

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) NOS.313 & 993 OF 2017

Date: 17.08.2017

W.P.(TR).NO.313 OF 2017:

Between:

M.Arunima D/o late Krishnaveni, Aged about 27 years,
Un-employee, r/o H.No.10-2-355/2, Flat No.504,
Prabhakar Apartments, Vijayanagar Colony,
Hyderabad.

..... applicant/Petitioner

and

The District Collector, Hyderabad district at
Hyderabad and others

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) NOs.313 & 993 OF 2017

COMMON ORDER:

Father of the petitioner in W.P.(Tr).No.993 of 2017 while working as Junior Assistant in the Office of Kakatiya Urban Development Authority, Warangal (KUDA), expired on 02.06.2010, leaving behind his wife, two unmarried daughters and the petitioner. Petitioner submitted representation on 21.06.2010 requesting to provide appointment on compassionate grounds. By order dated 04.09.2010, request of petitioner to provide appointment on compassionate grounds was rejected. Challenging the said decision, petitioner filed O.A.No.7195 of 2013 before the A.P.Administrative Tribunal, transferred to this Court.

2. Mother of the petitioner in W.P.(Tr).No.313 of 2017 while working as Assistant Commercial Tax Officer in Commercial Tax Department died on 20.10.2005. The deceased employee was survived by her husband and two daughters including the petitioner. Petitioner was requesting to provide employment on compassionate grounds. Having waited for considerable time, petitioner claimed to have submitted representation on 14.10.2009 requesting provision of appointment on compassionate grounds. At that stage, copy of the order passed on 23.06.2006 was furnished, where under request for provision of appointment on compassionate grounds was rejected on the ground that father of petitioner retired from the Reserve Bank of India service as Ex-Assistant Treasurer on 31.10.2003 availing the Optional Early Retirement Scheme and is drawing pension. It was also noticed

that he was paid an amount of 27,00,000/- towards various service benefits. Challenging the said decision, petitioner filed O.A.No.1328 of 2013 before the A.P. Administrative Tribunal, transferred to this court.

3. In both writ petitions, the stand of the respondent authorities is same. According to the respondents, both parents of petitioners were employed. In the case of petitioner in W.P.(TR).No.993 of 2017, mother is working as Teacher in Zilla Parishad Schools and in WP No.313 of 2017, father took early retirement and is drawing pension. Thus, according to the respondents, as both spouses were gainfully employed, mere demise of one of them, do not make the family put in destitute circumstances, warranting provision of appointment on compassionate grounds. In W.P.(Tr).No.313 of 20017 respondents went further to assert that in addition to drawing of pension, financial benefits to a tune of Rs.27,00,000/- were paid to the father of the petitioner. It was further contended that on the request made by the father to provide employment to petitioner on compassionate grounds, matter was examined and by proceedings dated 06.07.2006, rejection letter was communicated. After three years, representation was made and thereafter O.A. was filed and, therefore, there was inordinate delay in making the claim.

4. Heard learned counsel for petitioners and learned Government Pleader for Services-II.

5. Learned counsel for petitioners contended that merely because both spouses are employed cannot be a ground to deny appointment on compassionate grounds once the claimants

establish that the families are in destitute circumstances and, therefore, warrant provision of employment on compassionate grounds.

6. Sri D.Bala Kishan Rao, learned counsel for petitioner in W.P.(Tr).No.993 of 2017 further contended that much before the demise of father, mother deserted the family and was living separately; that petitioner and his sisters were living with their father and were totally depending on their father; after the demise of their father they have been living in destitute circumstances and that their mother is not taking care of them. He further submitted that merely because the family members certificate also disclose the name of the mother does not mean that mother was taking care of them.

7. Sri M.Ram Gopal Rao, learned counsel for petitioner in W.P.(Tr.)No.313 of 2017, further contended that father of petitioner retired much earlier to the demise of mother and that father was drawing a meager pension and pension amount drawn by the father is not sufficient to carry on family responsibilities. He would further submit that family had huge financial obligations and the benefits paid at the time of retirement of father were utilized for settlement of those obligations and, therefore, family was left with no other money and they are hardly eking out their livelihood with a meager pension paid. It is further contended that even father is not taking care of them and, therefore, petitioner and her sisters continue to suffer a lot. On the question of delay, learned counsel contended that communication given to his father was not informed to the petitioner. Having waited for considerable time,

petitioner made representation and only after representation was made, copy of the proceedings was communicated to her and immediately thereafter O.A. was filed. He, therefore, submitted that there is no inordinate delay as sought to be contended.

