

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.42552 of 2016

ORDER

The petitioner is an Orphan, having lost her mother, prior to the death of her father in the year 2008. As could be seen from the marks obtained in the SSC examination, it appears that she was a meritorious candidate. She could not continue her studies in B.S.C Nursing Course due to financial and domestic problems. She is staying with her maternal uncle. Her father died when he was working as Attender in the 3rd respondent, under the control of the 2nd respondent. At the time of death of her father, the petitioner was aged about 14 years. She submitted a representation to the 2nd respondent on 7.9.2009 seeking appointment on compassionate grounds. The receipt of the said representation is acknowledged at the time of the representation on 7.9.2009 itself and hence, there cannot be any dispute with regard to the submission of representation. However, when the petitioner submitted another representation on 6.1.2015, her case was rejected on the ground that as on the date of death of her father, she was under-aged and below 16 years and hence, she was not eligible for appointment in terms of G.O.Ms.No.349, dated 12.6.1986 and G.O.Ms.165/GA (Ser-A) Department, dated 20.03.1989. Challenging the order of rejection dated 20.2.2015, the present writ petition is filed.

A counter-affidavit is filed by the 2nd respondent stating that the petitioner submitted a representation on 7.9.2009, which was after expiry of one year from the date of death of her father, which occurred on 7.9.2008. In order to consider the case of the petitioner, she should have completed at least 16 years as on the date of death of her father. Two years relaxation has been fixed for seeking employment. In view of the clarification issued by the Government on 17.12.1979, the case of the minor cannot be considered as there cannot be any contractual obligation between the Government and the petitioner, who is a minor. Since the provision for compassionate appointment is meant for helping the family and social security measure, no appointment can be made after lapse of 8 years.

Learned counsel for the petitioner submits that the petitioner has been suffering from HIV though in her representation, she did not state about her suffering.

A perusal of G.O.Ms.No.349, dated 12.6.1986, shows that temporary appointments can be made in relaxation of age, educational qualifications etc., and the regular appointment would be made only after the relevant rules, wherever necessary, are relaxed in favour of the concerned individuals. The cases of the dependants, who are 16 years of age, can be considered for appointment to posts in the Last Grade Service in relaxation of rules subject to the conditions that the service rendered prior to attaining majority shall not be counted till they attain majority.

Subsequent G.O.Ms.No.165, dated 20.3.1989 provides for relief within two years from the date of demise of the Government servant. In the clarificatory memo dated 17.12.1979, it is stated that the minor dependant of the employee, who dies in harness, should not be considered for providing employment under compassionate appointment as there cannot be any contractual obligation between the Government and employee, who is a minor, and the relief under the scheme is meant to be immediate.

Though the relevant Government orders speak as above they do not deal with cases covering all human problems.

It is an admitted case that the father of the petitioner expired on 7.9.2008, when the petitioner was aged about 14 years three months and 24 days. The mother of the petitioner pre-deceased her father. She completed SSC examination and is now under custody of her maternal uncle. She also states that she is suffering from HIV.

Thus, in the absence of any family members and in view of the undisputed fact that the petitioner was dependant of the deceased employee at the time of his death, her case should have been considered as she is living on the mercy of her maternal uncle.

In view of the peculiar circumstances of the case, this Writ Petition is allowed, setting aside the impugned order dated 20.2.2015 and directing the 2nd respondent to consider the case of the petitioner for appointment on compassionate grounds in Last

Grade Service, within a period of three months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

9th November, 2017

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