

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.28830 OF 2010

DATED :05.02.2018

Between :

Sampath Kumar S/o.J.Ramamurthy,
Aged about 39 yrs, R/o.H.No.3-5-465,
Vittalvadi, Narayanaguda, Hyderabad,

.. Petitioner

And

The Government of Andhra Pradesh,
Rep., by the Secretary to the Government,
Youth Advancement, Tourism & Culture (Sports),
Department, Secretariat, A.P., Hyderabad & another.

.. Respondents



This court made the following :

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ORDER :

Wife of the petitioner late K. Brahmaramba, was working as Office Subordinate in the Sports Authority of Andhra Pradesh. While in service she died on 27.09.2006. On 06.11.2006, petitioner submitted application to provide employment on compassionate grounds contending that due to sudden demise of bread winner in the family, family is left with no source of financial support to survive. By letter dated 30.08.2010, impugned in the writ petition, request of petitioner to provide employment on compassionate grounds is rejected, informing him that scheme of compassionate appointment is not applicable to Sports Authority as clarified by the Government.

2. Heard Sri D.Linga Rao, learned counsel for petitioner and Sri Pochaiah Dorishetti Standing Counsel for the respondents.

3. Learned counsel for petitioner submits that the scheme of compassionate appointment formulated by the State of Andhra Pradesh is applied in the Sports Authority of AP and appointments are made from 1987 till the year 2006. According to Rule 21 of the Sports Authority of Andhra Pradesh Service Rules, 1993 (for short '1993 Rules'), all the Rules, Regulations, orders issued by the Government and decisions made by the Government, in so far as service conditions governing the employees of State are Mutatis Mutandis are applicable to the employees of the authority, if no contrary rule is made. Thus, scheme of compassionate appointment formulated by the State is also applicable to the

sports authority and not appointing on compassionate grounds is on erroneous assumption that the scheme is not applicable; same is illegal and amounts to arbitrary exercise of power. He also placed reliance on the decision of the Hon'ble Supreme Court in ***“Director of Education (Secondary) and another Vs Pushpendra Kumar and others¹”***, to contend that selective appointment on compassionate grounds amounts to arbitrary exercise of power and illegal. The respondents having made appointments earlier cannot reject case of petitioner claiming there is no such scheme.

4. The order of rejection states Government clarified that the scheme of compassionate appointment formulated by the State is not applicable to the Sports Authority of India.

5. Learned counsel for the petitioner placed before this Court the letter dated 31.07.2009 addressed by the Sports Authority of Andhra Pradesh to the Principal Secretary to Government, Youth Advancement Tourism & Culture Department, seeking clarification on the application of scheme of compassionate appointment.

6. A reading of the letter would show that the Sports Authority assumed that scheme of compassionate appointment as formulated by the Government is applicable and accordingly appointments were made between the years 1987 and 2006. Entertaining doubt on application of scheme, the Sports Authority sought clarification from the Government. In the letter dated 31-07-2009, the Sports Authority also referred to the provision in Rule 21 (1) of the 1993 Rules, to support its stand. Thus, a reading of this letter would show that the Sports Authority was under the

¹ (1998) 5 Supreme Court Cases 192

assumption that scheme of compassionate appointment formulated by the Government is applicable. In turn, the Government clarified that the scheme formulated by the Government to provide employment on compassionate grounds to the dependants of the deceased employees of the Government is not automatically applicable to the Sports Authority.

7. In the counter affidavit, the same fact is highlighted. It appears from the reading of counter affidavit that the authority has not taken any independent decision to formulate scheme of compassionate appointment nor decision was taken to extend the scheme of compassionate appointment formulated by the Government. In other words, there is no scheme of compassionate appointment, in force in the Sports Authority. If that is so, petitioner cannot insist for provision of employment on compassionate grounds.

8. Appointment on compassionate grounds is an exception to the normal method of recruitment. Employer extends such employment to the members of the deceased family to enable such family to overcome the sudden loss of bread winner. It being an exception to the normal method of recruitment, it must be based on policy/scheme formulated by the employer. In the absence of any such scheme the dependants of deceased cannot insist to provide employment on compassionate grounds.

9. The decision relied upon by learned counsel for petitioner does not come to the aid of petitioner. The Hon'ble Supreme Court only highlighted the object of the scheme and cautioned that, ***"Exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking***

away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee". [paragraph 8]

10. As noted, in the instant case, no scheme is placed before this Court formulated by the employer.

11. Even otherwise, the wife of the petitioner died on 27.09.2006, and claim was rejected on 30.08.2010. Therefore, it cannot be said that destitute circumstances still subsist for the petitioner to claim employment on compassionate grounds at this distance of time.

12. At this stage learned counsel for the petitioner points out that petitioner earlier filed W.P.No.21510 of 2009 praying to declare that petitioner is entitled to compassionate appointment as an attender or in any other equivalent post in place of deceased wife. When said writ petition was taken up for consideration, the Court was informed that the Sports Authority has written letter on 31.07.2009 requesting the Government to clarify. Having regard to the same, the writ petition was disposed of directing the 2nd respondent-Government to consider the request of Sports Authority and clarify the position on appointment on compassionate grounds. In terms thereof, Government

communicated the decision which was informed to the petitioner by the letter dated 30.08.2010 impugned in the writ petition.

13. It is also relevant to note that this Court observed that the Sports Authority should function under the supervision of the Government and Government has power to give such direction as it deems fit, from time to time and therefore, the Sports Authority is bound to follow instructions of the Government. As noticed above, the Government has now informed the Sports Authority that scheme of compassionate appointment formulated by the Government is not applicable to Sports Authority. Thus, said decision also do not come to the aid of petitioner.

14. Having regard to the above, there is no merit in the claim of petitioner. I do not see any error in the decision communicated to petitioner informing him that scheme of compassionate appointment is not available. Merely because some appointments were made earlier under wrong assumption, cannot give a right in petitioner for continuation of such appointments, when it is specifically ascertained that scheme of compassionate appointment is not in force.

15. The writ petition is accordingly dismissed. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

5th February, 2018
Rds

P.NAVEEN RAO,J