

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NOS.33462 & 34419 OF 2013

W.P.No.33462 of 2013:

Between :

K.Srinivasa Rao S/o late Anjaneyulu,
E-26768, RTC Controller of Ponnur Depot,
34 years, r/o. Telagapalem, Ponnur (M),
Guntur District.

.... Petitioner

And

The APSRTC, rep.by its Managing Director,
Musheerabad, Hyderabad and another.

..... Respondents.

JUDGMENT PRONOUNCED ON : 01.06.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : **Yes**
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : **Yes**
to Law Reporters/Journals :

3. Whether Their Ladyship/Lordship wish to : **Yes**
see fair Copy of the Judgment ? :

***HON'BLE SRI JUSTICE P.NAVEEN RAO**

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!Counsel for the petitioners : Sri S.M.Subhan, counsel for
petitioners in both writ petitions

Counsel for the Respondents: Sri P.Durga Prasad, learned standing counsel
for APSRTC in W.P.No.33462 of 2013 and Sri B.Mayur Reddy, learned standing
counsel for TSRTC in W.P.No.34419 of 2013.

<Gist :

>Head Note:

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? Cases referred:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.33462 & 34419 OF 2013

COMMON ORDER:

Heard Sri S.M.Subhan, learned counsel for petitioners in both the writ petitions, Sri P.Durga Prasad, learned standing counsel for APSRTC in W.P.No.33462 of 2013 and Sri B.Mayur Reddy, learned standing counsel for TSRTC in W.P.No.34419 of 2013.

W.P.No.33462 of 2013:

2. Father of the petitioner who was working as controller of Ponnur Depot died in an accident on 12.11.1998. Petitioner along with his mother made an application on 10.4.2010 to provide employment. Petitioner claims that he is differently abled person, passed Degree and has knowledge in computers. Petitioner refused to receive additional monetary benefits and insisted for

providing employment. Earlier petitioner filed W.P.No.22152 of 2013 wherein interim order was granted to consider the claim of the petitioner in accordance with G.O.Ms.No.2 of 2013. By order dated 21.9.2013 impugned herein the claim of the petitioner to provide employment under the Bread Winner Scheme (BWS) was rejected on the ground that the petitioner has 100% physical disability and, therefore, not suitable to hold the posts of Conductor and Driver.

3. Learned counsel for petitioner submitted that petitioner being physically handicapped in accordance with the reservation provided to disabled persons, appointment ought to have been given to him. In substance, learned counsel would submit that petitioner is eligible to be appointed as Junior Assistant and such post ought to have been provided to him. Family of the petitioner is in destitute circumstances and they desperately need employment.

4. Respondents denied submission of application in the year 2010. According to deponent to the counter, application was made for the first time on 29.7.2013 enclosing copy of the Court order. Since petitioner was found to have 100% physical disability, no employment as driver or conductor can be provided. Accordingly, his claim was rejected. It is further contended that no provision is made under the bread winner scheme for appointment to the post of record tracer/booking clerk/ announcer.

W.P.No.34419 of 2013:

5. Father of the petitioner died on 10.12.1991 while working as Assistant Depot Clerk. On 17.4.1993 representation was made to provide appointment on compassionate grounds. He was provisionally selected for the post of Clerk and was also subjected to medical examination. Thereafter, no further orders were passed. Aggrieved thereby, petitioner filed W.P.No.11489 of 2001. This Court disposed of the writ petition directing the petitioner to appear before the concerned hospital and to obtain fitness certificate and further directed to consider the same sympathetically, as petitioner is physically handicapped person. As corporation failed to appoint him in any post, petitioner filed W.P.No.19348 of 2004. This Court by order dated 08.11.2004 directed the Regional Manager to consider his case for appointment under bread winner scheme. Petitioner was called for interview and by order dated 30.12.2004, petitioner was informed that he was not entitled to cleaner post due to amputation of his right leg.

6. In the counter affidavit, respondents asserted that petitioner was selected as Shramik under bread winner scheme and was subject to medical examination. He was examined and declared unfit by APSRTC-Tarnaka hospital for the post of Cleaner as his right leg was amputated upto knee. Stating that he was provided artificial leg a request was made by the petitioner for re-medical examination. Vide letter of the Regional Manager dated 29.3.2005 he was asked to report for re-medical examination, but it was informed by the Senior Medical Officer of APSRTC-Tarnaka hospital vide letter dated 12.11.2005 that petitioner did not attend for medical examination.

