

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT APPEAL NO.700 OF 2018

Between:

The State of Telangana, rep. by its
Principal Secretary to Government,
General Administration Department and others ... Appellants

and

N.Suresh Chandra ... Respondent

Date of Judgment Pronouncement: 29th NOVEMBER, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

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1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
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> Head Note:

! Counsel for appellants : Government Pleader for Services-II,
State of Telangana

^ Counsel for respondent : Sri D.Linga Rao

? CASES REFERRED:

1. W.P.No.16242 of 2013 decided on 20.06.2013
2. (1987) 2 SCC 179
3. (2014) 8 SCC 894
4. (1985) 1 SCC 429
5. (2005) 10 SCC 289
6. (2004) 7 SCC 265
7. (2006) 5 SCC 766
8. (2008) 11 SCC 384
9. (2014) 13 SCC 583

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.700 OF 2018

J U D G M E N T
(Per Sri Justice Sanjay Kumar)

The State of Telangana and the District Collectors of Adilabad, Karimnagar and Kumaram Bheem Asifabad Districts are in appeal aggrieved by the order dated 30.08.2017 passed by a learned Judge of this Court allowing W.P.No.27465 of 2017 and directing them to reconsider the application of the sole respondent, the writ petitioner, for appointment on compassionate grounds.

Heard the learned Government Pleader for Services-II, State of Telangana, for the appellants, and Sri D.Linga Rao, learned counsel for the respondent.

The mother of the respondent died in harness on 19.01.2016 while working as a Telugu Pandit Grade-II at the Government Upper Primary School at Easgaon Village in Kagaznagar Mandal of the erstwhile Adilabad District. He thereupon submitted application dated 14.03.2016 seeking appointment on compassionate grounds. The District Collector, Adilabad, addressed letter dated 28.07.2016 to the District Collector, Karimnagar, stating that as the respondent was not a local candidate of Adilabad District, his case had to be considered in Karimnagar District where he was a local candidate, in terms of the Memo dated 07.12.2007 issued by the General Administration (Ser.A) Department of the Government. Thereupon, the District Collector, Karimnagar, *vide* letter dated 29.05.2017, returned the proposal of the District Collector, Adilabad, for compassionate appointment of the respondent on the ground that his

father had retired from service as a Prohibition and Excise Sub-Inspector and was drawing service pension. The District Collector, Karimnagar, concluded that in terms of the Circular Memo dated 24.03.2012, pension would have to be treated as an 'earning' and a pensioner had to be treated as an 'earning member' and therefore, the respondent could not avail the benefit of compassionate appointment as his other parent was in receipt of service pension.

It is the case of the respondent that his parents were estranged and were living separately. During her lifetime, his mother resided with him in Adilabad District while his father stayed at Karimnagar. He therefore contended that the service pension of his father could not be taken as a ground to disentitle him from seeking appointment on compassionate grounds upon the death of his mother. He further contended that in any event, the pension drawn by his father was wholly inadequate and there was no rationale in denying him compassionate appointment on that ground. He pointed out that the scheme of compassionate appointment was a welfare measure and it ought not to be implemented in a technical manner. It is on these grounds that he filed the subject writ petition assailing the Circular Memo dated 24.03.2012 and the consequential rejection of his case by the District Collector, Karimnagar, *vide* letter dated 29.05.2017.

No counter-affidavit was filed in the writ petition.

By the order under appeal, the learned Judge took note of the earlier judgment of this Court in THE COMMISSIONER OF POLICE, HYDERABAD CITY, HYDERABAD V/ s. K.PADMAJA¹, which held to the effect that sanction of family pension to the widow of the employee

¹ W.P.No.16242 of 2013 decided on 20.06.2013

was not a ground to reject the case of the dependent married daughter for compassionate appointment, and in the light thereof, the learned Judge allowed the writ petition and directed the authorities to reconsider the respondent's application for compassionate appointment.

The issue that arises for consideration in this appeal is whether pension can be treated as an 'earning' and a pensioner can be treated as an 'earning member', whereby his dependent child can be denied appointment on compassionate grounds.

