

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.15295 of 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner is filed by the petitioner seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue an order direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ (i) declaring the proceedings of the Depot Manager, Jagtial No.01/83 (8)/92-JGTL dated 11.05.2007 as illegal and arbitrary; (ii) declaring the proceedings of Dy. Chief Mechanical Engineer, Karimnagar Region as illegal and arbitrary; (iii) declare the proceedings No.PA/19(06)/2007-RM-KRMR dated 10.03.2008 as illegal and arbitrary; and (iv) consequently set aside the removal from service with all consequential benefits including the arrears of salary and (v) pass such other order or orders as the Hon'ble Court deems fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Smt. K.Udaya Sri*, learned counsel appearing for the petitioner, and of *Ms. Vladimeer Khatoon*, learned counsel representing Sri A.Ravi Babu, learned Standing Counsel appearing for the respondents. I have perused the material record.

3. The facts for consideration that emerge from the pleadings and submissions, in brief, are as follows:

The petitioner's father, late Narsaiah, worked as a Driver at Warangal Depot of the 1st respondent-Corporation, that is, Telangana State Road Transport Corporation ('the Corporation', for brevity). He died on 14.09.1984. Even according to the petitioner, as one of the sons of the deceased employee is entitled to appointment, he applied for a suitable post. He was accordingly sent to Basic Training Centre, for undergoing training for a period of three years. He joined the training course, on 03.10.1988. He was imparted training at the Centre of Lalaguda, Secunderabad. On successful completion of his training in October, 1991, he was appointed as a Mechanic, Grade-II, on 30.12.1991, and was posted to Jagtial Depot. While he was working as a

Mechanic, Grade—II, he was issued a charge sheet, dated 11.02.1994, *inter alia* stating that a complaint was received from one Gopikrishna to the effect that the petitioner suppressed the fact that his brother was already appointed as a Cleaner, on 29.12.1987, at Mancherial Depot under compassionate appointment scheme. Before issuing the said charge sheet, the Security Sub Inspector conducted a preliminary enquiry and confirmed the fact that the brother of the petitioner, by name, Ashok, was already selected and appointed as a Cleaner and working in the Mancherial Depot of the Corporation and that he was appointed under 30% employees children quota and that again the petitioner has secured employment under deceased employees' children quota and is working as Mechanic, Grade II, in Jagtial Depot and that the petitioner suppressed the fact that his brother has already secured employment under the deceased employees' children quota i.e., under the bread winner scheme. The charges formulated verbatim reads as under:

“(1) For having concealed the facts of your brother by name Sri U.Ashok, E.301260 S/o Narsaiah got employment as cleaner at Mancherial depot under employees children quota under bread winner scheme, earlier to your appointment and you have been appointed under the same quota as Mechanic w.e.f 30.12.1991 on the name of your deceased father Sri Narsaiah, E.83587, driver of Warangal-I depot, which resulted two persons employed which is misconduct vide Reg.28 (xxii) of APSRTC Employees (Conduct) Regulations, 1963.

(2) For having cheated the Corporation by getting two persons employment by both of brother on the name of your father Sri Narsaiah, E.83587, driver of Warangal-I depot by concealing the facts of the employment your brother Sri U.Ashok, E.301260, Cleaner of Mancherial depot, which resulted two persons employed which is misconduct vide Reg.28 (xxxii) of APSRTC Employees (Conduct) Regulations, 1963.”

The petitioner submitted an explanation to the charge sheet admitting that his brother is already employed, but pleading ignorance about the rules and regulations with regard to appointment under the employees' children quota. As his explanation was not convincing, a detailed enquiry was ordered and an Enquiry Officer was appointed to conduct an enquiry. He conducted a detailed enquiry in accordance with the procedure and principles of natural justice and

submitted a report holding that the charges formulated against the petitioner are proved. Thereafter, a show-cause notice, dated 24.07.1995, was issued, along with a copy of the enquiry officer's report, proposing the penalty of removal from service. The petitioner without submitting any explanation to the show-cause notice filed W.P.No.17493 of 1995. However, the said writ petition was dismissed by directing the petitioner to submit an explanation. Thereafter, the petitioner offered an explanation. Eventually, the order, dated 11.05.2007, directing removal of the petitioner from service was passed. The appeal and the review petition of the petitioner were rejected, by orders, dated 27.07.2007 and 10.03.2008, respectively passed by the appellate and reviewing authorities. Hence, the petitioner filed this writ petition for setting aside the orders of the officers of the Corporation and seeking reinstatement into service with all benefits.

4. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

He is not aware of appointment of his brother, Ashok, under deceased employees' children quota/bread winner scheme. The Corporation issued guidelines that the sons/dependants of the deceased employees are entitled for employment in the Corporation after undergoing industrial training course conducted by the Corporation. As per the said guidelines, the Corporation invited applications from the sons/dependants of the deceased employees for joining the basic training course. The petitioner applied for the said training course. His application was forwarded to the Depot Manager, Warangal. On consideration of his eligibility, he was admitted to Basic Training Centre for undergoing three years training. After successful completion of the three years training course, he was appointed as Mechanic, Grade-II, with effect from 30.12.1991. The appointment that was given after imparting training and as per the guidelines cannot be termed as an employment under deceased employees' children quota or under the bread winner scheme. After successful

completion of training only, the employment was offered to the petitioner. There is no irregularity in the appointment of the petitioner. The notification does not specify that the scheme is bread winner scheme. The petitioner's employment is not on compassionate grounds. During the training period, free boarding and lodging was provided, but no stipend was paid. Under the guidelines, employment would be provided on the suitability of the candidates at the end of the training. The trainees are required to execute five years bond that they would serve the Corporation. On failure to comply with the said condition of the Board, the cost of training would be recovered from the trainees. When a similar issue came up for consideration before this Court in various other proceedings, this Court held that selection and appointment of children of employees after imparting training is on merit basis and it will not come under the scheme of compassionate appointment. Accordingly, this Court directed the Corporation to issue appointment orders to similarly placed employees.

5. The case of the Corporation and the submissions made on its behalf, in brief, are as follows:

On the death of the petitioner's father, his brother, Ashok, secured employment as a Cleaner on compassionate grounds, i.e., under 'bread winner scheme'. The petitioner suppressed the said fact and again secured employment as Mechanic, Grade-II. This fact came to light on a preliminary enquiry made by the officer concerned of the Corporation pursuant to a complaint received from one Gopikrishna. As the petitioner secured employment suppressing the fact that his brother was already employed under the deceased employees' children quota/ bread winner scheme, a charge sheet was issued; and, after following the due procedure, the petitioner was removed from service. The appeal and the review petitions were rejected by the respective authorities of the Corporation. In the writ petition itself, the petitioner stated that on the death of his father, who was an employee of the

Corporation, he applied for providing employment as one of sons of the deceased employee is entitled for appointment. Therefore, the averment in the writ petition would make it manifest that the petitioner was appointed under deceased employees' children quota/bread winner scheme. Securing employment by suppression of material facts is a serious misconduct. Concealing the fact that his brother was already employed, the petitioner applied for training under the deceased employees' children quota and under compassionate grounds. Applications were invited from the sons of the deceased employees with a view to provide employment to one of the members of the family of the deceased employee, as per the guidelines, and to avoid hardship to the families of such deceased employees. In the notification, it was clearly mentioned that preference shall be given to the sons of deceased employees. After the completion of training at the Basic Training Centre, while providing employment, preference was given to the sons of deceased employees. As such, preference was also given to the petitioner while providing employment, as he claimed appointment as a son of the deceased employee. In his application, he concealed the fact that his brother was already appointed at Mancherial Depot under 30% deceased employees' children quota. The applicants aspiring for employment, after undergoing basic training, must give a declaration as to whether any other family member was employed or not. In this case, the petitioner not only concealed the said fact but also left unfilled, the relevant columns in the prescribed application form. There is a specific column in the pro-forma requiring the petitioner to state as to whether or not any alternative employment is offered to any of the dependants other than the applicant. The petitioner left that column unfilled though it is a fact that his brother was offered employment. The training course and employment after training is intended for children of the employees, who dies in harness. Only because the petitioner applied under the deceased employees' children quota and as preference was given under the

said quota, the petitioner secured employment. As per the rules and regulations of the Corporation, if any fact is suppressed and any document produced is found to be incorrect, the Corporation is entitled to remove such employee. In this case, after following the due procedure, the petitioner was removed from service. Instruction No.VII-6(b) of the Circular No.PD-30/ 200, dated 03.05.2000 reads as under:

6) The eligible dependant of employee died in harness be considered for appointment in APSRTC for the posts specified earlier, provided.

a) none of the children or Spouse of the employee died in harness is employed earlier in the Organization irrespective of the mode of recruitment for their appointment or elsewhere either on the basis of merit or otherwise;

b) if sons of the employees died in harness are considered for admission into Basic Training Centre for ITI Apprentice course as per eligibility”

The Corporation was justified in removing the petitioner from service in the facts and circumstances of the case.

