

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE SRI JUSTICE M. GANGA RAO

+ W.P.No.8492 of 2016

%Date: 19-01-2018

Between:

1. N.VK. Doraiswamy, S/o. (late) Palaniswamy, Tailor, Government General Hospital Guntur, (Retired on medical invalidation), R/o. Krishnanagar, 1st line, D.No.3-29-73/3, Guntur District 522 006.
2. Sri N.V.K. Ayyappa, S/o. N.V.K. Doraiswamy, R/o. Krishnanagar, 1st line, D.No.3-29-73/3, Guntur District 522 006.

...Petitioners

Vs.

1. The State of Andhra Pradesh, rep. by its Principal Secretary, General Administration (SER.G) Department, Secretariat, Hyderabad.
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Medical, Health and Family Welfare Department, Secretariat, Hyderabad.
3. The Director of Medical & Health, State of Andhra Pradesh, Koti, Hyderabad.
4. The Collector and District Magistrate, Guntur District, Guntur.
5. The Superintendent, Government General Hospital, Guntur, Guntur District.
6. The Andhra Pradesh Administrative Tribunal, rep. by its Registrar, Purani Haveli, Hyderabad.

... Respondents

! For the Petitioners : Mr. P.V. Ramana

^ For the Respondents : G.P. for Services (A.P)

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? Cases referred

(2008) 13 SCC 730

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ORDER: (per VRS,J)

The claim of the petitioners for the appointment of the second petitioner on compassionate grounds, having been rejected by the A.P. Administrative Tribunal, they have come up with the above writ petition.

2. Heard Mr. P.V. Ramana, learned counsel for the petitioner and the learned Government Pleader for Services A.P.

3. The 1st petitioner was appointed as a Tailor in the Government General Hospital on 25.05.1984. He was due to retire on reaching the age of superannuation on 31.05.2014.

4. Five years before he was due to retire on superannuation, the 1st petitioner made a representation on 25.05.2009, seeking retirement on medical grounds and seeking appointment for his son, the 2nd petitioner herein, on compassionate grounds.

5. In response to the said representation, the 1st petitioner was called upon to appear before the Regional Medical Board, Guntur. He appeared before the Regional Medical Board on 27.05.2009 and on 30.05.2009.

6. By a certificate issued on 30.05.2009 by the Regional Medical Board, the 1st petitioner was declared medically invalid. Therefore, the 1st petitioner stopped attending duties from 30.05.2009 and made a representation dated 07.11.2009 seeking appointment for the 2nd petitioner on compassionate grounds.

7. The District Collector addressed a communication to the Government on 10.11.2009 quoting G.O.Ms.No.661, GAD dated

23.10.2008. The Government by a letter dated 26.04.2010 sought a detailed report. The Director of Medical Education sent a detailed report on 20.09.2010.

8. Since nothing happened, the petitioner made a representation on 04.11.2013 indicating that even his pension was not finalized. Therefore, the Superintendent of the Government General Hospital again sent a letter to the Director of Medical Education on 29.11.2013. But there was no response.

9. Therefore, the father-son duo filed an application in O.A.No.7105 of 2015 on the file of the A.P. Administrative Tribunal, seeking a declaration that the 1st petitioner retired on medical invalidation with effect from 30.05.2009 and for a consequential direction to the respondents to provide employment to the 2nd petitioner in terms of G.O.Ms.No.182, GAD dated 22.05.2014.

10. The said application was dismissed by the A.P. Administrative Tribunal on two grounds, viz., (a) that the 1st petitioner was not issued with any order retiring him on medical invalidation; and (b) that G.O.Ms.No.182 would have prospective and not retrospective application. Aggrieved by the dismissal of their original application, the petitioners are before us.

11. It is true that under G.O.Ms.No.504, GAD dated 30.07.1980, the Government introduced a scheme for compassionate appointment of the dependents of Government servants, who retired on medical invalidation. This benefit was confined under G.O.Ms.No.309, dated 04.07.1985 to cases where Government servants retired on medical grounds five years before attaining the age of superannuation.

12. The scheme itself was set at naught by a Full Bench of this Court. But the said decision was reversed by the Supreme Court in *V. Sivamurthy v. State of A.P.*¹.

13. Thereafter, the Government issued G.O.Ms.No.661, GAD dated 23.10.2008. Under this Government Order, a detailed procedure was prescribed for allowing persons to retire on medical invalidation and granting appointment on compassionate grounds to one of their wards.