7. Learned counsel for petitioner would submit that petitioner's mother also died and there is no other source of livelihood to him and he continues to be unemployed; he is married and blessed with children. He would submit that on 10.4.2005 he made representation for consideration to any suitable post. According to petitioner, he has passed degree and having knowledge in computers. According to learned counsel, petitioner ought to have been considered after reintroduction of the bread winner scheme. Corporation has issued notification dated 31.3.1997 identifying 23 areas where disabled persons can be provided employment and, therefore, petitioner could have been considered in any one of those areas.

8. The point for consideration is whether petitioners are entitled to claim employment under the Bread Winner Scheme (BWS) to any other post other than the posts of Driver, Conductor, Shramik and Police Constable on the ground that they are differently abled persons.

9. Before appreciating the rival contentions, it is necessary to dwell into the history of fight for equal rights to disabled persons on par with able bodied persons and the measures taken to protect the rights of disabled persons by the international organizations and Union Government.

10. There are people who are disabled by birth or acquired disability during the life time. Due to such disability, their dependence is more on others. A disabled person is neglected/ill-treated and same care and affection is not extended as is given to ordinary persons. In many instances, their basic needs

are not attended. It is an un-equal treatment to persons who are also entitled to all rights and safeguards bestowed in them by the Constitution of India. What is not appreciated is disabled persons are also equally entitled to mandate of Articles [14](#), [16](#) and [21](#). They have right to a decent and honourable living. State and its instrumentalities must endeavour to protect and preserve their rights.

11. This ill treatment/neglect is a universal phenomenon. World over, several movements launched to achieve some sort of protection and helping hand yielded results in the form of Beijing Proclamation of 1992. India was a signatory to this proclamation. As per the commitment made by India, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted.

12. The Act intended to provide a mechanism to ensure equal participation, safeguards and all the other objectives of the enactment. Act dealt with safeguards in the matter of education, employment and in social life.

13. While so, the United Nations General Assembly passed resolution on 13.12.2006 in the Convention on the Rights of Persons with Disabilities. India ratified the convention on 01.10.2007. The convention came into effect on 03.05.2008.

14. The convention recognizes that disability is an evolving concept and that disability results from the interaction between persons with impairments and

attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

15. Some of the important provisions of the Convention are listed here under:

Preamble:

The States Parties to the present Convention

(a) to (d) xxx

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

...

(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) Recognizing further the diversity of persons with disabilities,

(j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world.

Article-2:

Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment of exercise, on equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment of exercise on an equal basis with others of all human rights and fundamental freedoms;

Article-4:

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with

disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

Article -27: Work and Employment:

1. State parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by making appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.

16. The Government of India has undertaken thorough review of functioning of the Act, 1995 and taking due note of United Nations Convention, the Act, 1995 is replaced by “The Rights of Persons with Disabilities Act, 2016 (Act, 2016). This Act brought in significant changes on various aspects. The definition of disability is expanded and incorporates provision for addition. The endeavour is to ensure full participation by disabled persons in all activities of life an able bodied person can perform without any hindrance and not to discriminate disabled persons in all aspects of life.

17. The Act, 2016 aims to achieve following objectives:

- i. Nineteen specified disabilities have been defined;

ii. the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others;

iii. duties and responsibilities of the appropriate Government have been enumerated;

iv. all educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;

v. a National Fund is proposed to provide financial support to persons with disabilities;

vi. stakeholders' participation in the policy making through Central and State Advisory Boards;

vii. increase in reservation in posts from existing three per cent to five per cent in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;

viii. setting up of National Commission and State Commission to act as Grievance Redressal Mechanism, monitor implementation of the proposed legislation replacing the Chief Commissioner and the State Commissioners for persons with disabilities, respectively;

ix. guidelines to be issued by the Central Government for issuance of certificates of specified disabilities;

x. penalties for offences committed against persons with disabilities; and

xi. Court of Session to be designated as Special Court by the State Government in every district to try offences.

18. Section 3 of the Act, 2016 prohibits discrimination on the ground of disability unless the concerned authority shows that the Act or omission (rejecting the claim for employment) is a proportionate means of achieving legitimate aim. This section has to be read in consonance with Section 20 of the Act, 2016. Section 20 is included in Chapter-IV. Chapter-IV deals with skill development and employment. Section 20 prohibits Government

establishment from observing discrimination against any person with disability in any matter relating to employment. RTCs are not exempted from the provisions of the Act and are bound the provisions of the Act, 2016.

