

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.16870 OF 2010

Dated:24.01.2018

Between:

G. Ramesh, S/o. Late Rajaiah,
Aged 38 years, Occ: Unemployee,
R/o.1-15-14/2, Krishna Nagar,
Kazipet, Warangal District

.. Petitioner

And

APSRTC, rep., by its Managing
Director, Bus Bhavan, RTC X
Roads, Hyderabad and another

.. Respondents



The Court made the following:

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ORDER:

Heard.

2. Father of petitioner retired from service on medical invalidation grounds on 01.10.1993. At the time of his retirement, he was working as Driver. His father applied to provide employment to the petitioner to the post of Cleaner/Shramik under the Employees Children Quota. As there was no response, petitioner earlier instituted W.P.No.21611 of 1994. The said Writ Petition was disposed of on 14.12.1995 directing consideration of the claim of the petitioner. By proceedings dated 06.03.1998, petitioner was informed that his case would be considered as and when children of the employees are being considered. As there was no further progress on claim of petitioner, petitioner filed W.P.No.25658 of 1999. The said Writ Petition was disposed of by order dated 20.06.2002 directing consideration of case of petitioner. According to petitioner, there was no further progress. Curious to know as to whether any other person in the quota is appointed, he made an application on 06.04.2010 under the Right to Information Act, 2005 (for short, 'the Act') eliciting information. Petitioner sought to know how many vacancies were filled up in the post of Shramik/Cleaner from the year 1993 till the date of his application. Reply was furnished on 07.05.2010 giving all the details. Based on the information furnished under the Act, this Writ Petition is filed.

3. Petitioner alleges that action of the respondent - Corporation in not considering his case for the post of Shramik/Cleaner under the Employees Children quota is illegal and arbitrary.

4. Learned counsel for the petitioner submits that illegally petitioner is denied employment even though the respondent – Corporation formulated scheme to provide employment to children of employee, who retires from service on medical invalidation grounds. He further submits that on application made by father of petitioner, they were informed that name of petitioner is shown at Serial No.5 and as and when employment under the scheme is taken up, he would be considered for employment, but the same is not complied with. As per the information furnished under the RTI Act, 52 vacant posts of Shramik/Cleaner were filled up from 1993 to 06.04.2010. Out of these 52 vacancies, 16 vacancies were filled up under the quota of Employees Children as well as under the Bread Winner Scheme. He would therefore submit that illegally petitioner is ignored.

5. In support of his contention that children of employee, who retires on medical invalidation grounds, are entitled to provide employment under the Bread Winners Scheme on same terms as extended to the children of deceased employee, he placed reliance on the Supreme Court judgments in **V. Sivamurthy v. State of Andhra Pradesh and others**¹ and **Bhawani Prasad Sonkar v. Union of India (UOI) and others**².

¹ (2009) 1 SCC (LS) 335

² (2011) 4 SCC 209

6. Per contra, learned Standing Counsel for the respondent – Corporation would submit that consistently stand of the respondent – Corporation is that there were no vacancies to consider case of petitioner and there was a ban imposed on appointment of children and therefore appointment could not be taken up. The information furnished under the RTI Act gives only status as ‘filled up.’ He further submits that no child of retired employee was considered and the same was informed to him.

7. The facts, as noted above, would make it clear that father of petitioner retired on medical invalidation grounds on 01.10.1993. This Writ Petition was instituted in the year 2010. By now, the claim for employment relates back to approximately 24 years. Having regard to this fact, when specifically pointed out, learned counsel for the petitioner would submit that petitioner has been agitating his claim for appointment on compassionate grounds and he instituted two Writ Petitions. Therefore, petitioner was not negligent in prosecuting his grievance. He would further submit that vide letter dated 25.07.1994, petitioner was informed that his name was included at Serial No.5 and he would be considered appropriately. In the subsequent correspondence, petitioner was informed that there is no provision for employment and as and when provision is introduced, he would be considered. Learned counsel therefore submits that claim of petitioner cannot be thrown out on this ground.

8. On extensive review of law on the subject, in **B. Suvarna v. APSRTC and others**³ this court held as under:

³ 2017 (6) ALD 43

“17. 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. However, respondents corporation made an exception and offered employment to dependents of employees who died on or after 01-01-1998.

