

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.3748 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioners, who are the legal heirs of late Yadagiri, is filed questioning the proceedings, dated 04.10.2005, of the 1st respondent whereunder the 1st respondent failed to reconsider the request of the petitioners for appointment of the 2nd petitioner in the organization of the respondents on compassionate grounds consequent to the death of the said Yadagiri in harness.

2. Heard the submissions of Sri C. Raghu, learned counsel appearing for the writ petitioners, and of Ms. K. Mani Deepika, learned Additional Standing Counsel for Central Government, appearing for the respondents. I have perused the material record.

3. The facts which emerge for consideration from the pleadings and submissions of the parties, in brief, are as follows:

Yadagiri, the husband of the 1st petitioner and the father of the 2nd petitioner, joined as a Tradesman, on 20.04.1974, in the 2nd respondent organization. He served the organization for more than 28 years and died in harness, on 20.01.2003, due to chronic renal failure/diabetes/motor sensor neuropathy. Before his death, he was working as Technical Assistant, A-Grade. The petitioners are his only legal heirs. The 2nd petitioner has been working as casual labour in the 2nd respondent organization since the year, 2000. The petitioners sought regular appointment of the 2nd petitioner in the 2nd respondent organization under compassionate appointment scheme. They made several representations in that regard. However, by proceedings, dated 04.10.2005, which are impugned in this writ petition, the 1st respondent having adverted to the representation, dated 22.08.2005, of the petitioners informed

the petitioners that every effort was made to accommodate their request; but, the competent authority is required to take a decision in the matter after taking into account the limited number of vacancies available and also the large number of cases; and, that each case for compassionate appointment would be decided on the basis of points scored and *inter se* merit of the cases that come up for consideration at a given time; and, that having regard to the facts of the case of the petitioners, it was found not possible to offer an appointment on compassionate grounds to the 2nd petitioner. Aggrieved thereof the petitioners filed this writ petition.

4. The main contentions of the petitioners are as follows:

In the impugned proceeding, the respondents have not stated as to how many vacancies are existing and how many applications were received seeking compassionate appointments. In the proceedings it is only stated that the benefit is denied to the petitioners. The policy adverted to in the proceedings is not there in the organization. Even the contents of the proceedings show that the respondents are providing compassionate appointments. The grounds mentioned in the proceedings for rejection of the request of the petitioners for appointment of 2nd petitioner under the compassionate scheme are not valid. The said proceedings are devoid of details. The rejection of the case of the petitioners without any reasons is illegal and arbitrary.

5. Per contra, the case of the respondents, as stated in the counter affidavit of the Senior Administrative Officer of the 2nd respondent organization, in brief, is as follows:

As per the existing Rules, the 2nd respondent had sent all the papers submitted by the petitioners for compassionate appointment to the constituted committee to study and to report as to whether the case of the 2nd petitioner is a deserving case for onward transmission to the 1st respondent, who is the competent authority to decide the matter. The recommendations of the

committee were sent to the 1st respondent, the competent authority. The case was examined by the competent authority from all aspects such as size of the family, family pension, terminal benefits received from the Government and also in the light of the guidelines relevant to the subject like prioritization of the cases based on degree of indigence. Having considered the facts of the case, the competent authority found that there were many deserving cases, which needed to be given priority within the overall limit of 5% vacancies of direct recruitment available for compassionate appointment and that it was not administratively feasible to accede to the request of the petitioners for appointment of the 2nd petitioner. The compassionate appointment cases are decided on comparative merit and not on individual merit. A large number of compassionate appointment cases are being received against the very few available vacancies. At times, if more highly deserving cases are available, less deserving cases could not be accommodated. Requests for compassionate appointments are being considered by the competent authority and only most deserving cases are being approved for appointments against available percentage of vacancies. Even for review of the case of the petitioners, no substantive and valid points, which were not previously raised, were brought up for consideration. The compassionate appointment is not automatic and not mandatory in nature. As per the scheme, the competent authority would examine the cases to find out whether the family of the deceased Government servant is indigent and is without any means of livelihood and deserves immediate assistance for relief from financial destitution. In the instant case the widow and the son are the only dependants of the deceased employee and the widow is getting enhanced rate of pension of Rs.2,950/- and dearness pay and relief; and she, along with her son, the 2nd petitioner, received an amount of Rs.5,13,462/- towards terminal benefits. The competent authority followed the Rules and Guidelines of the Ministry of Defence on the subject and even disposed of the representation, dated 22.08.2005, *vide* the proceedings, dated

04.10.2005, *inter alia* stating therein the reasons for non consideration of the case of the petitioners for compassionate appointment of the 2nd petitioner. Hence, the writ petition, which is devoid of merit, is liable to be dismissed.

