

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

**WRIT PETITION NOs.8614, 20849, 23637, 23891 of 2012; 12777,
15761, 15893, 31535, 31947, 37259 of 2013; 15475, 15756,
15916, 20141 of 2014; 4943, 7779 and 24432 of 2015**

WP No. 8614 of 2012:

Between :

Smt B. Suvarna, W/o. late B.Sudhakar,
RTC Driver, 29 years, r/o.Bannur (V),
Jupadu Bunglow (M), Kurnool district.

.... Petitioner

And

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

.... Respondents

JUDGMENT PRONOUNCED ON : 13.04.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : No
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 : No
See fair Copy of the Judgment ? :

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

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!Counsel for the petitioners : Sri. S.M.Suban, learned counsel for
petitioners in all writ petitions,

Counsel for the Respondents:

Sri A.Rama Rao, learned standing counsel for APSRTC in W.P.Nos.8614, 23891 of 2012; 31535, 15761 and 15893 of 2013; 15475, 15756, 15916, 20141 of 2014; 4943 and 24432 of 2015; Sri S.V.Ramana, learned standing counsel for APSRTC in W.P.Nos.20849 of 2012 and 7779 of 2015; Sri A.Ravi Babu, learned standing counsel for TSRTC in WP Nos.23637 of 2012; Sri P.Druga Prasad, learned standing counsel for APSRTC in W.P.Nos. 12777, 31947 and 37259 of 2013.

<Gist :

>Head Note:

? Cases referred:

(1994) 4 SCC 138 ; (1995) 6 SCC 476; (1989) 4 SCC 468; (1998) 5 SCC 192; (2009) 13 SCC 112; (2011) 4 SCC 209; (2012) 13 SCC 412; (2014) 13 SCC 583; (2014) 15 SCC 739; (2015) 7 SCC 412;

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

Heard Sri. S.M.Suban, learned counsel for petitioners in all writ petitions, Sri A.Rama Rao, learned standing counsel for APSRTC in W.P.Nos.8614, 23891 of 2012; 31535, 15761 and 15893 of 2013; 15475, 15756, 15916, 20141 of 2014; 4943 and 24432 of 2015; Sri S.V.Ramana, learned standing counsel for APSRTC in W.P.Nos.20849 of 2012 and 7779 of 2015; Sri A.Ravi Babu, learned standing counsel for TSRTC in WP Nos.23637 of 2012; Sri P.Druga Prasad, learned standing counsel for APSRTC in W.P.Nos. 12777, 31947 and 37259 of 2013.

2. In all these writ petitions, claim of petitioners for compassionate appointment under the 'Bread Winner Scheme' is rejected/not considered. Since the issue for consideration in all the writ petitions is same, these writ petitions are disposed of by this common order.

3. State of Andhra Pradesh, when it was united, formulated scheme of compassionate appointment to the dependents of deceased government employees. This scheme was later extended to State Level Public Enterprises. However, having noticed that there were financial constraints and many Public Sector Enterprises are running in losses, Government dispensed with the provision of appointment on compassionate grounds in PSUs and instead, introduced the scheme of granting ex-gratia depending on the category of deceased employee. On a review of this policy, Government reintroduced the scheme in State Public Sector Enterprises and Cooperatives subject to such Enterprises and Cooperatives are having positive net-worth, which are financially

sound and earning profits for the last five years and not dependent on Government for any kind of budgetary support.

4. The scheme of compassionate appointment was dispensed with in A.P. State Road Transport Corporation (APSRTC) in the year 1998. When the State was united, the combined APSRTC persuaded the Government to reintroduce the scheme of compassionate appointment. Though the Corporation informed the Government that Corporation is not making profits, but endeavor was being made to improve profitability; that for long time no recruitment was made; and large number of claims have accumulated and requested to grant permission to make appointments on compassionate grounds to all eligible dependents of the employees, who have died in harness. Government was informed that 1120 claims were pending w.e.f. 01.01.1998. Government issued orders in G.O.Ms.No.2, Transport, Roads & Buildings (TS.II) Department, dated 05.01.2013 permitting the Corporation to reintroduce the scheme of compassionate appointments w.e.f. 01.01.1998. Vide orders in G.O.Ms.No.15 Transport, Roads and Buildings (TR.II) Department, dated 07.02.2014, Government clarified that the scheme shall be in force for future claims also.

