

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.13109 OF 2010

Date: 28.11.2017

Between:

M.Venkata Narayana s/o. late M.Dasaiah,
Aged about 27 years, Un-employee,
R/o 20-8-148, Sangadigunta, Guntur.

.....Petitioner

and

The Commissioner, Endowments Department,
Andhra Pradesh, Hyderabad, Tilak Road,
Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.13109 OF 2010

ORDER:

Heard learned counsel Sri M.Venkata Narayana for petitioner, learned Government Pleader for Endowments (AP) for respondents 1 & 2 and Smt. A.Varalaxmi, counsel holding for Smt. K.Lalitha, standing counsel for Endowments for respondent no.3.

2. Father of the petitioner, while working in the service of 3rd respondent-Satram, died on 07.08.2009. Petitioner submitted representation, dated 28.10.2009, requesting to provide appointment on compassionate grounds due to demise of breadwinner of family. The 3rd respondent forwarded the said representation to the 2nd respondent, who in turn forwarded to the 1st respondent. Respondent No.1, vide his proceedings dated 27.05.2010, rejected the request of petitioner, which is impugned in the instant writ petition.

3. Reading of the proceedings, by which claim of the petitioner was rejected, would show that claim was rejected on the ground that there is no provision in the Rules governing the employment in Charitable and Hindu Religious Institutions notified vide G.O.Ms.No.888, Revenue (Endts.IV) Department, dated 08.12.2000. In other words, the claim of petitioner for provision of appointment on compassionate grounds is not considered on merits, but rejected only on the ground that in the Service Rules, there is no provision to provide employment on compassionate grounds. This reasoning is reiterated in the counter-affidavit filed on behalf of respondents 1 and 2.

4. The reasoning assigned to reject the claim is fallacious to say the least. Ordinarily service rules do not envisage provision of employment on compassionate grounds. The service rules only prescribe various categories of posts in establishment, method of recruitment, eligibility criteria, etc., but do not incorporate provision of employment on compassionate grounds. Government formulated scheme to provide employment on compassionate grounds as a social welfare measure to come to rescue of family of employee, who died even before he/she attained the age of superannuation. The scheme is also extended, if employee becomes medically incapacitated to perform his duties. Thus, scheme of appointment on compassionate grounds is a social welfare measure and is an exception carved out to the normal method of recruitment. To consider the claim of employment under the scheme, it is not necessary that employer should follow the regular mode of recruitment. However, it is not automatic that a person can claim employment as a matter of course only on the ground that family member, who was taking care of the family needs, dies even before he attains the age of superannuation or retired on medical grounds. Thus, subject to fulfillment of other parameters of consideration, employment can be provided under the scheme even if service rules do not make a provision.

5. In order to curb back door entry into public service, Government promulgated 'Andhra Pradesh (Regulation of Appointments to Public Services in Rationalization of Staff Pattern and Pay Structure) Act, 1994' (Act 2 of 1994). The Act, 1994 prohibits provision of employment by any means other than

procedure prescribed therein. However, an exception is carved out to the general mode of recruitment by the Act and Act enables provision of employment on compassionate grounds without following procedure prescribed therein. Thus, the compassionate appointment is permissible mode of recruitment to public service.

6. It is pertinent to note that Officer at the level of Commissioner rejects the claim of petitioner only on the ground that there is no provision incorporated in the Rules to provide employment on compassionate grounds. It is further noticed that the Commissioner issued proceedings in Rc.No.A2-32111/89, dated 08.12.1989, neat copy of which is enclosed at page nos.40 and 41 of the writ petition paper book, holding that employment on compassionate grounds should be provided to the legal heirs or spouse of the deceased employee on same terms as in Government service. It is also appropriate to note, as pointed out by the learned counsel for petitioner, the Commissioner accepted the request of person seeking employment in similar circumstances and passed orders granting employment vide proceedings dated 04.07.2009, copy of which is enclosed to the writ petition paper book at page no.37. Such manner of dealing with the claim for appointment on compassionate grounds is deprecated. It amounts to arbitrary exercise of power. There was total non application of mind.

7. As per averments in the counter-affidavit filed by 3rd respondent, by the time proposal was sent on the application submitted by the petitioner, vacancy in the post of Attender in the 3rd respondent institution was available due to the death of

petitioner's father. Thus, first respondent has grossly erred in not considering the petitioner when vacancy was available and the claim of the petitioner for provision of employment was not disputed on any other parameters. It appears, the services of petitioner are utilized by the 3rd respondent as outsourcing employee since February, 2011 till date. It appears, vacancy created on account of death of father of petitioner is also available.

8. Having regard to these facts and the statutory provisions noted above, writ petition is allowed. The order impugned is set aside. The first respondent is directed to examine the proposals sent by the 3rd respondent afresh without regard to the earlier decision impugned in the writ petition and if the vacancy of Attender created on account of death of father of petitioner is still available, to the said vacancy or to any other vacancy shall consider the claim of petitioner with reference to the scheme of appointment on compassionate grounds and pass appropriate orders as expeditiously as possible, preferably within a period of six weeks from the date of copy of this order.

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

JUSTICE P.NAVEEN RAO

Date: 28.11.2017
kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.13109 OF 2010

Date: 28.11.2017

kkm