

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

WRIT PETITION No.8002 of 2016

Dated: 11.03.2016

Between:

A.Venkataramanamma, D/o. Late A.Chennappa.

.. Petitioner

And

State of Andhra Pradesh,
Represented by its Principal Secretary,
Municipal Administration & Urban Development,
Secretariat, Hyderabad,
and others.

.. Respondents

Counsel for the Petitioner: Mr. K.Venkat Rao

Counsel for the Respondent No.3: Mr. Md.Saleem,
Standing Counsel for Municipalities

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This Court made the following:

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

This writ petition is filed for a Mandamus to declare order, dated 09.12.2015, in O.A.No.3258 of 2012 on the file of the A.P. Administrative Tribunal at Hyderabad (for short, 'the Tribunal'), as illegal and arbitrary.

I have heard Mr. K.Venkat Rao, learned counsel for the petitioner, and Mr. Md.Saleem, learned Standing Counsel for Municipalities appearing for respondent No.3.

The petitioner claims to be the daughter of one Channappa (hereinafter referred to as 'the deceased employee') of Kadiri Municipality through alleged second wife, while respondent No.4 is the son of the deceased employee through first wife. Following the death of their father, a dispute arose between the petitioner on the one side and respondent No.4 on the other in the matter of claiming the compassionate appointment. In a O.A filed by respondent No.4, a direction was issued by the Tribunal to respondent No.3 to consider the case of respondent No.4 for compassionate appointment. Later the petitioner has filed O.A.No.3258 of 2012 for the same relief. In paragraph 3 of the order passed by it, the Tribunal has observed as under:

"It is for the authority concerned to decide whether any of the above two persons or none of them is entitled for compassionate appointment. Condition precedent for entertaining the application for compassionate appointment is that the applicant seeking compassionate appointment has to furnish no objection certificate from all other family members/legal heirs of the deceased Government servant. In the absence of any such no objection from other family members or legal heirs, none of the applicants/aspirants is entitled for compassionate appointment...."

However, while concluding the order, the Tribunal has observed that if after discussion between the petitioner and respondent No.4, they do not arrive at consensus as to the person who is entitled to be appointed in place of the deceased employee, the petitioner's claim for compassionate appointment can be rejected by respondent No.3.

The learned counsel for the petitioner submitted that the above-mentioned observation of the Tribunal seriously affects the interests of the petitioner, as her entitlement for compassionate appointment shall not be solely dependent upon her capacity to convince her stepbrother i.e., respondent No.4.

We find merit in the submission of the learned counsel for the petitioner. Unless it is found that respondent No.4 has superior claim, there must be level playing field between the petitioner and the said respondent. If no consensus is reached between the two parties, in our opinion the appropriate remedy for both parties is only to approach the competent Civil Court and get a declaration as to who among them is the legal heir of the deceased employee.

The petitioner has averred in the affidavit filed in this writ petition that respondent No.4 has already filed O.S.No.416 of 2012 in the Court of the Principal Junior Civil Judge, Kadiri, against herself, respondent No.3 and others, seeking a declaration that he is the legal heir of the deceased employee, and that the same is being contested by the petitioner, besides her filing a counter claim.

In the above facts and circumstances of the case, the order of the Tribunal is set aside. The rights and remedies of the petitioner as well as respondent No.4 are left open and respondent No.3 shall consider the claims of both these persons based on the ultimate decision of the

Civil Court in O.S.No.416 of 2012.

The writ petition is, accordingly, allowed. As a sequel to the allowing of the writ petition, WPMP.Nos.10170 & 10171 of 2016 filed by the petitioner for interim reliefs stand disposed of as infructuous.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

11.03.2016
v v