5. In these Corporations, the scheme is called as 'Bread Winner Scheme' (BWS). Earlier, vide Circular No PD-30/2000 dated 05-05-2000 Corporation notified comprehensive guidelines on provision of employment under the bread winner scheme.

6. With effect from 02.06.2014, State of Andhra Pradesh was bifurcated and separate State of Telangana was carved out with ten (10) districts. However, the APSRTC continued as common RTC for two States. On processing the applications received, the Corporate Office

noticed that though the Corporation intended to fill up 1120 vacancies, only 734 candidates were considered. There were representations from individuals as well as unions that the benefits of the scheme have not reached the truly deserving and requested to provide one more opportunity to consider the request for relaxations and modifications to the scheme. To consider the said request, Committee of Officers was constituted by the Vice Chairman and Managing Director. The report of the Committee was considered and comprehensive guidelines were notified in Notification No.PD-02/2015, dated 10.02.2015, which are in addition to the guidelines notified on 5-5-2000. These instructions prescribe eligibility qualifications for the respective posts and criteria for consideration of eligibility of a claim.

7. Compassionate appointment is restricted initially to the posts of Driver Grade-II, Conductor Grade-II and Shramik (Cleaner to Khalasi). Later, APSRTC extended to the post of RTC Constable also.

8. As the instructions in Notification No.PD-02/2015 dated 10.02.2015 are comprehensive and require consideration vis-à-vis the claims of petitioners, it is necessary to extract the full instructions:

***“1.Applications shall be invited afresh from the dependents of deceased employees who died from 01-01-1998 to 04-01-2013 as one time measure subject to the conditions that (i) the family should not have availed AMB and (ii) the family should not have obtained compassionate appointment to any of the family members under BWS even though such family member who received compassionate appointment is separated from the family for whatever reasons that might be. In other words, this notification is applicable to only those families of the deceased employees who have failed to register applications for compassionate appointment of one of the eligible family members during the above mentioned ban period without reference to the stipulated time of registration of 3 years from the date of death of the employee which was later enhanced to 5 years.*”**

1. Such applications shall be considered as per the comprehensive instructions issued on the subject through **Circular No.PD-**

30/2000 dated 05-05-2000 and instructions or clarifications issued thereafter from time to time.

2. Applications shall be entertained for the **post of Conductor Gr.II, Driver Gr.II and Shramiks** only subject to the candidates fulfilling the eligibility for the respective posts as amended from time to time.
3. Though application is made for the **AMB** but is not availed by the family or the sanctioned AMB is not debited from the Corporation Account, application shall be entertained now from the eligible dependent Applications must not be entertained even if the dependent come forward to repay the AMB received even with interest.
4. **Upper age limits specified for different posts and different castes as per APSRTC Employees' (Recruitment) Regulations shall be followed.** In terms of Recruitment Regulation, no candidate above the age of 45 years shall be appointed. However, because of the ban for a very long period of 15 years, several candidates under BWS might have crossed 45 years though they might have been within the prescribed upper age limits within the prescribed time of registration from the date of death of employee. This is an unusual situation wherein the BWS applicants are not at fault and hence the upper age relaxation to the extent of requirement may have to be given to consider their compassionate appointment. Hence, the Regional Managers are hereby authorized to grant upper age relaxation provided that on granting such relaxation, the age of the candidate does not cross 45 years. In cases it requires upper age relaxation of the candidate beyond 45 years till almost the date of superannuation in certain extreme cases, necessary sanction from the ED(Zone) concerned shall be obtained in individual cases.
5. **Under aged** applicants must not be considered at all as the same was objected to by the Government.
6. **Height can be relaxed to the extent of 2 cms** only in case of Conductors by the Executive Director concerned in terms of the existing circular instructions. No height relaxation in the case of Drivers is permitted under any circumstances as it is concerned with the safety of operations.
7. **Qualifications:** No relaxation is permissible in the Educational Qualifications. The qualification required for different posts are reiterated as follow:

Conductors: The existing qualification of having cleared SSC successfully will be continued.