G.O.Ms.No.1005, Employment and Social Welfare Department, dated 27.12.1974, was issued by the erstwhile Government of Andhra Pradesh relaxing the employment exchange sponsorship procedure while appointing the spouse or dependent children of a deceased Government servant who died in harness, as a social security measure. When such appointees on compassionate grounds represented to the Government that their appointments should be treated as regular appointments straightaway without subjecting them to the process of selection, the erstwhile Government of Andhra Pradesh issued G.O.Ms.No.687, General Administration (Ser.A) Department, dated 03.10.1977, in supersession of the orders issued in G.O.Ms.No.1005 dated 27.12.1974. As per this later G.O., candidates eligible for appointment on compassionate grounds should be either the spouse or the dependent children of the deceased Government servant who died in harness, there being no other earning member in the family. The procedure to be followed while making such an appointment was also prescribed therein. Memo dated 17.12.1979 was issued by the Government clarifying certain aspects in relation to such compassionate appointments. It is relevant to note that one of the clarifications sought was whether the G.O.Ms.No.687 dated 30.10.1977

would be applicable to pensioners and the answer was that pensioners would not at all come within its purview.

This being the situation, Memo dated 24.03.2012 was issued by the erstwhile Government of Andhra Pradesh stating to the effect that a clarification had been sought as to whether dependent children of a Government employee who had expired while in service could be considered for appointment on compassionate grounds when the other parent of the applicant was in receipt of service pension. Observing that the object of providing compassionate appointment was to mitigate the hardship caused to the family of the deceased and it is granted only when the financial condition of the family is in dire straits, the Secretary to the Government, General Administration Department, Government of Andhra Pradesh, stated that when the other parent was in receipt of service pension and family pension, the dependent child would not be entitled to seek compassionate appointment as there would be no financial distress. He further observed that pension was an allowance or stipend or deferred salary paid to the Government employee in consideration of his past service and he can therefore be regarded as an earning member of the family. He concluded by stating that the family which has a person drawing pension cannot not be said to be without an earning member and consequently, the scheme of compassionate appointment cannot be invoked by the dependent in such a case. The concluding paragraphs of the Memo are apposite of extraction and they read as under:

‘3. The matter has been examined carefully, it is observed that the object of providing compassionate appointment to the dependents of a Government servant dying in harness is to mitigate hardship caused to the family of the deceased on account of his unexpected death and it is granted only when the financial condition of the family is in penury. Where one of the parents of

the applicant is in service or in receipt of service pension and family pension, and lumpsum retiral benefits, the dependent child is not entitled to seek compassionate appointment, since there is no financial distress. It is further observed that pension is an allowance or stipend or deferred salary paid to a Government employee in consideration of his past service. The pensioner, therefore, can be regarded as an earning member of the family. The family which has a person drawing pension cannot be said to be without an earning member and consequently the scheme of compassionate appointment cannot be invoked to the depended in such case.

4. The Government after careful examination, hereby clarify to all the appointing authorities that pension can be treated as 'earning' and pensioner can be treated as an 'earning member' and also that the depended children of a Government employee, who died while in service, cannot be considered for appointment under the scheme of compassionate appointment, when the other parent, who had retired from service, and is in receipt of service pension.'

Be it noted that G.O.Ms.No.687 dated 03.10.1977 merely postulated that there should be no other 'earning member' in the family in the event the widow or dependent child of the deceased Government servant sought appointment on compassionate grounds. As to whether the Government could have enlarged the scope of 'earning member' by way of a Memo when the G.O. itself was silent on this aspect is one aspect of the matter. Further, even if the rider now sought to be attached by way of this Memo is considered on its own merits, it appears to be wholly illogical and bereft of rationale. When a Government employee dies in harness, his widow is bound to get family pension and lumpsum death benefits. Even so, either the widow or her dependent children, if eligible, would be offered appointment on compassionate grounds. In such cases, the family pension or the lumpsum death benefits are not treated as a factor disentitling the dependents of the deceased Government employee from seeking employment on compassionate grounds. Further, receipt of

family pension and terminal benefits cannot be a valid ground for denying compassionate appointment as accepting the same as a plausible reason to do so would mean that no dependent of a Government employee can seek such appointment as the monthly family pension would invariably be more than the declared poverty line which would be taken as a benchmark for assessing the financial condition of the family in distress. That being so, the pension earned by the other parent, which stands practically on par with the family pension earned by the widow, cannot be treated differently. That apart, the essential question that would arise is as to whether pension can be treated as an 'earning' and a pensioner can be treated as an 'earning member'.

In STATE OF U.P. V/ s. BRAHM DATT SHARMA², the Supreme Court made it clear that pension is not a bounty but a right earned by the Government servant on the basis of the length of service rendered by him. The same principle was reiterated in D.D.TEWARI (DEAD) THROUGH LRs V/ s. UTTAR HARYANA BIJLI VITRAN NIGAM LTD.³.

