

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.19508 of 2016

O R D E R:

Heard counsel for the petitioner and Sri T.Ramulu,
Standing Counsel for respondents 1 and 2.

2. Petitioner's father was employed in the 1st respondent-Organization as Development Officer-cum-Head of the Business Centre at Chimakurthi of Prakasham District, Andhra Pradesh. He died on 02.04.2011 due to ill-health. Petitioner is the only son and he has three unmarried siblings.

3. Petitioner had applied to the 1st respondent on 29.10.2015 seeking appointment on compassionate grounds in the 1st respondent-Organization stating his financial difficulties and family situation.

4. Before 01.11.2014 the 1st respondent had only a scheme providing for payment of monetary compensation in lieu of appointment on compassionate ground to the dependents of the employees who died while in service.

5. On 26.03.2015, the Board of the 1st respondent approved the recommendation of the Compassionate Appointment Scheme to the legal heirs of the deceased employees and employees retired on medical ground with effect from 01.11.2014 in lieu of monetary compensation.

6. The Deputy Manager of the Visakhapatnam Regional Office wrote to the 2nd respondent on 16.12.2015 referring to the

said circular and requesting the 2nd respondent to inform the petitioner that the date of death of his father was 02.04.2011.

7. As this communication was cryptic and did not furnish any reason why the petitioner's case was not been considered for appointment on compassionate ground, the petitioner filed this Writ Petition.

8. Petitioner also stated that he has not received any monetary benefit in lieu of compassionate appointment as per the pre-existing scheme.

9. Counter affidavit is filed by the respondents stating that as per circular dt.20.04.2015 the scheme was launched for compassionate appointment in the 1st respondent-Organization with effect from 01.11.2014 subject to fulfilment of eligibility criteria and other relevant conditions. In para 6 it is contended that at the time of death, petitioner's father was aged 56 years 9 months old and as per para 1.2 of the Scheme for Compassionate appointment in Public Sector and General Insurance Companies notified by the 1st respondent vide Circular dt.20.04.2015, he ought not to have crossed the age of 55 years.

10. Before I deal with this contention, I first refer to Clause(1) of the Scheme which states as under:

“1.COVERAGE:

- 1.1 To a dependent family member of permanent employee of a Public Sector General Insurance Company (PSGIC) who –
 - a) Dies while in service(including death by suicide)

b) Is retired on medical grounds due to incapacitation before reaching the age of 55 years.

(incapacitation is to be certified by a duly appointed Medical Board in a Government Medical College/Government District Head Quarters Hospitals/Panel of Doctors nominated by the Company for the purpose)

1.2 For the purpose of the Scheme, “employee” would mean and include only a confirmed regular employee who was serving full time or part-time on scale wages, at the time of death/retirement on medical grounds, before reaching age of 55 years and does not include any one engaged on contract/temporary/casual or any person who is paid on commission basis.”

11. Thus the scheme is applicable to dependent family members of a permanent employee of a Public Sector General Insurance Company like the 1st respondent, who, (a) died while in services or (b) was retired on medical grounds due to incapacitation before reaching the age of 55 years.

12. When clause 1.2 defines the term ‘employee’ and refers to time of death or retirement on medical ground, the use of the words “before reaching age of 55 years” therein, in my considered opinion, qualify and are referable to retirement on medical grounds only and would not apply to the cases where such compassionate appointments are sought on the basis of death of an employee. This is because of the distinction between cases of death covered by Sub-Clause (a) of clause 1.1 and Sub-Clause (b) of clause 1.1 which confines the claims to dependents of permanent employee, who retired on medical grounds due to incapacitation before reaching the age of 55 years. Therefore, this contention of the 1st respondent is rejected.

13. The next contention raised in the counter affidavit by the 1st respondent is that as per para 8 of the scheme, the scheme would operate prospectively from 01.11.2014 and since father of the petitioner who was an employee of the 1st respondent died on 02.04.2011, i.e., prior to 01.11.2014, the petitioner would be disentitled for appointment under the scheme.

14. Clause 8 of the Scheme states as under:

“8. TIME LIMIT FOR CONSIDERING APPLIATIONS:

The Scheme comes into force prospectively from 01st November, 2014. Application for employment under the Scheme from eligible dependent should normally be considered up to five years from the date of death or retirement on medical grounds taking place on or after 01st November, 2014 and decision to be taken on merit in each case.”

15. As the heading of Clause (8) shows it deals with the time limit for considering the applications and in cases of applications for employment under the scheme from eligible dependents who are seeking such employment on compassionate ground on the ground death of their parents, it specifies that such applications should be considered up to 5 years from the date of death.

16. In the present case, the petitioner's father died on 02.04.2011 and he had made the application seeking appointment on compassionate ground on 29.10.2015. Therefore, he has applied within five years from the date of death of his father and after 01.11.2014. Therefore, the petitioner's application seeking compassionate appointment under the Scheme is within time.

17. The Standing Counsel for 1st respondent however contends that Clause (8) should be interpreted to mean that the death of the father of the petitioner should have also occurred on or after 01.11.2014, in view of the mention of the said date in Clause(8).

18. I am of the opinion that this contention cannot be accepted because Clause (8) of the Scheme deals with the coverage which has been dealt within clause (1), and since Clause (8) only deals with time limit for considering the application from the date 01.11.2014 mentioned in Clause (8), it would apply only in respect of persons who make applications for appointment under the scheme on the ground of retirement on medical grounds taking place on or after 01.11.2014.

19. If the interpretation sought to be placed by the counsel for 1st respondent is to be accepted, then Clause (8) itself would have stated that even applications for employment from eligible dependents claiming compassionate appointment on the basis of death of parent would have to be considered only in cases “where said death occurred on or after 01.11.2014”, but Clause (8) does not contain such a requirement in the cases where compassionate appointment is sought on the basis of death of a parent. As long as the application for employment under the Scheme is made within five years from the date of death of the parent, as in the case of the petitioner, the said application has to be entertained and considered and cannot be thrown out on

the ground that the petitioner's father had died prior to 01.11.2014.

20. I am also of the opinion that the said clause which fixed time limit for considering applications cannot control the clause dealing with coverage i.e., Clause (1), and the eligibility of the petitioner to the benefit of the Scheme ought to be considered primarily with regard to Clause (1). Since the said clause does not state specifically that the death of the parent should have occurred on or after 01.11.2014, Clause (8) cannot be pressed into service to deny appointment on compassionate ground to the petitioner. Further it cannot be said that giving the petitioner the benefit of the scheme would amount to enforcing the Scheme retrospectively from a date prior to 01.11.2014, since the petitioner has not sought for employment with effect from the date of his father's death on 02.04.2011 or from 01.11.2014 and he had made the representation seeking employment only on 29.10.2015.

21. So looked at from any angle, the stand of the respondents cannot be sustainable.

22. Accordingly, the Writ Petition is allowed; the 1st respondent is directed to consider the case of the petitioner for appointment on compassionate ground in any post, which is suitable to him in the 1st respondent-Organization within a period of eight (08) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

23. Consequently, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

21st November, 2016.
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