Drivers: The present requirement of holding a Heavy Vehicle (Transport) Driving License for a period for 1½ years as on the date of interview shall be made applicable. While determining the period of holding valid Heavy Transport Vehicle Driving License, the instructions issued through Circular No.PD-10/1999 dated 28-01-1999 shall be followed.

Shramiks: The qualifications that were applicable at the relevant point of time shall be applied for recruiting Shramiks i.e., (i) ability to read and write for the deaths that occurred prior to 10.05.99 (ii) 8th Class pass for the deaths occurred between 10.05.1999 and

11.07.01 and (iii) ITI (Diesel Mechanic) for the deaths occurred on or after 12.07.2001.

8. The existing system of denying employment to the applicant in case any other member of the family is **employed elsewhere** either in APSRTC or Government or Private sector will continue. Thorough verification of the employment status of the other members of the family by the Vigilance Department as per the existing Circular instructions will be continued.
 9. **Change of applicants is permitted** on the conditions that (i) the initial applicant fulfilling the eligibility criteria should have applied for the post within five years from the date of death of the employee (ii) the new alternate applicant should have attained the eligibility criteria for the post applied for within five years from the date of death of the employee.
 10. **Change of post** applied for can also be entertained in respect of the original applicant or by the alternate applicant provided such candidate fulfils the eligibility criteria for the changed post applied for within 5 years from the date of death of the employee.
 11. It was noticed that several dependents could not be selected for not fulfilling eligibility criteria during the selections held for filling 1120 vacancies accumulated during the ban period from 01.01.1998 to 31.12.2010. In order to mitigate hardship to such families, it is decided that change of applicants shall be entertained even in case the original applicant has attended the interview and was found unsuitable for the post applied for. The condition to entertain such application is that such alternate dependent should have attained the eligibility for the same post for which the original applicant was rejected or another post permitted under BWS within 5 years from the date of death of the employee. This provision is exclusively for the candidates rejected during the selection process to fill up 1120 vacancies that arose during the period 01.01.1998 to 31.12.2010 only.
 12. Remarried spouse or his/her children are not eligible.
 13. In case spouse of the deceased employee is employed either in APSRTC or Government or Private Sector irrespective of mode of employment, the children are not eligible for either AMB or compassionate appointment as they are not wholly dependent on the income or the deceased employee.
 14. These instructions are not applicable for the cases arising on or after 05-01-2013.”
9. Salient features of this scheme are, 1) the dependent child should attain the minimum age of 18 years as on the date of submission of application; and not to consider applications of under aged persons; (2) application should be made within three years from the date of death of employee (later extended to five years); (3) candidate should possess requisite qualifications as prescribed in the recruitment rules; (4) there

should be sanctioned vacancies; (5) 2 Cms relaxation in height is extended to women for appointment to the post of Conductor Grade-II; (6) no employment was provided to children or spouse of ex-employee in the Corporation or elsewhere; (7) family has not received additional monetary benefit; (8) upper age limit can be relaxed upto 45 years by the Regional Manager and with the approval of ED(Zone) beyond 45 years; (9) change of applications and change of post is permitted; (10) posts of Driver and Shramik are not offered to women; and (11) the BWS is not extended to the dependent members of the family of contract employee.