8.1. Learned Government Pleader submitted that the facts on record would disclose that the families cannot be classified as in destitute circumstances warranting appointments on compassionate grounds. As the compassionate appointment is an exception to the normal method of recruitment, such claims have to be considered only in accordance with the scheme and the Government orders issued from time to time. It is mandatory for the persons claiming appointment to declare that there is no other earning member in the family. Petitioners cannot say that there is no other earning member in the family when mother of the petitioner in W.P.(Tr).No.993 of 2017 is working as Government Teacher and father of the petitioner took early retirement and was paid huge financial benefits. He, therefore, defends the decisions to refuse the claims of petitioners.

8.2. He, further submitted that there is inordinate delay in prosecuting the claim for compassionate appointment by the petitioner in W.P.(Tr).No.313 of 2017 and on that ground alone, the said writ petition is liable to be dismissed.

9. First appointment to public post whether it is in State/ Central service or service in the public sector undertakings has to be in accordance with the Rules/Regulations governing the services. Such recruitment should be open to all eligible candidates and selections are to be made in transparent manner

and should stand the test of Articles 14 and 16 of the Constitution of India. Certain exemptions are carved out to this constitutional norm to make recruitment and one such exception is “appointment on compassionate grounds”. In Public employment such scheme is prevalent. This scheme of compassionate appointment is in recognition of the employer’s commitment to look after the members of the family of the employee who had premature death/forced to retire from service on him/her being declared as medically unfit, much before he/she would attain the age of superannuation leaving the family members in lurch. The scheme is intended to give a kind of protection to the members of the deceased employee family on account of loss of breadwinner in the family or premature retirement of bread winner on health grounds upsetting the family financial calculations.

10. The compassionate appointments are regulated by the scheme formulated by the employer. Ordinarily such scheme envisages provision of appointment to posts classified as Class-III and Class-IV which are at the bottom of hierarchical structure of any organization. Such appointment is extended to wife or children of the deceased employee/retired on medical invalidation and appointment should be provided soon after the occurrence of event. In case of death, ordinarily a ceiling of one year is imposed to make a claim for such appointment with relaxation of one more year in case the children are minors and would attain majority within two years from the date of demise. Some employers prescribe ceiling on consideration of such claims and some employers provide financial package in lieu of such appointment.

11. Consideration of claim for compassionate appointment depends on various factors, such as, the nature of employment of former employee, the financial strength of the family, the number of dependents of Ex-employee, status of the family members and date of submission of application. The foremost factor for consideration by employer is destitute circumstances prevailing in the family requiring such employment. Thus, proximity to occurrence of event is very significant. If family has survived the calamity and sustained for reasonable time without the financial support in the form of salary of the earlier bread winner, it is presumed that the family is not in destitute circumstances requiring such appointment.

12. The scheme of compassionate appointment being an exception to the normal mode of recruitment to public service, it has to receive strict and narrow interpretation.

13. It is wrong to assume that a right is vested in the dependent of ex-employee to seek employment at any time irrespective of date of demise/retirement on medical grounds and irrespective of the financial status of the family and after long lapse of time.

14. This exception is carved out to meet a specific contingency, i.e., to provide succour in the form of employment to dependents of ex-employee who were suddenly deprived of an earning member and the death/medical invalidation would lead them to penury unless employment is provided. It is intended to tide over the sudden crisis engulfing the family. It is something akin to fire fighting mechanism. This crisis cannot be treated as continuous. If claim is belated, the very fact that family has survived for a long

time without such employment would militate against such claim. It is to be born in mind that there are millions of Indians who need succour and their families are also in dire need of employment. Highly educated people are driven to seek menial jobs out of desperation.

15. In the long line of precedent decisions this issue has come up for consideration before Supreme Court. Broad principles that emerge from the decisions of the Supreme Court in i) **Umesh Kumar Nagpal v. State of Haryana**¹; ii) **Union of India v. Bhagwan Singh**², iii) **Director of Education (Secondary) v. Pushpendra Kumar**³; iv) **Bhawani Prasad Sonkar v Union of India**⁴ v) **CCE & Customs v. Prabhat Singh**⁵; vi) **MGB Gramin Bank v. Chakrawarthy Singh**⁶; vii) **SBI v. Surya Narain Tripathi**⁷; viii) **Canara Bank v. M.Mahesh Kumar**⁸, are as under:

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.

¹ (1994) 4 SCC 138

² (1995) 6 SCC 476

³ (1998) 5 SCC 192

⁴ (2011) 4 SCC 209

⁵ (2012) 13 SCC 412

⁶ (2014) 13 SCC 583

⁷ (2014) 15 SCC 739

⁸ (2015) 7 SCC 412

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 is 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.