20. 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.

21. This exception is carved out to meet a specific contingency, i.e., to provide succour 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 mind that there are millions of Indians who need succour and their families are also in dire need of employment. Highly educated people are driven to seek low paid class-IV employment out of desperation.

22. In the long line of precedent decisions issue of compassionate appointment has come up for consideration

before Supreme Court. It is necessary and expedient to consider few of the precedent decisions.

32. The principles deducible from the above precedent decisions are:

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 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 are 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."

9. As noted above, claim for compassionate appointment relates to the year 1993. Having regard to the specific assertions of learned counsel for the petitioner on delay, it is also appropriate to note the observations of the Supreme Court in **B. Suvarna** at paragraph Nos.28, 30.1 and 30.2, which read as under:

"28. In **CCE & Customs v. Prabhat Singh**⁴, Supreme Court held,

"15. Had the High Court or the Tribunals applied their mind to the aforesaid precondition for eligibility for appointment on compassionate grounds, none of the directions issued by the High Court or the Tribunals would have been issued. Such directions could have been issued only when the party approaching the Tribunal or the High Court had established a prima facie case, by demonstrating fulfilment of the terms and conditions stipulated in the rules/regulations/policy instructions/office memoranda, relevant for such consideration. Had the aforesaid simple exercise been carried out, it would not have been necessary to examine the matter again and again.

16. In the instant case, on a simple issue of compassionate appointment, there have been repeated rounds of litigation, the first time before CAT, Allahabad Bench, then before CAT, Lucknow Bench, and thereafter, before the High Court. From the High Court the matter has now been carried to this Court. If only the prerequisite eligibility of Prabhat Singh for

⁴ (2012) 13 SCC 412

appointment on compassionate grounds had been examined, it would not have been necessary to examine the matter again, and yet again. ***The instant observations have been recorded only to demonstrate how judicial time at different levels has been wasted by entertaining a frivolous litigation. Surely, because Prabhat Singh had approached a judicial forum nine years after the death of his father, whereas, appointment on compassionate grounds is permissible only within three years of the death of the breadwinner, the matter deserved to have been rejected at the stage of first entertainment.***

17. We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed. ***Where claims for appointment on compassionate grounds exceed the available vacancies (which can be filled up by way of compassionate appointment), a selection process has to be adopted by the competent authority. The said process, necessarily has to be fair, and based on a comparative compassion gradient of eligible candidates, or on some such like criterion having a nexus to the object sought to be achieved. In other words, where there are two candidates but only one vacancy is available, there should be a clear, transparent and objective criterion to determine which of the two should be chosen. In the absence of a prescribed criteria, a fair selection process has to be followed, so that, the exercise carried out in choosing one of the two candidates against a solitary available vacancy, can be shown to be based on reason, fair play and non-arbitrariness.***

18. The very object of making provision for appointment on compassionate grounds, is to provide succour to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole breadwinner. ***Delay in seeking such a claim is an antithesis for the purpose for which compassionate appointment was conceived. Delay in raising such a claim is contradictory to the object sought to be achieved.*** The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate grounds had died on 2-3-1996, Prabhat Singh sought judicial redress, for the first time, by approaching CAT, Allahabad Bench in 2005. By such time, there was no surviving right for appointment on compassionate grounds under the OM dated 5-5-2003. As already noticed above, appointment on compassionate grounds under the OM dated 5-5-2003 is permissible within three years of the death of the breadwinner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment.

