

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.323 of 2017

Date: 17.08.2017

Between:

A.Praveen Kumar, s/o late A.Devender, Aged about 29 years,
Occu: Unemployee, R/o H.No.22-2-27, Dabeerpura,
Komatwadi, Hyderabad.

.....Applicant/Petitioner

and

Government of A.P. rep.by its Prl.Secretary to Government,
Municipal Administration & Urban Development Department,
Secretariat, Hyderabad and others.

.... Respondents

The Court made the following:



HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.323 of 2017

ORDER:

Petitioner instituted O.A.No.1430 of 2013 before Andhra Pradesh Administrative Tribunal challenging Government Order dated 10.01.2013 rejecting the claim of petitioner to provide employment on compassionate grounds, since transferred to this Court.

2. Case of petitioner is, his mother died on 11.10.2000 due to burst of gas stove while cooking food. Father of petitioner sustained serious injuries in the processing of saving her and succumbed to injuries and died on 12.10.2000. Petitioner, his younger brother and sister lost two parents at young age. They were aged 18, 17 and 15 years respectively. He could not complete Intermediate education and took private job to eke out living. On 07.04.2001 applicant submitted representation to provide employment on compassionate grounds. As there was no communication, he made further representation on 17.04.2003. As there was no proper response and was given to understand that his request was turned down on the ground that he did not submit application within one year of demise of his mother, he appealed to Minister for B.C. Welfare to provide employment. The Minister in turn addressed letter dated 26.02.2008 to Government recommending his case. Minister also recommended condoning the delay in filing application. Later he submitted representation to Hon'ble Minister for Municipal Administration and Hon'ble Chief Minister. At that stage, applicant came to know that his request

was rejected in the year 2004. Alleging inaction in considering the claim of petitioner on the ground that application was not submitted within one year of death and praying to grant consequential reliefs, petitioner filed O.A.No.128 of 2011. The said O.A. was disposed on 05.07.2012 directing Government to pass orders on the remarks sent by the Additional Commissioner, GHMC, dated 28.08.2008 and 21.05.2009. By the order impugned, Government declined to condone the delay in filing application and rejected the claim of petitioner to provide employment on compassionate grounds.

3. Heard Sri J.Sudheer learned counsel for petitioner and learned Government Pleader for Services-II (TG).

4. Mr. J.Sudheer contended that there was no application of mind while rejecting request of petitioner to provide employment on compassionate grounds. The petitioner submitted application within one year of death of his mother, but the same was not taken into consideration.

5. He further submitted that even assuming that application was not made within one year, it is a fit case where Government ought to have considered delay and provided employment. Not considering the delay is erroneous. In several cases Government considered the delay even though the claims were not genuine. It thus amounts to arbitrary exercise of power and is discriminatory. He further submitted that claim of petitioner fits into the object of the scheme of compassionate appointment and technicalities ought

not to have come in the way of providing employment to him. Petitioner lost both parents at a very young age. Thus children became orphans.

6. Learned Government Pleader would submit that case of petitioner was considered as per directions of Tribunal on the issue of condoning the delay and having regard to long delay, the Government was not inclined to condone. He, therefore, defended the Government decision. He would further submit that having regard to long delay no such claim can be accepted at this stage.

7. In the counter-affidavit filed on behalf of GHMC, deponent denied submission of representation by petitioner on 07.04.2001. It is asserted that there was tampering of inward register and for the first time, a claim was made only on 17.04.2003.

8. The issue for consideration is whether rejection of claim of petitioner to provide employment on compassionate grounds on the ground that such application was not made within one year of death of employee is valid and whether petitioner deserved special consideration?

9. Before considering the said issue, it is necessary to clear the issue of submission of application within one year. Petitioner filed O.A.No.128 of 2011 praying to declare the action of respondents rejecting the claim on the ground of delay though application was submitted within time. Tribunal noted the objection of respondents on not filing application within the time and the fact that matter was pending with Government to condone delay. Taking due note

of above facts, Tribunal directed Government to pass orders on the remarks sent by the Additional Commissioner, GHMC, on 28.08.2008 and 21.05.2009. In the counter-affidavit, GHMC asserted that no application was filed in time and there was manipulation of inward register to claim as if such representation was made in time. It is also asserted that in the subsequent representations, petitioner himself admitted of not submitting representation in time. Those assertions are not denied. Further, in his representation addressed to Minister for Municipal Administration petitioner accepted the fact of not submitting application in time and sought for condoning the delay. Thus, it cannot be said that petitioner filed application in time.

