

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.884 of 2017

Dated:13.07.2017

Between:

Smt A.Suguna W/o late A.Nagaraju,
Aged 44 years, occ:Employee (Contract),
Office of Municipal Council, Medak District,
H.No.3-9-60/4, Kadigadda, Medak District.

...Petitioner

AND

The Commissioner, Medak Municipality,
Medak District and others.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION (TR) No.884 of 2017****ORDER:**

Husband of the petitioner was appointed as Nominal Muster Roll (NMR) Public Health Worker on 01.09.1991 in Medak Municipality. While he was working in the said capacity, he died on 21.10.2006. The petitioner sought for provision of employment on compassionate grounds and sought for a direction to appoint her as NMR employee and pay salary attached to the post of Last Grade Service with all consequential benefits.

2. Heard learned counsel for the petitioner.

3. Learned counsel for the petitioner submits that it is no doubt true that the husband of the petitioner only worked as NMR and not qualified for regularization of his services in accordance with the scheme of regulations formulated and notified by the Government vide G.O.Ms.No.212, dated 22.04.1994; that since a long service was rendered by husband of the petitioner, the respondents ought to have provided employment to the petitioner as NMR. In support of his contention, reliance is placed on a decision of Division Bench of this Court in **Sports Authority of Andhra Pradesh, Hyderabad v. Yala Asirayya @ Asiri Appalaraju and others¹**.

4. As noted above, the basic facts in issue are not in dispute. The only basis for claim to provide employment on compassionate grounds as NMR is a decision of the Division Bench of this Court

¹ 2012 (2) ALD 219 (DB)

referred to above. A reading of the Division Bench judgment would disclose that father of the 1st respondent therein worked as Watchman in the Sports Authority of India since 1983 till he was terminated from service in the year 1989. Aggrieved by the termination order, he filed I.D.No.206 of 1990, which was allowed directing the respondent management to reinstate him with back wages and continuity of service. While so, he died on 26.05.2009. Therefore, the 1st respondent made a representation to appoint him in Last Grade Service. As there was no response, he filed W.P.No.24322 of 2009 and the Single Judge of this Court granted interim order directing the 1st respondent therein to consider the representation and thereafter, orders were passed rejecting the claim of the 1st respondent for provision of employment on compassionate grounds. The stand taken by the employer was that the scheme of compassionate appointment notified by the Government in G.O.Ms.No.637, G.A. (Ser.A) Department, dated 03.10.1973 is applicable only to the Government employees and not applicable to the employees of Sports Authority and further the employee was only a temporary Watchman. By referring to the decision of the Hon'ble Supreme Court in **Director of Education (Secondary) v. Pushendra Kumar**², the learned Single Judge directed appointment as temporary Watchman. The Division Bench upheld the direction issued by the Single Judge and dismissed the Writ Appeal.

5. A bare perusal of the Judgment of the Division Bench shows that the Division Bench was not upraised of the scope of

² (1998) 5 SCC 192

compassionate appointment scheme, the provisions of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short, 'Act 2 of 1994') and exception carved out to provide appointment on compassionate grounds under Section 7 of Act 2 of 1994. Act 2 of 1994 prohibits appointment to public posts by any other manner other than manner prescribed therein. Thus, no appointment in public service can be made as NMR after coming into force of Act 2 of 1994. However, to attract exception carved out to provide appointment to public employment on compassionate grounds to dependent of the deceased employee without following the procedure as indicated in the Act, the primary requirement was that the deceased employee must be regular Government servant/regular employee of the public authority.

6. Aggrieved by such condition, a demand was made for extension of benefit of compassionate appointment to dependents of such of those persons who have acquired eligibility for regularization under the scheme formulated and notified by the Government vide G.O.Ms.No.212, dated 22.04.1994. Considering the said request, the Government issued orders in G.O.Ms.No.118, dated 18.08.1999, granting relaxation of rigors imposed in the scheme of compassionate appointment and extended the benefit of compassionate appointment to such of those persons, who worked as daily wage/NMR/consolidate/contingent worker/full time worker and was eligible for regularization in accordance with the scheme notified vide G.O.Ms.No.112, 22.04.1994.