Earlier, in STATE OF KERALA V/ s. M.PADMANABHAN NAIR⁴, the Supreme Court held that pension was no longer a bounty to be distributed by the Government to its employees on retirement but had become a valuable right and property in their hands.

The word 'earn' is defined in The Concise Oxford English Dictionary as follows:

'1 (also *absol.*) a (of a person) obtain (income) in the form of money in return for labour or services (*earn a weekly wage; happy to be earning at last*). b (of capital invested) bring in as interest or profit. 2 a deserve; be entitled to; obtain as the reward for hard work or merit (*have earned a holiday; earned our*

² (1987) 2 SCC 179

³ (2014) 8 SCC 894

⁴ (1985) 1 SCC 429

admiration; earn one's keep). b incur (a reproach, reputation, etc.). [Old English *earnian* from West Germanic, related to Germanic roots associated with reaping]'

'Earned income' is defined thus:

'income derived from wages etc. (opp. UNEARNED INCOME).'

'Earnings' are defined as follows:

'money earned.'

P.Ramanatha Aiyar's Law Lexicon defines 'earnings' to mean that which is earned; reward; that which is gained or merited by labour; the reward for personal services, whether in money or other goods; the price of services performed; gains derived from service or labour without the aid of capital.

It is therefore clear that the connotation of 'earning' is something received in return for the labour expended or service rendered. It is *in praesenti*, i.e., in the present. To earn would mean that the person renders service *in praesenti* to get some returns *in praesenti*. A payment made, not as a bounty, but as a right or privilege for the services already rendered in the past cannot therefore be taken to be an 'earning'. Therefore, by no stretch of imagination can a pensioner be treated as an 'earning member'. A pension would necessarily have to be treated as a right or privilege inuring to his benefit on the strength of the past service rendered by him.

The same is the import of the Division Bench judgment of this Court in SMT.K.PADMAJA¹. That was a case where the father of the applicant died in service as a Head Constable, leaving behind his widow and three married daughters. The applicant was the eldest of the three daughters but was dependent upon her parents as she was separated

from her husband. One of the grounds urged in support of the argument that she was disentitled to appointment on compassionate grounds was that the widow of the deceased employee, the mother of the applicant, was getting family pension and therefore, the daughter would not be entitled to compassionate appointment as there was an 'earning member' in the family. The Division Bench however rejected this argument stating that merely because pension was being paid to the wife of the deceased, the same was not a ground to deprive the applicant of the benefit of compassionate appointment.

To the same effect were the observations of the Supreme Court in *GOVIND PRAKASH VERMA V/ s. LIFE INSURANCE CORPORATION OF INDIA*⁵, wherein it was held that the scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee, which they get on the death of the employee, and therefore, compassionate appointment cannot be refused on the ground that the family received such benefit.

Though the learned Government Pleader relied upon the observations made in *PUNJAB NATIONAL BANK V/ s. ASHWINI KUMAR TANEJA*⁶, we find that these observations were made in the context of the specific conditions of the scheme for employment of dependents of employees who died while in service of the bank, floated by the Punjab National Bank. These observations therefore do not have general import and application.

In *STATE OF JAMMU & KASHMIR V/ s. SAJAD AHMED MIR*⁷, the Supreme Court observed as under:

⁵ (2005) 10 SCC 289

⁶ (2004) 7 SCC 265

⁷ (2006) 5 SCC 766

'11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.'

In MUMTAZ YUNUS MULANI (SMT) V/s. STATE OF MAHARASHTRA⁸, having considered the views expressed in ASHWINI KUMAR TANEJA⁶, GOVIND PRAKASH VERMA⁵ and also SAJAD AHMED MIR⁷, the Supreme Court observed that the decision in GOVIND PRAKASH VERMA⁵ was rendered without taking into account the earlier decision in ASHWINI KUMAR TANEJA⁶ but thereafter, concluded with the views expressed in SAJAD AHMED MIR⁷.

More recently, in MGB GRAMIN BANK V/s. CHAKRAWARTI SINGH⁹, the Supreme Court observed that appointment on compassionate grounds was an ameliorating relief and should not be taken as opening an alternative mode of recruitment to public employment. It was further observed that an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such an appointment would stand obliterated. The

⁸ (2008) 11 SCC 384

⁹ (2014) 13 SCC 583

further observations made in para 13 of this judgment are also worthy of reproduction and they read as under:

‘The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme....’