19. The point in issue require consideration, having due regard to the above legal framework.

20. The scheme of compassionate appointment is made as a social welfare measure to reach out to the family members of ex-employees and help them to overcome sudden loss of the breadwinner throwing the family members of the former employee into financial troubles and distress. However, due to financial constraints of the combined Corporation, scheme was dispensed with. However, on review of the financial position and acceding to the demand from the service unions, the scheme was reintroduced in the combined Corporation in the year 2013 and continued by corporations of both States after bifurcation. The objective of the scheme is to provide sustenance to the members of the family, who lost breadwinner. Under the BWS, the respondent corporations either offer employment or offer lump sum amount in lieu of employment. Under the breadwinner scheme only posts of Driver, Conductor and Shramik in the Telangana Corporation with an additional post of Constable in Andhra Pradesh Corporation are provided. The differently abled persons are declared as not suitable to hold these posts.

21. A disabled person requires support from his family, more particularly from his parents. The breadwinner in the family is more relevant to disabled

family member. In the absence of breadwinner, disabled person would suffer more than any other person. He would lose support system and would crumble. For able bodied person at least it is possible for him to eke out a living by doing any other work; it may not be difficult to secure at least some kind of employment to eke out living. In the case of disabled persons, securing employment/earning capacity are scarce and if disability is more severe, the problem of securing some avocation to eke out a living would be very bleak.

22. The evolution of struggle for equal treatment, the Beijing declaration, the United Nations convention and the necessity to bring legislation by Indian Parliament would show societal support to differently abled persons is abysmal. In fact most of them do not get even support from their family. Legislative intervention is necessitated due to discriminatory treatment meted out to differently abled persons in all spheres of life. Thus, they are the most deserving dependents to get employment under the BWS. Further, the lump sum amount offered is meagre and cannot give sustenance to a disabled person for life time. He needs support for his entire life or till he secures some kind of employment.

23. The objective of BWS can be said to have achieved only if provision is made specifically addressing the claims of such of those dependents of deceased employee who are also disabled persons in addition to the fact that they were dependent on the ex-employees of the corporations. The respondent Corporations singularly

failed in addressing this issue and mechanically rejected their claims and oppose the writ petitions as any other writ petition.

24. No reasons are assigned as to why only 3/4 categories of posts respectively are reserved for employment under the BWS. However, provision of employment under the scheme only to these categories may be justified in ordinary circumstances to all other persons who are able bodied and do not suffer any disability. No statutory embargo is placed before this court to extend employment to any other categories of posts in respondent corporations. No conscious decision is taken at the apex level on claims of disabled dependents and categories of posts identified. On the ministerial side and in the Last grade service, there are several other posts in existence for smooth running of the organization. By very nature of posts now thrown open under the scheme, they cannot be occupied by persons suffering with disability. It is shutting the door on their face.

25. India is a signatory to Beijing Proclamation, 1992 and Indian Parliament enacted Act, 1995, which mandates provision of employment for differently abled persons. Three percentages in various categories of posts are reserved in the respondent corporations to differently abled persons. Having regard to its functional requirements, the Corporation has identified 60 categories of posts where orthopedically handicapped can be appointed. Notification No.R3/331(14)92-HRD, dated 31.03.1997 was issued listing out the posts in which orthopedically handicapped can be appointed. The list includes posts in

the technical side and in the ministerial establishment. In all these posts reservation principle in favour of differently abled persons has to be applied. As per Act, 2016 the percentage of reservation has to be increased beyond 3%. Thus, there must be several vacancies in the identified categories requiring to be filled up by differently abled persons. At any rate it is not the case of respondent corporations that there are no vacancies to be filled by differently abled persons.

26. It is no doubt true that no right is vested in a person to seek employment on compassionate grounds as a matter of course. Compassionate appointment being an exception to normal method of recruitment, the claim for such appointment should be considered narrowly and within the parameters of the scheme formulated by the employer. It is not in dispute that employer recognizes provision of employment to dependents of deceased employee as social welfare measure. Thus, only issue for consideration is while considering claims of dependents for employment under the BWS, can the claims of differently abled dependents be ignored merely on the ground that they are not suitable to the posts identified under the BWS, more so when the Corporations have identified several other posts where differently abled persons can be employed. Though employers recognize need to provide employment to the family members of the deceased employee, by confining such consideration to the posts of Driver, Conductor, Shramik in Telangana Corporation and additional post of Constable in Andhra Pradesh Corporation shuts the door of BWS to differently abled dependents of deceased employees. No explanation is

forthcoming as to why other posts cannot be offered to differently abled dependents of deceased employee. As noted above, differently abled persons require the support system of his family for the entire life and as the disability increases, the dependence is more. Thus, loss of bread winner is more severe on such persons.