16. However, to appreciate the submissions made in these cases, it is appropriate to note observations and directions by Hon'ble Supreme Court in the following decisions in little more detail:

17.1. In **UMESH KUMAR NAGPAL v. STATE OF HARYANA**⁹, Supreme court delineated scope of claim for compassionate appointment. Supreme Court held :

"2. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. 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

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* [(1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878 : (1989) 4 SLR 327] has been

⁹ [(1994) 4 SCC 138]

misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. ”

(emphasis supplied)

17.2. In **GENERAL MANAGER (D&PB) AND OTHERS V. KUNTI TIWARY AND ANOTHER**¹⁰, claim for employment on compassionate grounds by son was rejected by the Bank on the ground that financial condition of the family could not be termed as to be penurious. Single Judge affirmed said decision. On appeal, Division Bench reversed. The Bank challenged the said decision of Division Bench in Supreme Court. Supreme Court held:

“9. On the basis of the criteria as recommended by the Indian Banks' Association and adopted by the appellant Bank, it could not be said that the family of the late K.N. Tiwary had been left in “penury” or “without any means of livelihood”. ***The particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand to mouth.*** The Division Bench erred in diluting this criteria of penury to one of “not very well-to-do”. (emphasis supplied)

17.3. In **PUNJAB NATIONAL BANK V. ASHWINI KUMAR TANEJA**¹¹, the above view is affirmed. In the said case, employee was working in Class-IV post. He died while in service. He was survived by wife, mother, two sons and one daughter. Request to provide employment to elder son was turned down on the ground that there was no financial hardship to the family as they received substantial amounts after the death of employee. High Court took the view that payment of retirement benefits cannot be a ground to reject such claim. Reversing the decision of the High Court, Supreme Court held as under:

¹⁰ [(2004) 7 SCC 271]

¹¹ [(2004) 7 SCC 265]

“9. One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in G.M. (D&PB) v. Kunti Tiwary [(2004)7 SCC 271]. It was categorically held that the amounts have to be taken into consideration....”

17.4. In **STATE BANK OF INDIA AND OTHERS v. SURYA NARAIN TRIPATHI**¹², employee died after working for 28 years and while working as Assistant Manager. He was survived by wife, two sons and five daughters. Three of them were not married. Plea raised was on account of large family left behind, it was hard case and employment should be provided. Supreme Court rejected the said plea and held,

“9. In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the breadearner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, **if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment.** This being the principle which has been adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent.” [emphasis supplied]

18. The principle deducible from above decisions is financial position of the family is vital factor before assessing the eligibility of a person to secure employment under the scheme. If both parents were employed, particularly in Government service and/or Government Organizations, it cannot be said death of one parent would through the family into turmoil. It is also appropriate to note that on death of an employee considerable amounts would be paid to family of deceased employee.

¹² [(2014) 15 SCC 739]

19. At this stage it is appropriate to note the Scheme notified by the Government and orders issued from time to time governing such appointments.

20. In G.O.Ms.No.687 G.A.D., dated 03.10.1977, Government notified scheme of appointment on compassionate grounds.

Clauses (1) and (2) of the scheme reads as under:

“(1) the candidates eligible for appointment under this measure shall be the spouse of the deceased Govt.servant or the dependent children of the deceased Government servant who died in harness, there being no other earning member in the family.

(2) Application for appointment from such persons shall be entertained within the period of one year from the date of occurrence of the death of Government servant. ”

21. Noticing indiscriminate entertainment of claims under the scheme, Government reiterated its resolve to restrict consideration to claims arising immediately after the death of breadwinner and to restrict such claims to most deserving persons.

21.2 It's useful to extract paragraphs 2 & 3 of Memo No.11083/Ser.A/80-1 GAD dated 01.08.1980. It reads as under:

“2. There is an unfortunate tendency to treat the cases of appointment of the dependents of Government servants who dies in harness with extra consideration and sympathy. Some departments are obtaining orders of Government in cases in which death had occurred prior to 27th October, 1973, there is delay in seeking employment, etc., and making compassionate appointments. This tendency is not correct. In the present day society getting a job in Government is vital and important for the economic welfare of any family, as it is to the family of a deceased Government servant. Indiscriminate compassionate appointments in the cases of deceased Government servants who dies in harness will deprive other equally deserving poor families in securing jobs.

3. The main objective in having the scheme is to see that the family of deceased Government servant is not thrown out on the streets, immediately after his death. The purpose would be achieved only if a family could be given an alternative bread winner almost immediately. The purpose certainly is not served if years after the death of the Government servant, for a dependent is proposed for appointment. It is because of this consideration that a dead-line has been fixed beyond which, rightly enough, no consideration should be given. If the policy of

the Government and the objective behind this policy are to be implemented with sympathy all-round, request for compassionate appointment in cases which violate the conditions stipulated in the scheme should not be entertained at all. ”

22. In G.O.Ms.No.400 dated 12.09.1996 Government reiterated that in no case relaxation of any of the conditions stipulated in the scheme should be entertained. The same is reiterated in Government Memo No.68215/Ser.A/99-2 G.A.(Ser.A) Department, dated 02.06.2000.