5.1 At the hearing, learned counsel for the petitioner brought to the notice of the Court the contents of the application form of the petitioner and also the contents of the office order related to the selection and appointment of the petitioner by producing the copy of the application form submitted by the petitioner at the inception and the copy of the said office order.

6. *In reply*, learned counsel for the petitioner would submit as follows:

This Court has to consider the true facts and circumstances concerning the selection and appointment of the petitioner, but not his understanding of the matter as the appointment is governed by the rules and regulations and guidelines relevant to the employment. The petitioner's father is a former employee of the Corporation. The application to be submitted for training by the aspiring applicants comprises of three parts, 'A', 'B' and 'C'. Part 'A' relates to general applicants, part 'B' relates to applicants related to in-service

employees and Part 'C' relates to the children of the employees who died in harness. The petitioner's signature was obtained in part 'A' after filling up necessary columns in part 'A'. Therefore, the petitioner applied as a general applicant. Since he applied as a general applicant, there was no requirement to fill up the columns in Parts 'B' and 'C', which deal with the applicants, who are related to in-service employees and who are children of the deceased employees. Thus, the copy of the application produced by the Corporation clearly discloses that the petitioner has not applied under the deceased employees' children quota. For compassionate appointment, the criteria will be different and there will not be a regular selection process. In fact, the petitioner's brother was appointed without any selection process as a Cleaner. Therefore, his appointment was under the compassionate scheme and on compassionate grounds, i.e., under the bread winner scheme. Whereas, the petitioner was required to apply for Basic Training and he underwent three years industrial training imparted by the Corporation. A written test was held on 14.08.1988 before his candidature was approved for training. After he was successful in the written test, a letter, dated 05.09.1988, was issued requiring him to attend the training course of three years duration. Even the deceased employees' children are also eligible to join training course and participate in the regular selection. The Departmental Selection Committee selected the petitioner to the post of Mechanic, Grade-II and accordingly, the petitioner was provided employment. None of the documents produced by the petitioner is a fraudulent document. Since his appointment is by means of selection based on merit, it cannot be termed as compassionate appointment or appointment under bread winner scheme. The petitioner was selected on merit as is evident from the copy of the order, dated 27.12.1991, of the Divisional Manager, Karimnagar, and was duly appointed as Mechanic, Grade-II and joined the service of the Corporation, on 30.12.1991. On an anonymous complaint, the whole issue was unnecessarily raked up by issuing a charge sheet in February

1994 after the petitioner has put in considerable number of years of service. The petitioner was aged 37 years in the year 2008 when the removal order was passed and he is now aged about 43 years. In the facts and circumstances, the petitioner is entitled to the relief claimed in the writ petition.

7. I have bestowed my attention to the facts and submissions.

8. The admitted facts are as follows:

The petitioner's father, late Narsaiah, worked as a Driver at Warangal-I Depot and died, on 14.09.1984, in harness. The petitioner's brother, Ashok, was appointed as a Cleaner at Mancheria Depot of the Corporation under 30% deceased employees' children quota, i.e., under the bread winner scheme. As per the guidelines and recruitment procedure of the Corporation, the Corporation invited applications to the post of Mechanic, Grade-II. The petitioner applied for the said post. As per the recruitment procedure, his application was scrutinised and he was called for a written test, which was held on 14.08.1988. After he cleared the test, he was issued a letter, dated 05.09.1988, to join the industrial training course of a duration of three years being conducted by the Corporation. After successful completion of the training, a selection committee constituted for recruitment to the post of Mechanic, Grade-II, selected and recommended the candidature of the petitioner for appointment. Accordingly, the petitioner was appointed as Mechanic, Grade-II, in Jagtial Depot and he joined the services of the Corporation on 30.12.1991.

9. Now the short question is as to whether or not the employment of the petitioner can be considered as an employment provided under compassionate grounds or deceased employees' children quota/ bread winner scheme?