7. It is not in dispute that the husband of the petitioner did not complete five years of service as on 25.11.1993 and therefore, he was not eligible for consideration of his services for regularization. Scheme under G.O.Ms.118 is applicable only to such persons and no further exemption or exception can be carved out to the said scheme.

8.1. In **Pushpendra Kumar**, relied upon by the Division Bench, the dependents of teaching/non-teaching staff in non-government recognised aided schools/intermediate colleges in Uttar Pradesh State were provided employment on compassionate grounds to Class IV posts. They filed writ petitions seeking appointment to Class III posts instead of Class IV posts. Some of them who were not provided any job also sought direction to appoint them to Class III posts. All the writ petitions were allowed by the High Court. Aggrieved thereby, appeals were preferred.

8.2. The Hon'ble Supreme Court held as under:

“8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. **An exception cannot subsume the main**

provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment of seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee. In Umesh Kumar Nagpal v. State of Haryana, 1994 (4) SCC 138, this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual categories. It was observed: (SCC p.140, parar 2)."

"The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz, relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. ***It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the***

change in status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

[emphasis supplied]

10 If the Regulations are thus construed, the respondent-applicants could only be appointed on a Class IV post and they could not seek a direction for being appointed on a Class III post and for creation of supernumerary post in Class III for that purpose. We are, therefore, unable to uphold the direction given by the High Court in the impugned judgments whereby the respondents have been directed to be appointed on Class III post if they possess the requisite qualifications for such a post and in case no Class III post is available, then a supernumerary Class III post be created for the purpose of such appointment."

8.3. It is thus seen what was considered by Supreme Court was on claim to provide Class III post instead of Class IV post. Supreme Court overruled the decision of Allahabad High Court.

9. The issue before Division Bench was mainly on the refusal of employer to apply scheme of compassionate appointment notified in G.O.Ms.No.687, dated 03.10.1973, as father of petitioner was temporary watchman. As noted above, G.O.Ms.No.118, dated 18.08.1999, was not brought to the notice of the Division Bench as the Division Bench has not examined the scope of said G.O.

10.1. In W.P.No.8614 of 2012 and batch, dated 13.04.2017 on review of precedent decisions on the subject, this Court delineated the principles giving compassionate appointment.

10.2. The principles as noted in the said decisions read as under:

"The principles deducible from the above precedent decisions are:

1. The appointment on compassionate grounds is an exception to the normal recruitment procedure to public posts. An exception can not subsume the main provision.
2. The object of granting compassionate employment is to relieve the family of financial constraints on account of untimely demise of bread winner/ bread winner developed serious health problem losing his job and to enable the family to tide over the sudden crisis.
3. Employment under the scheme can be provided only if the employer is satisfied that unless the employment is provided the family will not be able to meet the crisis and only after assessment of financial condition.
4. Posts in class III and class IV should alone be offered.
5. The consideration for employment on compassionate grounds is not a vested right which can be exercised at any time in future.
6. Claim for compassionate employment should be made within a reasonable time or within the time specified in the scheme formulated by employer. It cannot be claimed and offered after lapse of time and after crisis is over. Delay in seeking such a claim is anti thesis to the very objective of the scheme.
7. The scheme and the policy of compassionate appointment are binding both on the employer and the employee.
8. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.
9. The claim has to be considered within a reasonable period of time.
10. The Courts/Tribunals should not fall prey to any sympathy syndrome. The Courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift

of compassionate appointment to all those who seek a Court's intervention.

11. Consideration of claims should be to available vacancies. If there are more claims than available vacancies a fair and transparent selection process should be conducted based on a comparative compassion gradient or on some such like criteria.

12. An ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment. Courts/Tribunals cannot confer benediction impelled by sympathetic consideration.”

11. Having regard to the principles laid down by Supreme Court in precedent decision on claims for compassionate appointment noted above and having regard to the Government policy as notified vide G.O.Ms.No.118, dated 18.08.1999, which is not under challenge, the claim of the petitioner for provision of employment on compassionate grounds as NMR worker is not valid and therefore, there is no merit in the writ petition.

12. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date:13.07.2017
YVL

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