

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION No.33157 of 2017

Date:10.10.2017

Between:

N.Padma,

W/o N.Ram Prasad

..... Petitioner

And:

The Commissioner, Miryalaguda
Municipality, Nalgonda District
and three others.

.....Respondents

Counsel for the petitioner: Mr. A.Narasimha Rao

Counsel for respondent Nos.2 to 4: GP for Services (TS)

The Court made the following:

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for *Certiorari* to quash order, dated 17.3.2010, in Original Application No.3003 of 2008 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal').

We have heard Mr. A.Narasimha Rao, learned counsel for the petitioner and perused the record.

The petitioner's father-in-law by name N.Gopal (hereinafter referred to as "the deceased employee"), who was a Watchman in Miryalaguda Municipality, died in harness on 30.01.2000. It is the pleaded case of the petitioner that her husband-N.Ram Prasad applied for compassionate appointment on 08.5.2001; that no action was taken by the respondents on the said application; that her husband having died on 26.5.2007, she made an application on 24.3.2008 for compassionate appointment; and that, as the respondents have not taken any action on her application either, she filed O.A.No.3003 of 2008 before the Tribunal.

The respondents resisted the prayer in the said O.A. by filing counter-affidavit, wherein it was stated that the purported application of the husband of the petitioner was not available in their file and that the petitioner being the daughter-in-law of

the deceased employee, she is not eligible for compassionate appointment. On consideration of the respective pleadings of the parties and after hearing the learned counsel representing them, the Tribunal has dismissed the said O.A. on 17.3.2010. More than 6 ½ years thereafter, the unsuccessful applicant in the said O.A. filed this Writ Petition.

In its order, the Tribunal held that during the life time of the husband of the petitioner, he could not secure compassionate appointment and that, only after his death, the petitioner made a representation to the respondents. The Tribunal further held that under G.O.Ms.No.612, General Administration Department, dated 30.10.1997, which provides for the appointments on compassionate grounds in place of employees dying in harness, the daughter-in-law of the deceased employee is not eligible for such appointment. On this premise, the Tribunal dismissed the said O.A.

A perusal of the record shows that the petitioner has earlier filed Writ Petition No.19532 of 2017 for the following substantive relief:

“.... to issue an appropriate Writ, Order or Direction more particularly one in the nature of *Mandamus* directing the respondents to appoint the petitioner on compassionate grounds in place of her father-in-law-Late N.Gopal as she is the only member of the family of late N.Gopal capable of working.”

The learned single Judge has dismissed the said Writ Petition *inter alia* on the ground that having allowed the order of the Tribunal in O.A.No.3003 of 2008 to become final, the petitioner is not entitled to file a Writ Petition for the same relief which she failed to secure in the said O.A. Writ Appeal No.1416 of 2017 filed by the petitioner against the said order was dismissed by order, dated 19.9.2017, with liberty to her to avail appropriate legal remedy. Accordingly, the present Writ Petition is filed assailing order, dated 17.3.2010, passed by the Tribunal in O.A.No.3003 of 2008.

In our opinion, the Writ Petition is liable to be thrown out on the ground of laches. Till June, 2017, the petitioner has not availed any remedy after the afore-mentioned O.A. was dismissed in the year 2010. The jurisdiction under Article-226 of the Constitution of India being discretionary in nature, a person who sleeps over his/her rights cannot be permitted to invoke such discretionary jurisdiction. Even on merits also, the law is well settled that compassionate appointment is an exception to the Right of Equality enshrined under Articles-14 and 16 of the Constitution of India. Therefore, a person who claims a right for compassionate appointment has to prove that

under a statutory provision or an executive instruction, he/she has a right to be considered for such appointment.

It is not in dispute that G.O.Ms.No.612, dated 20.10.1997, under which Compassionate Appointment Scheme has been framed, has not included daughter-in-law of the deceased employee as a person eligible for compassionate appointment under the said Scheme. Therefore, the Tribunal has rightly held that the husband of the petitioner not having been appointed, the latter has no right to claim compassionate appointment in place of her deceased father-in-law.

For both the above reasons, the Writ Petition is wholly without any merit and the same is, accordingly, dismissed.

As a sequel, WPMP.No.41249 of 2017 stands dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE K.VIJAYA LAKSHMI

10th October 2017

DR