

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.31633 of 2018

Date : 17.09.2018

Between:

B.Suguna, D/o. B.Ganapathi, Aged 28 years,
Occu: Un-employee, R/o. H.No.346, Jaipur
Colony, Nagole, Ranga Reddy district.

....Petitioner

And

State of Telangana, rep.by its Prl.Secretary,
Municipal Administration & Urban Development
Department, Secretariat, Hyderabad and another.

.... Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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ORDER:

Facts as averred in the affidavit filed in support of the writ petition would disclose that father of the petitioner while in service in the office of the 2nd Respondent died in the year 2001. After his demise, brother of the petitioner B.Paramesh was provided employment on compassionate grounds in the 2nd Respondent's office. Brother of the petitioner, B.Paramesh died on 08.05.2006 due to ill health. Petitioner claims she and her mother were dependent on him for their living. Petitioner claims to have made an application dated 19.07.2006 to the 2nd Respondent to provide her employment on compassionate grounds. She submitted further application on 20.01.2017. Petitioner was served with proceedings dated 29.12.2017 rejecting said application on the ground that the same was made after a lapse of 10 years. Challenging the same this writ petition is filed.

2. Learned Counsel for petitioner sought to contend the soon after the death of her brother, petitioner made application, the same was acknowledged by the respondent corporation but they delayed to consider her claim. She was making all efforts to secure employment. All along she was given assurance to provide employment. With fond hope she waited. Thus rejecting the claim on the ground of delay was wholly illegal.

3. Petitioner is seeking appointment on compassionate grounds claiming that her brother died on 08.05.2006, while in service.

4. First appointment to public post whether it is in State/ Central service or service in the public-sector undertakings should be in accordance with the Rules/Regulations governing the services. Such recruitment should be open to all eligible candidates and selections are to be made in transparent manner and should stand the test of Articles 14 and 16 of the Constitution of India. Certain exemptions are carved out to this constitutional norm to make recruitment and one such exception is “appointment on compassionate grounds”. In Public employment such scheme is prevalent. This scheme of compassionate appointment is in recognition of the employer’s commitment to look after the members of the family of the employee who had premature death/ forced to retire from service on him/her being declared as medically unfit, much before he/she would attain the age of superannuation leaving the family members in lurch. The scheme is intended to give a kind of protection to the members of the deceased employee family due to loss of breadwinner in the family upsetting the family financial calculations.

5. The very objective to provide employment on compassionate grounds is to alleviate suffering of dependants of the deceased who was the only breadwinner of the family and on account of his death family should not suffer financially. The long line of precedents on the scope of claim of compassionate appointment highlight this principle. It is not as a matter of course employment can be provided. It is to be extended only in deserving cases. It is not a reserve right to claim employment whenever a person seek.

6. Policy of the Government as reflected from various orders issued from time to time also highlights the objective behind envisaging this scheme. It is useful to extract paragraphs-2 & 3 of Memo No.11083/Ser.A/80-1 GAD dated 01.08.1980. The paragraphs – 2 and 3 read as under:

“2. There is an unfortunate tendency to treat the cases of appointment of the dependents of Government servants who dies in harness with extra consideration and sympathy. Some departments are obtaining orders of Government in cases in which death had occurred prior to 27th October, 1973, there is delay in seeking employment, etc., and making compassionate appointments. This tendency is not correct. In the present day society getting a job in Government is vital and important for the economic welfare of any family, as it is to the family of a deceased Government servant. Indiscriminate compassionate appointments in the cases of deceased Government servants who dies in harness will deprive other equally deserving poor families in securing jobs.

3. The main objective in having the scheme is to see that the family of deceased Government servant is not thrown out on the streets, immediately after his death. The purpose would be achieved only if a family could be given an alternative bread winner almost immediately. The purpose certainly is not served if years after the death of the Government servant, for a dependent is proposed for appointment. It is because of this consideration that a dead-line has been fixed beyond which, rightly enough, no consideration should be given. If the policy of the Government and the objective behind this policy are to be implemented with sympathy all-round, request for compassionate appointment in cases which violate the conditions stipulated in the scheme should not be entertained at all.”

(emphasis supplied)

7. In W.P.No.24919 of 2018 this court reviewed law governing appointment on compassionate grounds and delineated following principles in paragraph-12 of the judgment :

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 is 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.

8. In paragraph-7 of the affidavit it is averred that petitioner was directed to produce legal heir certificate. It appears legal heir certificate was furnished on 31.10.2006. This certificate contains

only the name of mother of deceased Smt B.Susheela. The affidavit is silent as to what petitioner was doing for 10 years and made a further application only on 20.01.2017. Further, according to petitioner her brother died on 18.05.2006. As per *bona fide* certificate issued by School, it is seen that her age on that date was less than 16 years. The details furnished by late B.Paramesh while opening the service book in the year 2002 also disclose the age as 12 years, matching with her age claim. On death of bread winner, dependant's family member should apply for employment within one year. If dependant is a minor, one year relaxation is granted to apply and to consider. It is seen from the particulars furnished by petitioner, she was falling short of two years on the day of death of her brother.

9. As seen from the family member certificate, petitioner's name is not reflected. It is not known whether she is still living with her mother. Mother is not a party to this writ petition. No material is brought on record to show that she has no independent means, that she was a dependant on earnings of her brother, that she continues to share the limited amounts paid on death of her brother and that family is still in destitute circumstances.

10. Even assuming that petitioner filed application in the year 2006, fact remains no employment was provided immediately. Petitioner did not seek further legal remedies alleging delay in providing employment. Thus, by now it is more than 12 years. The claim made by petitioner is not valid. No such appointment can be provided after 12 years of death of deceased employee.

11. The decision of Supreme Court in **Eastern Coalfields Ltd. v. Anil Badyakar**¹ applies to the facts of this case. Supreme Court held,

“20. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.

21. In the instant case the employee died in harness in the year 1981 and after a long squabble by the dependants of the deceased, they arrived at a settlement that the son-in-law of the second daughter who is unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personnel Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so-called dependant of the deceased employee.”

(emphasis supplied)

12. Having regard to the facts of this case, I do not see any error in the decision of Government rejecting the right of petitioner to provide employment on compassionate grounds. Writ Petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 17.09.2018
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¹ (2009) 13 SCC 112

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