As rightly pointed out by Sri D.Linga Rao, learned counsel, appointment on compassionate grounds attained statutory validation under Section 4(2)(a) of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994. Section 4 relates to regulation of recruitment and sub-section (1) thereof states that no recruitment in any public service to any post in any class, category or grade should be made except from the panel of candidates selected and recommended for appointment by the Public Service Commission, College Service Commission or Selection Committee constituted for the purpose, or from amongst the candidates having the requisite qualification and sponsored by the Employment Exchange in other cases. Sub-section (2)(a) however states that nothing in sub-section (1) would apply to compassionate appointments made in favour of a son or daughter or spouse of any married person or a brother or a sister of any unmarried person employed in public service, who dies in harness or who retires from service on medical grounds. Therefore, appointment on compassionate grounds, which has been granted statutory recognition, must necessarily be processed on a rational and contextual basis.

In the case on hand, details were sought by the Court as to what exactly was the pension benefit granted to the family of the respondent.

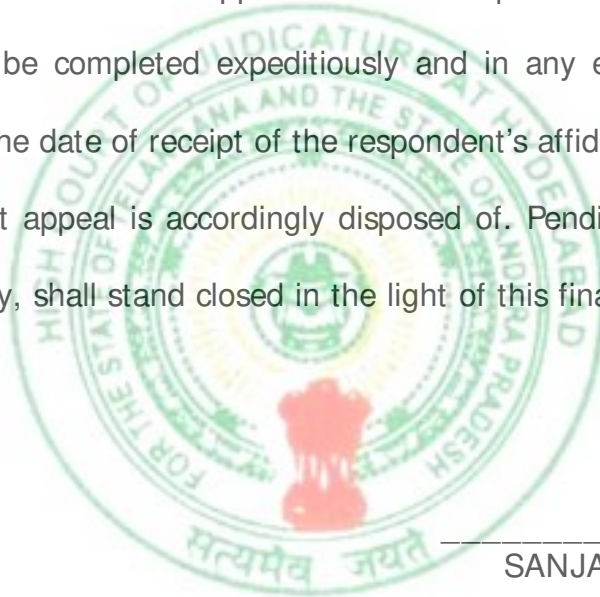
Be it noted that the family pension payable in relation to his mother's death is not being held against the respondent and it is only the father's service pension which is stated to be a stumbling block. The basic pension payable to the father stands at Rs.21,015/- while the net payable seems to differ from month to month, owing to deductions. The Pay Report for the month of June, 2018, placed before this Court in relation to this service pension demonstrates that he was paid Rs.27,059/-. It is also brought on record that the family of the respondent comprises not only his pensioner father but also another son and daughter. It is also brought out that the respondent is himself married and has a family of his own. The Economical Hardship Certificate dated 20.06.2016 issued by the Revenue Divisional Officer, Karimnagar, bears testimony to the fact that the family of the respondent is facing economical hardship after the death of his mother as there is no other earning member in the family. Therefore, the service pension drawn by the father cannot be said to be adequate by any stretch of imagination, thereby disentitling the respondent from seeking appointment on compassionate grounds.

As already pointed out *supra*, merely because a sizeable amount is paid to the widow towards the terminal benefits of the deceased employee, it was never considered sufficient to deny compassionate appointment to the dependent widow or one of the children of such employee. The same logic would be applicable to the case on hand even if the service pension of the father of the respondent is taken into account.

The rejection of the claim of the respondent for compassionate appointment therefore has no legs to stand upon and the order of the learned Judge holding to this effect and directing reconsideration of his claim brooks no interference.

Be it noted that the delay in considering his case for compassionate appointment on merits is wholly attributable to the authorities themselves. However, as the mother of the respondent expired on 19.01.2016 and more than two and half years have elapsed, the financial condition of the respondent and his family would again have to be examined afresh. The respondent shall therefore file an affidavit detailing the financial condition of the family, whereby he can still assert a right to appointment on compassionate grounds owing to financial penury. The authorities shall verify such claim and if he is otherwise found to be eligible, they shall extend to him the benefit of appointment on compassionate grounds. This exercise shall be completed expeditiously and in any event, within two months from the date of receipt of the respondent's affidavit.

The writ appeal is accordingly disposed of. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

M.GANGA RAO,J

29th NOVEMBER, 2018

L/R copy to be marked - Yes
B/o PGS