23. In Government Memo No.6068/Ser.A/2003-1 General Administration (Ser.A) Department dated 12.08.2003 all earlier orders are consolidated and notified. Clause I (i) mandates that there should not be another earning member. The Scheme requires a declaration by the applicant that there is no other earning member. This is discernable from clarification issued vide Memo No.618/Ser.A/78-11 GAD (Ser.A) dated 17.12.1979.

23. As seen from the facts and contentions noted above, parents of both petitioners were employed. Mother of the petitioner in W.P.(Tr).No.993 of 2017 is working as Teacher in Zilla Parishad Schools. Though learned counsel for petitioner in W.P.(Tr).No.993 of 2017 would contend that mother deserted them even before the demise of his father, no material is placed on record to substantiate such contention and to show that mother is not taking care of them. In the Certificate issued on 26.7.2010, name of the mother and three children is shown as family members of ex-employee. From the facts on record, it cannot be said that there is no other earning member in the family to enable the extension of benefit of appointment on compassionate grounds to this petitioner. Petitioner cannot claim that his family is in destitute

circumstances requiring public employment by way of special consideration.

24. Similarly, as seen from the details furnished by the respondents in the counter-affidavit filed in W.P.(Tr).No.313 of 2017, father of the petitioner is drawing pension of 7644/- plus dearness relief. It appears he took retirement from the Reserve Bank of India service on 31.10.2003 by availing Optional Early Retirement Scheme and was paid an amount of 27,00,000/- on account of retirement benefits. Though, it was sought to be contended that father is not taking care of his children, no material is brought on record to show that father was not taking care of petitioner. As seen from the impugned decision, in fact, father applied to provide employment on compassionate grounds to the petitioner and on consideration of said application, order of rejection was made. Though the claim was rejected on 23.06.2006, father as well as petitioner kept quiet till October, 2009, when fresh application was made as if the petitioner was not aware of the earlier rejection. Four years thereafter, O.A. was filed. No explanation is given in the application filed before the A.P. Administrative Tribunal on the reasons for not challenging the order dated 23.06.2006 immediately or at least in the year 2009. After four years from the date of submission of the representation on 14.10.2009, O.A. was filed. The death of mother occurred on 20.10.2005 and OA was instituted after eight years. Having regard to the principles laid down by the Supreme Court in plethora of decisions and the scheme of compassionate appointment, in the facts of this case, I am not in agreement with the view taken by the Calcutta High Court and Punjab and Haryana High Court

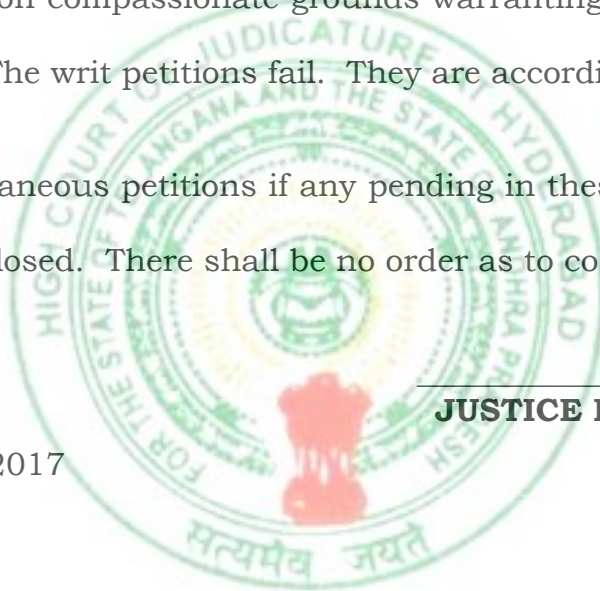
respectively, relied by learned counsel for petitioners. I am of the opinion that having regard to the fact that the death of employee occurred in October, 2005 and father was also employed and was given huge financial package on his early retirement and draws monthly pension, it cannot be said that family continues to be in destitute circumstances warranting extension of benefits of compassionate appointment.

25. I, therefore, see no error, much less patent error in the decisions rejecting the request of petitioners to provide employment on compassionate grounds warranting interference by this Court. The writ petitions fail. They are accordingly dismissed.

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

Date: 17.08.2017
kkm

JUSTICE P.NAVEEN RAO



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION (TR) NOS.313 & 993 OF 2017

Date: 17.08.2017

kkm