

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

WRIT PETITION NO.30230 OF 2016

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.6625 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. Therein, he challenged Memo dated 21.10.2013 issued by the Government of Andhra Pradesh rejecting his request for appointment as an Office Subordinate on compassionate grounds owing to medical invalidation of his father and the consequential Memo dated 06.06.2015 of the Government of Andhra Pradesh reiterating its stand and rejecting his representation dated 30.05.2014. His challenge was based on the ground that this rejection was contrary to the Circular Memo dated 12.12.2011 and the order dated 02.04.2014 passed by this Court in W.P.No.3912 of 2011 and batch. He sought a consequential declaration that he was entitled to compassionate appointment under the medical invalidation scheme in any suitable post.

The petitioner is the son of Sri P.Subba Rao, who worked in the Veterinary Dispensary, Vemur, Guntur District. The petitioner's father applied for voluntary retirement from service on medical grounds as he suffered from diabetes mellitus. His request was accepted and he retired from service on medical grounds on 30.05.2001. At that point of time, the scheme relating to providing compassionate appointment to a dependant of a medically invalidated employee was in force. Pursuant thereto, the Directorate of Animal Husbandry, Andhra Pradesh, addressed Memo dated 03.12.2001 to

the Joint Director, Animal Husbandry, Government of Andhra Pradesh, Guntur, stating that permission was accorded to appoint the petitioner as an Attender on compassionate grounds (medical invalidation) in accordance with the rules and the procedure in vogue. However, this was rejected under Memo dated 28.12.2002. Despite the same, the petitioner was however appointed on contract basis *vide* letter dated 20.07.2005 of the Joint Director, Animal Husbandry, Government of Andhra Pradesh, Guntur.

The basis for rejection of the petitioner's request for compassionate appointment under the Memo dated 28.12.2002 was the issuance of G.O.Ms.No.202 dated 27.04.2002 whereby the scheme of providing such compassionate appointment was abolished. However, pursuant to further litigation, the scheme was revived under G.O.Ms.No.661 dated 23.10.2008. The petitioner thereupon sought reconsideration of his case for compassionate appointment. This was rejected by the Government of Andhra Pradesh under the Memo dated 21.10.2013 on the ground that G.O.Ms.No.661 dated 23.10.2008 would have prospective effect only and could not be made applicable to the case of the petitioner. The same stand was reiterated by the Government under its Memo dated 06.06.2015 whereby it rejected the petitioner's representation dated 30.05.2014.

Sri M.R.Tagore, learned counsel for the petitioner, would contend that the issue is squarely covered by the common order dated 02.04.2014 passed by this Court in W.P.No.3912 of 2011 and batch.

The Tribunal did not even consider this judgment though it adverted to the same in para 2 of its order. When this Court already had occasion to consider the issue and passed judgment and the

same attained finality, it would be binding upon the Tribunal. Failure to take note of and act upon such a binding precedent by the Tribunal therefore needs to be deprecated.

Perusal of the common order dated 02.04.2014 passed by this Court in W.P.No.3912 of 2011 and batch reflects that this very issue was considered therein. The relevant portion of the judgment reads as under:

‘7. In view of the fact that the judgment of this Court has been set aside by the Supreme Court in Civil Appeal No.4210 of 2003, the question of the judgment of this Court coming into force may not arise in these cases. The Government issued G.O.Ms.No.202, dated 27.04.2002, withdrawing the Scheme of appointments on compassionate grounds on medical invalidation is only with effect from 27.04.2002. So, by the date of withdrawing the Scheme, the applications of the applicants were pending before the Government for consideration. In view of the same, the law or Scheme, which was prevailing as on the date of pendency of the applications of the applicants, can only be taken into consideration. As G.O.Ms.Nos.504, 309, and 214 were withdrawn in pursuance of G.O.Ms.No.202, dated 27.04.2002 issued in compliance with the judgment of this Court, the cases of the applicants pending long prior to that date have to be considered from the date of medical invalidation. Therefore, the impugned orders need no interference of this Court, and as the Scheme was available as on the date of medical invalidation, we find no merit in W.P.Nos.10060 of 2011, 4479, 4485, 4496 and 4506 of 2014 and they are, accordingly, dismissed. There shall be no order as to costs.

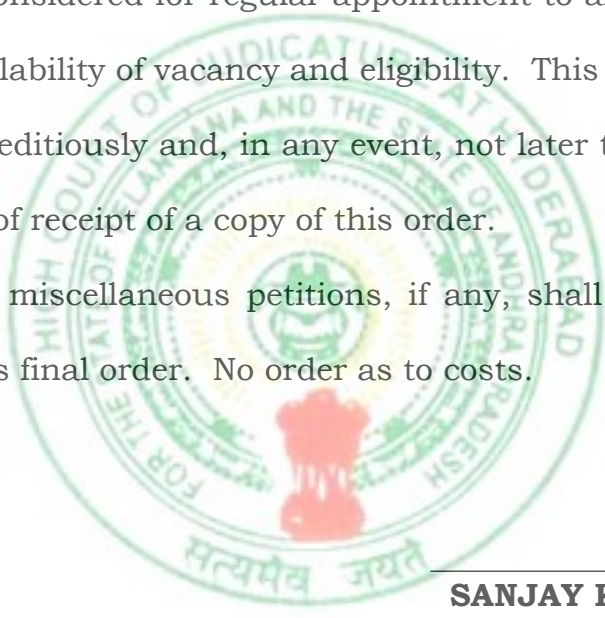
8. In so far as W.P.No.3912 of 2011 is concerned, the applicants have not been appointed and their case also stands on the same footing, because as on the date of medical invalidation, the Scheme for appointments on medical invalidation is available. Therefore, the Tribunal rightly directed the writ petitioners/official respondents to appoint the

respondents/applicants to any suitable post, subject to availability of vacancy and eligibility within three months. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.'

In the light of the aforestated binding precedent, it is not open to the authorities to treat the petitioner differently on the ground that he would not be covered by G.O.Ms.No.661 dated 23.10.2008.

The writ petition is accordingly allowed in terms of and for reasons alike as were mentioned in the order dated 02.04.2014 passed in W.P.No.3912 of 2011 and batch. The petitioner shall forthwith be considered for regular appointment to any suitable post, subject to availability of vacancy and eligibility. This exercise shall be completed expeditiously and, in any event, not later than eight weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

N.BALAYOGI, J

8th MARCH, 2017

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