10. The application form for the post to which the petitioner had applied reflects that it is an application for training in ITI. It consists of three parts,

viz., Part A to be filled up by general applicants, Part B to be filled up by the applicants who are the children of in-service employees and Part C to be filled in by the applicants who are the children of the employees who died in harness. The petitioner's application shows that he signed at the end of Part 'A' after filling up the columns in the said part. He did not sign at the end of either Part 'B' or Part 'C' of the said application form. Thus, though the scheme is also intended for the benefit of in-service employees' children and children of the deceased employees, the said scheme is a separate scheme and not akin to compassionate appointment scheme or bread winner scheme for the following among other reasons. On scrutiny of the applications, the applicants like the petitioner are required to appear for a written test. Accordingly, the petitioner appeared for a written test, which was held on 14.08.1988. After clearing the written test, a letter dated 05.09.1988, was issued calling upon him to appear before the selection committee for a personal interview, on 20.09.1988. In the said letter, the petitioner was described as V.Ravi s/o late V.Narasaiah, Emp. No.83587, Driver, and a reference was also made to the petitioner's application, dated 20.06.1988, and the written test that was held on 14.08.1988. After verification of his certificates and his eligibility as per the requirement, he was permitted to undergo training. By proceedings, dated 10.12.1991, the Principal, Basic Training Centre, Hakimpet, stated that 40 candidates including the petitioner successfully completed the training for absorption as Mechanic, Grade-II. The petitioner was advised to report to the Regional Manager, Kakatiya Region, immediately for further appointment orders. Finally, Office order, dated 27.12.1991, was issued by the Divisional Manager, Karimnagar, stating that the petitioner and another person, by name, Srihari, completed training successfully in Motor Mechanic, Grade-II, at Basic Training Centre of the Corporation and were selected by the Selection Committee, vide proceedings, dated 05.10.1991, of the Selection Committee and therefore, they are selected for absorption by appointing them as

Mechanics, Grade-II, as they are also medically found fit for the said post. In fact, the Office Order, dated 16.01.1992, reads that the petitioner was selected by the Departmental Selection Committee to the post of Mechanic, Grade-II, and is appointed as Mechanic, Grade-II, on temporary basis under Regulation 17 of the APSRTC Employees (Recruitment) Regulation, 1966, on pay of Rs.1075/- per month in the scale of Rs.1075-35-1320-45-1860 plus all other usual allowances admissible from time to time. The subject of the said office order reads as follows:

“ ESTABLISHMENT –Direct Recruitment of Mech. Gr.II in Karimnagar
Division – Appointment orders under Regulation 17 of A.P.S.R.T.C
Employees (Recruitment) Regulations, 1966 –Issued –Reg.”

Apart from the reasons assigned supra, it is to be noted that it is not the case of the Corporation that the petitioner was appointed directly without any selection process under 30%deceased employees' children quota. His father died in the year 1984 and his application for Mechanic, Grade-II, which is a specified post was submitted, on 20.06.1988, and his selection was after a written test, training and medical test followed by interview by the Departmental Selection Committee. Therefore, it is manifest that the selection of the petitioner is on merit and under a direct recruitment scheme and not under the scheme of compassionate appointment, i.e., 30%deceased employees' children quota. Therefore, it follows that the petitioner's appointment cannot be considered as an appointment under compassionate appointment scheme or bread winner scheme.

11. In Writ Petition No.5077 of 1995, the petitioner therein, who had aspired for appointment in the same manner as the petitioner herein, that is, after undergoing basic training at the Centre of the Corporation, was denied employment on the ground that his brother was already given appointment under 30%deceased employees' children quota in terms of the Circular, dated 14.07.1988, and as the said petitioner is the second son of his father and is not

eligible for appointment under deceased employees' children quota or on compassionate grounds. Therefore, he filed the said writ petition. The Corporation resisted the said writ petition raising similar contentions as were raised in the present writ petition. This Court in the said writ petition has taken note of the fact that one K.Satyanarayana, another such employee filed W.P.No.822 of 1994 and that he was absorbed into the services of the Corporation and held that the case of the writ petitioner in W.P.No.5077 of 1995 also requires same consideration and that the said writ petitioner is entitled to similar benefit and that denial of employment to the writ petitioner in W.P.No.5077 of 1995 violates the fundamental rights under Article 14 of the Constitution of India. Accordingly, this Court allowed the said writ petition. The above writ orders amply support the case of the petitioner herein.

12. On the above analysis of the facts of the present case and the reasoned findings supra and the legal position obtaining, this Court is of the considered view that the writ petitioner is entitled to succeed and that in the facts and circumstances of the case, the impugned orders are liable to be set aside being unsustainable.

13. In the result, the Writ Petition is allowed. The impugned orders are accordingly set aside and the authorities of the Corporation are directed to reinstate the petitioner into service forthwith with continuity of service and with all attendant and consequential benefits except back wages, in view of the principle 'no work no pay'.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01.06.2017
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