioner sought for a job in the Corporation and the writ petitioner was interviewed, but however, his request was rejected on the ground that the elder brother of the writ petitioner viz., another son of the retired employee is already in the employment of the Corporation and hence the writ petitioner cannot be given employment under the said scheme.

Thereafter, the retired employee Narsimha filed W.P.No.11064 of 1992 challenging the action of the Corporation refusing appointment. Vide Judgment, dated 24.03.1994, this Court has allowed the writ petition in part directing the Corporation to consider the application of the petitioner – Narsimha afresh seeking appointment to his second

son namely Krishna (the writ petitioner herein) on merits and pass appropriate orders within six weeks from the date of receipt of a copy of the order. The High Court further clarified that the Corporation cannot decline the appointment to the second son of the retired employee on the ground that his another son is already in the employment of the Corporation.

Subsequently, since the directions of the Court were not complied with, it appears that the retired employee filed a Contempt Case and thereafter, the Corporation issued the order of the appointment in proceedings No.LC2/785(8)95-RM:WL, dated 21.01.1995. It is necessary to reproduce the said order for understanding as to whether the appointment of the writ petitioner was on merits of the candidate or he was given the job on the ground that he is the son of a retired employee falling within the quota earmarked for retired employees. The order of appointment has to be looked into for ascertaining the said aspect. It reads as under:-

“Sri M.Narasimha, retired Mechanic Gr.I has filed W.P.No.11064 of 1992 for appointment of his son as Cleaner in APSRTC.

The Hon'ble High Court of AP by its interim directive dated 24.03.1994 has directed to consider the application of the petitioner afresh seeking appointment to his 2<sup>nd</sup> son namely Sri N.Krishna.

Sr.Law Officer vide letter cited has requested to issue appointment order to 2<sup>nd</sup> son namely N.Krishna, S/o.Narasimha incorporating a clause that his appointment is subject to result of W.A. pending against W.P.No.11064 of 1992 as Cleaner.

Therefore you are hereby advised to issue appointment order to the above named as Cleaner on daily wage basis @ Rs.45/- per day duly incorporating a clause that his appointment is subject to result of W.A. pending against W.P.No.11064 of 1992 and other usual terms and conditions. The party mechanically found fit vide M.C.No.05453, dated 17.01.1995.

The attestation forms may be collected before issuing appointment orders and the same may be sent to this office for further action.

This has the approval of Regional Manager, Warangal.”

Aggrieved by the orders of the High Court in the writ petition referred to above, the Corporation preferred Writ Appeal No.70 of 1995 and a Division Bench of our High Court vide Judgment dated 12.03.1997 allowed the Writ Appeal and dismissed the writ petition holding that reservation in the services of a State under Article 12 of the Constitution of India for children of retired employees will not be permissible at all. However, the Division Bench of our High Court observed that in case the son of the retired employee – Narsimha has been selected on merits and not on the ground that he is the child of one of the retired employees, the Corporation may consider to retain him in the service.

In view of the orders of the Division Bench of our High Court, the Corporation issued the Office Order in reference No.E1/255(7)/97MHBD dated 03.05.1997 discontinuing the services of the writ petitioner – Krishna.

Aggrieved by the said discharge order, originally the writ petitioner filed a writ petition which it is stated to have been withdrawn and thereafter the writ petitioner filed I.D.No.144 of 2001 on the file of the Industrial Tribunal-cum-Labour Court, Warangal. Vide Award dated 08.09.2003, the learned Labour Court confirming the orders of the Corporation discontinuing the writ petitioner from the service. Hence, the writ petition.

The contention of the learned Counsel appearing for the writ petitioner is that as is evident from the original orders of this High Court in W.P.No.11064 of 1992, dated 24.03.1994, the writ petitioner was given appointment on merits but not on the ground that he is the son of

a retired employee. The Division Bench further clarified that if the writ petitioner having been selected on merits and not on the ground that he is the child of one of the retired employees, the Corporation may consider to retain him in service. In view of the above, to terminate the services of the writ petitioner on the ground that another son of a retired employee cannot be appointed is not sustainable.

On the other hand, learned Standing Counsel appearing for the Corporation submits that it is not that the writ petitioner was appointed on merits in the regular course by following the due procedure. The selection process of the candidates in the open quota will be different which was not followed in the case of the writ petitioner. As is evident from the order of the appointment itself, it is manifest that the writ petitioner was given the job only on the ground that he is the son of a retired employee and that there are directions to that effect in the writ petition and the appointment order itself made clear that the appointment of the writ petitioner is subject to the result of the Writ Appeal which is already filed. Therefore, learned Counsel submits that the writ petitioner cannot be now heard saying that he was a person who was appointed on merits in the open quota but not only on the ground that he is the son of a retired employee.

Having carefully perused the orders of the learned single Judge and the Division Bench in Writ Appeal referred to above, and also perusing the order of the appointment, extracted above, I have no hesitation in holding that he is the son of a retired employee and that there are directions to that effect by the High Court in Writ Appeal No.70 of 1995, which, however, by then was subject to the orders in the Writ Appeal which was filed and pending. The procedure for appointment for an outsider will be different from appointing a person on the ground that he is either the son of a retired employee or is depending on an employee who died in harness. The appointments of dependents on the grounds of death during employment or that the

employee retired stand on a different pedestal, both in the matters of requirements and the restrictions, such as educational qualifications, age etc., which are applicable to outsiders.

Having taken into consideration the above facts and circumstances of the case, I see no substance in the submission of the learned counsel for the petitioner that the writ petitioner can be appointed by virtue of he being the son of employee M.Narasimha, who retired from service, therefore, the writ petition is liable to be dismissed.

However, the learned counsel for the petitioner submits that the petitioner was given appointment as cleaner, being the son of a retired employee and he worked in the Corporation as a cleaner for a period of more than 2 years and subsequently he was removed in view of disposal of the writ appeal. In that view of the matter, the learned counsel for the petitioner submits that taking into consideration the service of the writ petitioner in the corporation, his case may be considered for appointment in any cadre, on humanitarian consideration and in view of the fact that he is now aged about 50 years.

In view of the facts and circumstances of the case, the Writ Petition is disposed of, with a direction to the writ petitioner to make a representation afresh to the respondent Authorities to consider his case for appointment in the same capacity or any other and the respondent authorities may consider and dispose of the same on its own merits, in accordance with the rules and regulations of the Corporation. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

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**M.S.K.JAISWAL,J**

Date: 19.02.2016

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