

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

WRIT PETITION NO.42027 OF 2015

O R D E R

The petitioner is the applicant in O.A.No.8062 of 2011 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity, 'the Tribunal'). She filed the said O.A. seeking a declaration that the action of the authorities in not paying her the salary attached to the post of Kamatee/Sweeper in spite of her being appointed on compassionate grounds by the District Panchayat Officer, Mahabubnagar, the competent authority, *vide* proceedings dated 09.10.2001, and still treating her as a non-regular employee, was illegal. She sought a consequential direction to the authorities to pay her the regular scale attached to the post of Kamatee/Sweeper with all consequential benefits, including periodical increments, treating her compassionate appointment under the proceedings dated 09.10.2001 as a regular one.

By common order dated 11.12.2014 passed in O.A.No.8062 of 2011 and another similar O.A., the Tribunal dismissed both cases. Aggrieved thereby, the petitioner is before this Court.

The petitioner's husband was appointed on 01.05.1982 as a full-time contingent Kamatee in the erstwhile Shadnagar Gram Panchayat. He filed O.A.No.5752 of 1997, along with others similarly situated, seeking regularization of his services. The said O.A. was disposed of by the Tribunal *vide* order dated 18.07.2003 directing the authorities to consider the claims of the petitioner's husband and others. However, while still working as a full-time contingent employee and long before the aforestated order was passed, the

petitioner's husband died on 01.04.2001. The petitioner thereupon applied to the authorities seeking compassionate appointment to a last grade service post. She was then appointed as a Kamatee by the District Panchayat Officer, Mahabubnagar, on a consolidated pay of Rs.290/- per month, under proceedings dated 09.10.2001. Shadnagar Gram Panchayat was thereafter upgraded as a municipality under G.O.Ms.No.357 dated 28.08.2011 and the petitioner's services were taken over by the newly constituted municipality. However, her grievance was that she was not extended the usual allowances, such as increments, DA, HRA, etc. This was the cause for her to file O.A.No.8062 of 2011 before the Tribunal.

Perusal of the order passed by the Tribunal, dismissing her O.A., reflects that the Tribunal was of the opinion that as the petitioner had received her order of compassionate appointment and had worked for eight long years in terms thereof on consolidated pay, she could not thereafter claim regularization of her services or placement on regular pay scale. The Tribunal further observed that as the petitioner did not question her appointment order, she was barred from questioning the terms thereof under the law of limitation.

In his counter filed before this Court, the Commissioner, Shadnagar Municipality, admitted that the petitioner's husband worked on contingent basis from 1982 till his death in 2001. He pointed out that his services were not regularized and that he died by the time O.A.No.5752 of 1997 filed by him was disposed of on 18.07.2003. According to him, the petitioner could not claim regular pay scale unless she was regularized in service.

Sri P.Raghavender Reddy, learned counsel for the petitioner, would point out that the proceedings dated 09.10.2001, whereby the

petitioner was provided compassionate appointment by the District Panchayat Officer, Mahabubnagar, demonstrated that the same was effected as the petitioner was found eligible for such appointment under G.O.Ms.No.687 dated 03.10.1977. He would further point out that the said G.O. was issued by the Government with a view to provide permanent relief to deserving bereaved members of the families of deceased Government servants, whereby the candidates eligible for appointment under this measure, being the spouse of the deceased Government servant or his dependent children, were given temporary appointment and could be considered for regular appointment without subjecting them to the normal process of recruitment under the relevant rules. He would assert that the understanding of the authorities that the regular pay scale and increments could not be extended unless regularization of service first takes place is incorrect. He placed reliance in this regard on the order dated 16.03.2011 passed by the Tribunal in O.A.No.1507 of 2011. He further brought it to the notice of this Court that pursuant to the order dated 18.07.2003 passed in O.A.No.5752 of 1997 filed by the petitioner's husband and others, the Commissioner, Shadnagar Municipality, Mahabunagar District, issued proceedings dated 04.03.2013, regularizing the services of two of the applicants therein and extending to them the time scale of 6700 – 20100/-. Significantly, one of the other applicants, Satham Ramulu, died on 22.12.2012 and reference was made by the Commissioner to this fact while observing that he could not be appointed on that ground. However, Sri P.Raghavender Reddy, learned counsel, would point out that the Commissioner, Shadnagar Municipality, Mahabubnagar District, also issued another proceedings dated 04.03.2013

appointing Satham Mallesh, son of late Satham Ramulu, as a Sweeper on compassionate grounds and extended to him the same time scale of 6700-20100/-. Learned counsel would therefore contend that there was no reason for the authorities to discriminate against the petitioner who stood on par with Satham Mallesh.

Learned Government Pleader for Services (Telangana) would contend that as the petitioner's husband died even before the order was pronounced by the Tribunal in O.A.No.5752 of 1997, unlike Satham Ramulu who died long thereafter, their cases cannot be compared.

We are not impressed with this argument.

The petitioner was provided compassionate appointment on 09.10.2001. Her appointment was in terms of G.O.Ms.No.687 dated 03.10.1977. Perusal of the said G.O. reflects that it was issued as a measure to come to the rescue of the wife/dependent children of the deceased Government servant who died in harness leaving behind no other earning member in the family. Subject to the conditions prescribed therein being satisfied, the Government ordained that such spouse or child of the deceased Government servant should be considered for regular appointment without going through the normal recruitment process. Having thus provided employment to the petitioner under the aegis of this G.O., it is inexplicable as to why the authorities now seek to deny her regular status or the regular time scale. All the more so when Satham Mallesh, son of late Satham Ramulu, was treated differently. On the one hand the petitioner, whose husband died on 01.04.2001, was provided compassionate appointment on consolidated pay basis on 09.10.2001 and is being made to languish on monthly pay with no further benefits, while on

the other, Satham Mallesh, whose father stood identically situated as the petitioner's husband and who was also covered by the same order dated 18.07.2003 passed by the Tribunal in O.A.No.5752 of 1997, was straightaway provided compassionate appointment on a time scale under the proceedings dated 04.03.2013 of the Commissioner, Shadnagar Municipality, Mahabubnagar District. The difference in the dates of death of the petitioner's husband and Satham Ramulu, in the context of the order passed by the Tribunal, do not dilute the fact that both of them were held equally entitled to the relief granted thereunder. Extending such relief to the dependent of one of these deceased employees, while denying it to the other, clearly spells out rank arbitrariness and the discrimination shown by the authorities is writ large on the face of this disparate treatment of the petitioner when compared to Satham Mallesh.

The order dated 11.12.2014 passed by the Tribunal in O.A.No.8062 of 2011 is therefore set aside. The respondent authorities are directed to notionally place the petitioner on regular time scale with effect from the date of her initial appointment on 09.10.2001 and extend to her attendant benefits notionally from the said date while fixing her pay in the time scale. As the petitioner failed to avail her remedies in this regard till 2011, she cannot ask for monetary benefits for this period. However, from October, 2011 onwards, being the month immediately after the filing of O.A.No.8062 of 2011 by the petitioner, the authorities shall not only extend notional benefits but also actual monetary benefits to the petitioner in terms of the fixation of her pay in regular time scale as aforesaid. The arrears in this regard shall be paid to the petitioner expeditiously and, in any event, not later than 12 weeks from the date of receipt of

a copy of this order. As the petitioner's appointment was under G.O.Ms.No.687 dated 03.10.1977, she shall also be treated as a regular employee for all purposes and shall be extended all consequential benefits in terms thereof.

The writ petition is accordingly allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

N.BALAYOGI, J

16th MARCH, 2017

Svv