6. In the light of the admitted facts and submissions made before this Court, it emerges that though the 2nd petitioner is otherwise eligible for compassionate appointment, his case could not be considered by the 1st respondent, who is the competent authority, for the reasons, namely, the request for compassionate appointments received are large in number whereas only 5% of the direct recruitment vacancies arising in an year are utilizable for grant of compassionate appointments and that compassionate appointment is not automatic and mandatory in nature and that compassionate appointments received at a time would be considered on relative merit and that while considering relative merit the aspects like indigency, means of livelihood and requirement of immediate assistance for relief from financial destitution would be considered and that in the case of the petitioners, the petitioners, who are two in number, are the only dependants of the deceased employee, and that the 1st petitioner is getting enhanced rate of pension of Rs.2,950/- and dearness pay and relief and that the petitioners received Rs.5,13,462/- as terminal benefits and that, therefore, on a relative merit their case was found to be not deserving as at the relevant time there were more deserving cases after taking into consideration the points like number of family members, number of dependants from out of the family members, ages and marital statuses of the children of the deceased employee, indigency of the family, quantum of pension being received by the wife of the deceased and the amount of terminal benefits paid to the family etcetera.

7. In fact, learned Addl., Standing Counsel produced before this court the reports of the committee in respect of various applicats for appointment on compassionate grounds. Among the said reports there are reports related to

legal heirs of Government servants namely K. Jangaiah, Rameshwar Pawar, N. Gnaneshwar, Narsing Das, Narsing rao, M. Sainath, I. Ilaiyah, M. Satyanarayana, Balasivaraja, R. Shankar, and Habib Khan. Further, a copy of scheme for compassionate appointment and relative merit points and documents showing revised procedure for selection are also produced to substantiate the contention that compassionate appointments would be made on relative merit. In that view of the matter it is substantiated that sometimes while considering and accommodating more highly deserving cases of the families, which are in indigent circumstances and which required immediate assistance and release from financial destitution, even other less deserving cases were not being accommodated. Thus, the material record would show that the 1st respondent, who is the competent authority, could not consider, at the appropriate time, the case of the petitioners for compassionate appointment of the 2nd petitioner as at the relevant time there were more deserving cases than that of the petitioners. Learned Additional Standing Counsel also relied upon the decision in Union of India and another v. Shashank Goswami and another¹ in support of the following propositions: "There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right." She also placed reliance on the decision in Chief Commissioner, Central Excise And Customs, Lucknow, and others v. Prabhat Singh² in support of the propositions that the Compassionate Appointments are regulated by stipulated norms and that the same should be strictly complied with and that Courts

¹ (2012) 11 SCC 307

² (2012) 13 SCC 412

should not fall prey for sympathy syndrome and issue directions for compassionate appointment dehors prescribed norms and that a direction can be issued when the party who approached the Court established *prima facie* case.

8. Viewed thus, this Court finds that this is not a fit case to grant the relief prayed for and direct the respondents to provide compassionate appointment to the 2nd petitioner.

9. Be that as it may, the scheme also postulates as follows: “The candidates are required to apply only once and the application if not recommended in the first Board of Officers for want of vacancy, is to be considered afresh along with the fresh applicants by the Board of Officers on three occasions consecutively and ensure that the final decision is communicated to the applicant by a detailed speaking order.” From the facts brought on record, it is not clear as to whether the case of the petitioners was considered only once or twice or thrice as contemplated under the scheme before the order impugned was passed.

10. In that view of the matter, this court while dismissing the writ petition makes it clear that the dismissal of the writ petition shall not preclude the respondents from considering afresh the case of the petitioners along with the fresh applicants by the BOO, if not already considered thrice as per the scheme.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

13th April, 2017
Vjl