19. ***The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. 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. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.
(emphasis supplied)

30.1. In ***SBI v. Surya Narain Tripathi***⁵, father of the first respondent was working in State Bank of India from 27.12.1969 and died on 19.1.1998 while working as an Assistant Manager after completing more than 28 years of service. Respondent 1 applied for a job on compassionate basis and his application was turned down by the Bank which led to the writ petition. The writ petition was allowed by the learned Single Judge and the appeal of the Bank there from was dismissed. In the year 1979 there was a different scheme prevalent in the matter of compassionate appointment, and amongst others there was a provision for an interview under Clause 7.5 (f) of the Hand Book on Staff Matters. The Bank framed another policy in the year 1998. It is provided therein as an objective that when the Bank is satisfied that the financial condition of the family is such that it requires employment that compassionate appointment will be offered. The Bank contended that as far as the present appointment is concerned all relevant factors were considered. It was noticed that the salary of the deceased at the time of his death was 8970/-. His family was given an amount of 5,98,092/- plus 0.25 lakhs as terminal benefits. If the said amount was to be invested properly, it would get interest at least of 5000/- p.m. This was apart from the family pension of 4208/- + admissible DA. The Bank, therefore, took the view that the circumstances do not warrant the compassionate appointment for the respondent which was applied for. It was contended for the respondent that this was a hard case, and the deceased has left behind a large family. Apart from the widow, he had two sons and five daughters and three of them were unmarried. Considering this fact it was expected that the

⁵ (2014) 15 SCC 739

Bank should provide appointment to one of the members of the family when the main bread earner had passed away.

30.2. Considering the above facts and rival contentions, Supreme Court held,

“9. In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the breadearner. ***It is not an avenue for a regular employment as such.*** This is in fact an exception to the provisions under Article 16 of the Constitution. ***That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment. This being the principle which has been adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent.***

10. ***As stated earlier, the deceased left behind a large family. The fact however, remains that by now 15 years have gone since then. Besides the Bank has made appropriate financial provision on a par with similar arrangement that was noted by this Court in M.T. Latheesh [Union Bank of India v. M.T. Latheesh, (2006) 7 SCC 350 : 2006 SCC (L&S) 1646] . Therefore, it is not possible for us to say that the Court could have directed the Bank to consider compassionate appointment.*** In the circumstances, the appeal is allowed. The judgment rendered by the learned Single Judge as well as by the Division Bench are set aside. Writ Petition No. 5045 of 1999 filed by the respondent shall stand dismissed.”

(emphasis supplied)

10. On 25.07.1994, petitioner was informed that his name was shown at Serial No.5 and as and when appropriate steps are taken, he would be considered for selection. Thereafter, vide proceedings dated 14.02.1996, petitioner was informed that after submission of the representation by his father, no recruitment was made in Warangal Region and no application was considered to the post of Cleaner. Petitioner was also informed that there were excess persons than required in the category of Cleaner in Warangal Region and therefore he cannot be considered for appointment at

that stage. In the proceedings dated 06.03.1998, petitioner was further informed that none of the children of employees, who retired on superannuation or retired voluntarily on medical invalidation grounds, were considered in the post of Cleaner/ Shramik, but the children of the deceased employees were only considered. Petitioner was further informed that he would be considered while providing employment to the children of employee retired on medical grounds. It is also appropriate to note that proceedings dated 06.03.1998 were challenged in W.P.No.25658 of 1999.

11. A reading of the order of this Court dated 20.08.2002 disposing of the Writ Petition would show that in the year 1997, a notification was issued seeking applications for appointment for different posts. It appears petitioner alleged that even though a notification was issued for recruitment, his claim was not considered as earlier assured. In the counter affidavit, it was stated that as and when occasion arises, petitioner would be considered. Therefore, this Court observed that in view of the statement made by the respondent – Corporation, no further orders are required except directing the respondents to consider the case of the petitioner as and when occasion arises. Thereafter, petitioner kept quiet for about eight years and then moved an application under the RTI Act as noted above. In response to the said application, petitioner was only informed about availability of vacancies and filling up of those vacancies. This information furnished on 07.05.2010 does not give cause of action to the petitioner to resurrect the grievance regarding appointment on compassionate grounds, even taking disposal of the Writ Petition in

2002 as the basis, after eight years. Thus, in the facts of this case, as held by the Supreme Court in the decisions referred to above, it cannot be said that the family is still in destitute circumstances to provide employment on compassionate grounds to grant the relief at this distance of time. Having regard to the same, the Writ Petition needs no consideration and the same is liable to be dismissed.

12. The Writ Petition is accordingly dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, filed in this Writ Petition shall stand closed.

Date:24.01.2018

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P. NAVEEN RAO, J



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