10. In view of the above factual position, the next issue for consideration is whether petitioner claim to condone the delay is valid and whether petitioner is entitled to seek employment on compassionate grounds. To appreciate this issue, what is required to be noted is mother of petitioner died on 11.10.2000 and it is 17 years by now.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. This exception is carved out to meet a specific contingency, i.e., to provide succor 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 succor and their families are also in dire need of employment. Highly educated people are driven to seek menial jobs out of desperation.

17. 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

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

serious health problem losing his job and to enable the family to tide over the sudden crisis.

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.

18. In G.O.Ms.No.687 G.A.D., dated 03.10.1977, Government notified scheme of appointment on compassionate grounds. Clause (2) of the Scheme reads as under:

“(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.”

19. Noticing indiscriminate entertainment of clauses 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 must deserving persons.

20. It's useful to extract paragraphs 2 & 3 of Memo No.11083/Ser.A/80-1 GAD dated 01.08.1980. The paragraphs read 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. ”

21. In G.O.Ms.No.400, dated 12.09.1996 Government reiterated that no case of 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. 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.

22. It is, thus, clear that application must be submitted within the time specified and no relaxation of time to submit application would be considered.

23.1. At this stage, it is expedient to consider the decision of Supreme Court in ***Eastern Coalfields Ltd.*** (*supra*), wherein some what similar issue was considered by the apex Court.

23.2. To appreciate the issue the facts in a nutshell are as under:

“Employee died on 31.12.1981 while in service. Immediately his wife made an application for provision of employment on compassionate appointment. On 07.03.1983 his daughter submitted application for provision of employment. It took some time among the family members to reach a consensus on who should be sponsored and on consent being given by other family members, claim of the husband of the daughter was considered. By orders dated 10.05.1993, the respondent was appointed under the scheme and he joined service. While so, the higher authority in the company reviewed that appointment and by his order dated 23.09.1993 cancelled the provisional appointment issued in favour of the respondent on the ground that it was belated appointment and, therefore, not entitled for such appointment. On challenge, the learned single Judge of the High Court set aside the said cancellation, which was affirmed by the Division Bench.”

23.3. On appeal by the company, Supreme Court reviewed the case law on the subject and held as under:

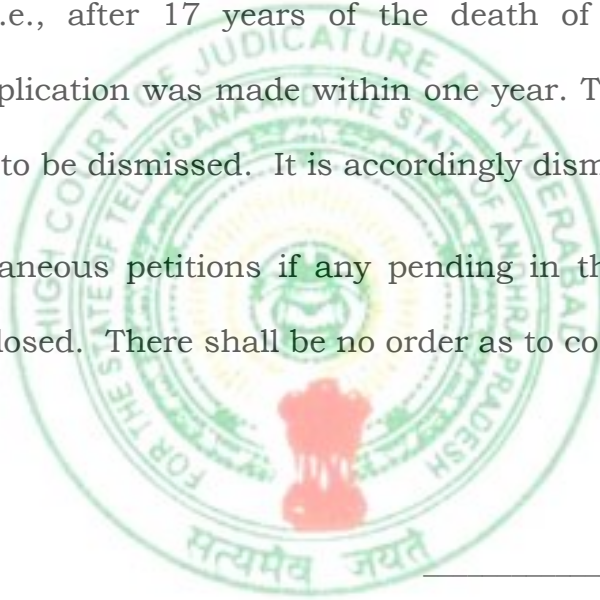
“20. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.

21. In the instant case the employee died in harness in the year 1981 and after a long squabble by the dependants of the deceased, they arrived at a settlement that the son-in-law of the second daughter who is unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personnel Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so-called dependant of the deceased employee.”

(emphasis supplied)

24. In the case on hand, the employee died in the year 2000; application was made in the year 2003 and claim was rejected on the ground that there was delay in making such claim. Having regard to Government policy and the object of the scheme of compassionate appointment propounded in the precedent decisions, the decision of the Government rejecting the request of petitioner cannot be faulted. It cannot be said the family of the deceased employee should be extended the benefit of the scheme at this stage, i.e., after 17 years of the death of employee even assuming application was made within one year. The Writ Petition (Tr) deserves to be dismissed. It is accordingly dismissed.

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: 17.08.2017

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