

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

WRIT PETITION NO.38951 OF 2018

ORDER
(Per Sri Justice Sanjay Kumar)

The petitioner is the unsuccessful applicant in O.A.No.3145 of 2017 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*for brevity*, 'the Tribunal'), which was dismissed *vide* order dated 20.11.2017. Her prayer therein was to declare the order dated 12.10.2015 issued by the Director of Public Health and Family Welfare, Andhra Pradesh, and the order dated 07.01.2017 of the District Medical and Health Officer, Srikakulam District, rejecting her request for appointment on compassionate grounds as illegal. She sought a further declaration that she should be appointed on compassionate grounds on par with J.S.S.S.Shankar, by relaxing the relevant rule. By the order dated 20.11.2017, presently under challenge, the Tribunal opined that in so far as J.S.S.S.Shankar was concerned, he had obtained relaxation of the relevant rule from the Government *vide* G.O.Rt.No.850, Health, Medical and Family Welfare (H) Department, dated 26.06.2010, whereas the applicant had no such relaxation granted in her favour and therefore, she was not entitled to compassionate appointment, as she was only 12 years at the time of her mother's death. In the result, the Tribunal dismissed the O.A.

Heard Sri A.V.Sivaiah, learned counsel for the petitioner, and the learned Government Pleader for Services, State of Andhra Pradesh, appearing for the respondents.

The petitioner's mother died in harness as a Multi-Purpose Health Assistant at Kavali Sub-Centre of Santakaviti Primary Health Centre, Ponduru

Mandal, Srikakulam District, on 13.07.2007. At that point of time, the petitioner was 12 years of age. As there was no other person to take care of her, she claims to have depended upon her maternal grandmother, who also expired recently on 19.06.2018. The petitioner passed Intermediate Course in 2017 and is stated to be presently prosecuting B.Sc. Degree Course. Upon attaining the age of 18 years, she applied on 17.09.2014 for appointment on compassionate grounds under the provisions of G.O.Ms.No.165, General Administration (Ser.A) Department, dated 20.03.1989. She claims to have made an application even earlier within one year of her mother's death, though she was under-aged at that point of time. According to her, the District Medical and Health Officer, Srikakulam District, recommended her case for appointment but despite the same, the Commissioner of Health and Family Welfare, presently the Director of Public Health and Family Welfare, Andhra Pradesh, rejected her application on the ground that the petitioner was a minor at the time her mother died and the Government had issued orders on 28.01.1999 not to entertain any proposals for relaxation of the age of candidates in connection with appointment on compassionate grounds. The petitioner thereupon made representation dated 22.11.2016 to the District Medical and Health Officer, Srikakulam District, requesting extension of the same benefit that was granted to J.S.S.S.Shankar, by relaxation of the relevant rule. However, by the order dated 07.01.2017, the District Medical and Health Officer, Srikakulam District, stated that her file had been circulated to the District Collectorate, Srikakulam, and it was concluded that her claim was not tenable as per existing rules. She was therefore informed that her request for compassionate appointment could not be considered as per the existing rules. It is in these circumstances that the petitioner approached the Tribunal but met with failure.

Perusal of G.O.Ms.No.165 dated 20.03.1989 demonstrates that the Government was conscious of the difficulties that would be faced by the family of a deceased employee when only a minor dependent was left behind to seek appointment on compassionate grounds. Reference was made therein to the earlier G.O.Ms.No.349 dated 12.06.1984, which provided for compassionate appointment of a dependent aged 16 years in the Last Grade Service by duly relaxing the rules, subject to the condition that the service rendered prior to attaining majority would not be counted. However, the Government opined that persons below the age of 18 years should not be considered even for appointment on compassionate grounds and accordingly directed that the dependent of a Government employee, who died in harness or retired on medical invalidation grounds, who is a minor seeking employment on compassionate grounds, should apply for such appointment only after attaining the age of 18 years, subject to the conditions stipulated in Item 13 in Government Memo No.618/Ser.A/78-11, General Administration Department, dated 17.12.1979, i.e., that the relief should be asked for within a reasonable time which may be two years from the date of demise of Government servant, but the spouse or the child of the Government servant should immediately apply for this relief. A copy of the aforestated Memo dated 17.12.1979 is also produced, whereunder the Government issued several clarifications in the context of compassionate appointments. Sl.No.13 in the list of clarifications reads as under:

Sl.No.	Point	Clarification
13.	Whether a minor dependent child of a deceased Government employee can be considered for appointment	A minor dependent of the employee who died in harness should not be considered for providing employment under this scheme, as there cannot be any contractual obligation between the Govt. and the employee who is a minor. The intention of the Govt. being to see that the family is not exposed to

destitution the relief by taking somebody for employment, should be immediate. Therefore, a spouse or a child of the deceased Govt. servant should immediately apply for this relief. However, in case where due to the fact that child is a minor or he has not attained the educational qualifications, it is delayed it should be possible for the relief within a reasonable time, which may be two years from the date of demise of the Govt. servant. In such a case, the fact should be communicated to the Govt.

We are of the opinion that the aforestated policy of the Government cannot be said to be arbitrary or illegal. It is well settled that appointment on compassionate grounds is not a mode of recruitment and it is intended as a welfare measure to help the family of the deceased employee tide over the crisis of suddenly losing its breadwinner. Therefore, placing a restriction to the effect that the minor dependant who seeks compassionate appointment should attain the age of majority within two years of the date of the death of the employee cannot be said to be arbitrary or meaningless. For example, in the event the minor dependant is only two years of age at the time of the death of the employee, it would be a travesty to allow such a minor dependant to aspire for compassionate appointment sixteen years later. Allowing such a measure would practically elevate appointments on compassionate grounds to a separate mode of recruitment.

While so, we may also take note of the fact that in the case of one J.S.S.S.Shankar, his father was a Senior Assistant in the Primary Health Centre, Bitiwada, Srikakulam District, who expired on 15.04.1992 while in service but at that point of time J.S.S.S.Shankar was only fourteen 14 years and 11 months of age. In terms of the policy of the Government, he was ineligible to seek appointment on compassionate grounds even upon attaining the age of 18 years. Despite the same, the Government of Andhra

Pradesh issued G.O.Rt.No.850, Health Medical and Family Welfare (H) Department, dated 26.06.2010, directing the Commissioner of Health and Family Welfare, Hyderabad, to appoint J.S.S.S.Shankar on compassionate grounds to any post for which he was eligible under the existing rules as a measure of relief to the distressed family in relaxation of the age condition stipulated in G.O.Ms.No.165 dated 20.03.1989. Pursuant to this Government Order, the District Medical and Health Officer, Srikakulam, issued proceedings dated 20.07.2010 appointing J.S.S.S.Shankar as a Junior Assistant at the Primary Health Centre, Murapaka, Srikakulam District.

It is therefore clear that the Government is not rigid or dogmatic in applying the age prescription in terms of G.O.Ms.No.165 dated 20.03.1989 and in a deserving case, the Government relaxes the condition. Be it noted that the case of J.S.S.S.Shankar was not covered by any Court order and the Government independently exercised its power of relaxing the age condition. That being so, as the petitioner claims to be in a state of penury without any elders to look after her welfare and interest, her case would be equally deserving of consideration on par with J.S.S.S.Shankar.

We accordingly permit the petitioner to make a fresh representation to the first respondent seeking relaxation of the age condition prescribed in G.O.Ms.No.165 dated 20.03.1989 citing her circumstances which warrant such relaxation. As and when such a representation is made, the first respondent shall consider the same on its own merits and keeping in mind the case of J.S.S.S.Shankar, who was granted similar relaxation, and pass appropriate orders thereon. In the event the request of the petitioner is not accepted, the first respondent shall communicate the reasons as to why her case does not warrant consideration on par with that of J.S.S.S.Shankar. The first respondent shall complete the exercise expeditiously and in any event,

not later than four weeks from the date of receipt of the representation made by the petitioner in terms of this order.

The writ petition is disposed of with the aforestated directions. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

19th NOVEMBER, 2018
PGS