27. In the two cases on hand, the entitlement of dependents of the deceased employee for provision of employment is recognized and both petitioners were identified for provision of employment, but employment was denied on the ground of their physical deformity. When corporations identified total of 62 categories of posts, where differentially abled persons can be employed, out of which, 60 are identified for the orthopedically handicapped persons, there is no justification in rejecting the claim of the petitioners for provision of employment on the specious ground that in the 3/4 categories of posts identified by the two respondent corporations respectively, petitioners are not suitable on account of their physical deformity. The respondent corporations are bound by the provisions of Act, 2016 and merely because the petitioners are not qualified to hold the posts ordinarily offered under the BWS is no ground to flout the constitutional norm and the mandate of the Act, 2016.

28. Discrimination against any person on the basis of disability is violation of the inherent dignity, honour as a human being and self-esteem. Violate his fundamental and human right. Not providing employment to the petitioners only on the ground that they are disabled persons falls foul of the

constitutional mandate of equality before law, equal protection of laws and amounts to discriminatory treatment on the basis of their physical deformity, contrary to spirit of the Beijing declaration and the United Nation Convention on disabled persons and in violation of the mandate of Act, 2016. It is appropriate to note at this stage that with technological advancement and availability of modern gadgets, no avocation is out of reach of a differently abled person.

29. At this stage it is apposite to note the observations of *Hon'ble Justice S.B. Sinha* in *Justice J.K. Mathur Memorial Lecturer* (Published in (2005) 3 SCC J-1):

“The mindset of people towards PWDs which needs to be changed. In the words of Henry Viscards Jr., “...there are no disabled people. There is nothing which can substitute for human rights, no honours, no fame, no pension, no subsidy, can replace a wish to work with dignity in free and open competition with all.”
(emphasis supplied)

30. In his conclusive remarks, *Justice Sinha* observed,

“Legal predications, judicial pronouncements and constitutional preferences only elucidate the imperative, for laws alone cannot guarantee integration. There are no firm policy decisions nor is there any action plan as to how and in what manner the provisions of the enactments would be implemented. Significantly, there has also been no financial impact assessment conducted to anticipate the cost of policies.

Besides, there is also a need to recognize that problems do not reside in a person with a disability, but are a result of structural practices and attitudes that prevent an individual from exercising his or her capabilities.

The time is now ripe for “social innovation”, that is, the normalization, integration, equalization and inclusion of the PWDs. Restorative, rehabilitative, and participative support with dignity is needed to bring the PWDs back into the mainstream.”

31. Not making suitable provision to consider the claims of differently abled dependents of deceased employees under the BWS amounts to arbitrary exercise of power. The court expresses displeasure in the manner in which the claims of disabled persons are dealt with. There appears to be no application of mind to the issue at the highest level and claims of such persons are mechanically rejected without regard to statutory mandate and international covenants. The remarks of *Justice S.B.Sinha*, extracted above aptly apply to the respondent corporations. There is a need to change the mind-set by the respondent corporations.

32. In W.P.No.34419 of 2013 bread winner died in the year 1991, 26 years back. Ordinarily, in such stale claims no direction can be issued to provide employment. However, facts of the case do not warrant rejection of writ petition on that ground. Petitioner earlier filed W.P.No.11489 of 2001 aggrieved by non-consideration of his claim for compassionate appointment. Writ Petition was disposed of by order dated 25.02.2002 with directions to consider petitioner claim sympathetically. Petitioner filed W.P.No.19348 of 2004 aggrieved by inaction in considering his representation dated 20.03.2002. The Writ Petition was disposed of by order dated 26.10.2004 directing to consider claim of petitioner. Claim was considered and petitioner was selected to the

post of Cleaner. However, on the ground that his right leg was amputated above knee, his claim was rejected vide proceedings dated 30.12.2004. In the meantime, ban on compassionate appointment was imposed, revived only in the year 2013. Further, petitioner suffers disability. After revival of BWS, claims to provide employment are considered from family members of employees who died after 01.01.1998. Having regard to these peculiar facts, claim of petitioner in W.P.No.34419 of 2013 cannot be thrown out on the ground of delay and laches.

33. The writ petitions are allowed. Respondents are directed to consider the claims of the petitioners for provision of employment under the Bread Winner Scheme according to their suitability and eligibility to any posts other than the posts of Driver, Conductor, Shramik and Constable. Such consideration shall be made within a period of two months from the date of receipt of copy of this order.

Miscellaneous petitions if any pending in these writ petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 01.06.2017
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WRIT PETITION NOS.33462 & 34419 OF 2013

Date: 01.06.2017

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