10.1. On further review of the claims, A.P. Corporation decided to grant relaxation of eligibility qualifications prescribed to the post of Shramik from the existing educational qualification of possessing ITI (Diesel Mechanic) and instead possessing of SCC or its equivalent qualification is prescribed. As a consequence to the relaxation of the educational qualifications, fresh willingness was sought from the male candidates for such appointment. Decision was also taken to invite applications afresh from the dependents of the deceased employees, who fulfill the eligibility criteria of pass in SCC or its equivalent and whose cases arose during the banned period, as one time measure, before 30th July, 2016 (vide Circular No.PD-29/2016, dated 17.06.2016). At this stage, it is appropriate to note that the posts of Shramik and Driver are offered to male candidates only. Female dependent members are entitled to apply for the post of Conductor Grade-II only. Further relaxation granted was, dependents of the deceased employees can register their applications as and when they would acquire eligibility, but within one year from the date of acquiring the eligibility. A.P.Corporation extended the consideration of appointment on compassionate grounds to RTC Constable also vide Circular No.PD-27/2015, dated 02.11.2015.

In Circular No.39/2015, dated 25.12.2015, qualifications are prescribed for the post of RTC Constable. A.P. Corporation also granted 5 years age relaxation to female dependents for the post of Constable (Corrigendum dated 29.01.2016). These relaxations are not applicable to TSRTC.

10.2. For the post of Conductor, minimum height prescribed in the recruitment regulations is 153 Cms. This was relaxed by 2 Cms to consider the claims of the dependents of the deceased employees under 'Bread Winner Scheme'. However, having found that in spite of granting relaxation, several women candidates could not be selected because of height restriction and on consideration of the representations of the Unions, further relaxation in height is extended and the height requirement is reduced to 146 Cms, as one time measure. However, this concession is extended only to lady dependents of the deceased employees, whose death occurred on or before 4.11.2000. In other words, for a limited category of lady dependents, this relaxation is extended and the normal relaxation of 2 cms stands with reference to all other claims.

11. In Circular No.PD-19/2015, dated 03.06.2015, the scheme of appointment on compassionate grounds is extended to spouse/child of an employee declared medically unfit. Circular lays down detailed guidelines for consideration of such claims. In the cases on hand, no claim is made under this scheme and, therefore, the contents of circular are not discussed in detail.

12. Further, the erstwhile monolithic Road Transport Corporation is divided. By carving out from its parent Corporation, Telangana State Road Transport Corporation (TSRTC) is formed and now two Corporations are independently functioning in the respective States.

13. In this batch of writ petitions, petitioners are wives or children of the deceased claiming employment under the 'Bread Winner Scheme'. Their claims are rejected/not considered by the respondent Corporation for various reasons, such as, candidate does not have requisite educational qualifications prescribed; claim is time barred; dependents of the ex-employee received additional monetary benefit. In some cases, the objection raised is, their request was rejected and decision was communicated, but such decision is not under challenge.

14. The individual claims have to be examined separately in each of the cases having regard to the principle of law on the subject and the terms prescribed in the 'Bread Winner Scheme'. Suffice to note at this stage that according to the stand of the employers, none of the petitioners are eligible to secure employment under the 'Bread Winner Scheme' and, therefore, their claims are rejected/not considered. It is categorical assertion of the respondents Corporation that all eligible claims were processed and employment is provided. Only where the persons found to be not suitable, their claims are rejected. All the cases are falling into the category where the candidates' eligibility is processed and found to be not eligible to be appointed under the scheme.

15. 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 to public posts and one such exception is "appointment on compassionate grounds". 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 the lurch. The scheme is intended to give a kind of protection to the members of the deceased family on account of loss of breadwinner in the family or premature retirement of bread winner on health grounds upsetting the family financial calculations.

16. 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. Claim for such appointments should be made within the time prescribed by the employer. Some employers prescribe ceiling on consideration of such claims and some employers provide financial package in lieu of such appointment.

17. 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. However, respondents corporation made an exception and offered employment to dependents of employees who died on or after 01-01-1998.

18. Normally, certain percentage of posts in specified cadres is earmarked for such recruitment. Even if claim for compassionate appointment is valid, securing employment depends on the availability of vacancies. If there is less number of posts than the persons claiming employment on compassionate grounds under the scheme, the competent authority should adopt a transparent selection process to select more deserving candidate from among the claimants for appointment, contingent upon fulfilment of above aspects.

19. 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.

20. 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.

21. 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 mind that there are millions