14. In paragraph-16 (i) (d) of the said Government Order, it is prescribed that as and when a Government employee applies for retirement on medical grounds, the appointing authority should refer the case to a team of Doctors (Medical Board).

15. After the Medical Board gives its report, the appointing authority should refer the matter to a District Level Committee of officers for scrutiny. This prescription is found in paragraph-16 (ii) of G.O.Ms.No.661, dated 23.10.2008. It reads as follows:

“(ii) The appointing authority under whom the employee seeking medical invalidation is working, shall, after receipt of the Medical Boards recommendations refer the matter to a District Level Committee of officers for scrutiny and its recommendations. Government hereby constitute the District Level Committee of the officers with the following:

- | | |
|--|-------------------|
| 1. District Collector | Chairman |
| 2. The District Medical & Health Officer | Member. |
| 3. The District Head of the Department
in which the employee is seeking
retirement on medical invalidation | Member / Convener |

The District Level Committee shall consider the Medical Invalidation report given by the Medical Board constituted in para 16 (i) above and scrutinize the proposal for compassionate appointment on Medical Invalidation strictly in accordance with the guidelines and conditions stipulated in the existing instructions on the scheme. The committee is also competent to seek at its discretion personal presence of the employee seeking retirement on medical invalidation before considering the proposal.”

¹ (2008) 13 SCC 730

16. It is only after the District Level Committee makes a recommendation that orders of retirement as well as appointment on compassionate grounds can be granted.

17. But in the case on hand, no reference appears to have been made to the District Level Committee, in terms of para-16(ii) of G.O.Ms.No.661, after the receipt of the certificate issued by the Regional Medical Board. The petitioners have filed a copy of the certificate issued by the Regional Medical Board on 30.05.2009. There is nothing on record to show that this certificate of the Regional Medical board was referred to the District Level Committee or that thereafter an order of retirement was passed. Unless the procedure prescribed from paragraph-16(ii) onwards of G.O.Ms.No.661 had been followed, the petitioner ought not to have absented himself from duty from 30.05.2009.

18. In other words, what the petitioners had, was only a certificate issued by the Regional Medical Board and not an order of retirement on medical invalidation. Without an order of retirement on medical invalidation, the certificate issued by the Regional Medical Board is of no avail.

19. In fact, paragraph-16(i)(g) of G.O.Ms.No.661 indicates the diseases for which medical invalidation may be allowed. They are –

“1. Paralysis

- (i) All 4 limbs
- (ii) One side upper limb and lower limb
- (iii) Both lower limbs.

2. End stage Renal Diseases.

3. End stage Liver diseases

4. Cancer with metastasis stage or secondaries.

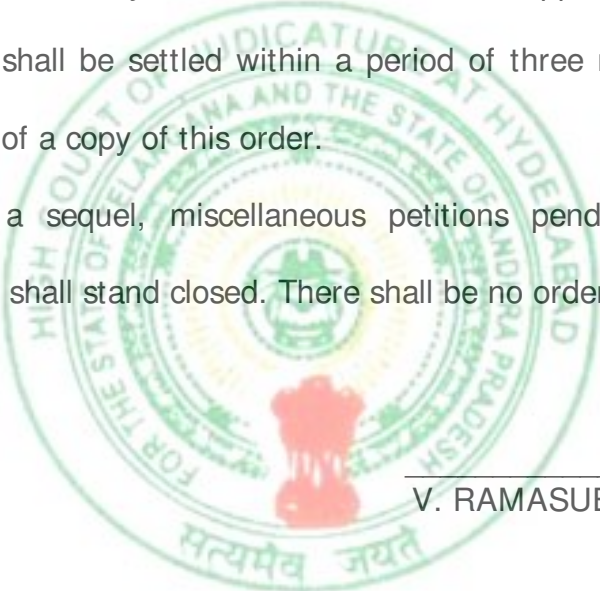
5. Dementia – Mental Disorder

6. Severe Parkinson Disease.

7. Loss of limbs (hands or legs) in case of drivers.”

20. But the medical certificate issued to the 1st petitioner by the Government General Hospital, where he was actually working, indicates that his ailment was “Dementia– Probably Alzheimer’s disease”. Therefore, the 1st petitioner did not even qualify in terms of G.O.Ms.No.661. In any case, he did not get an order retiring him on medical invalidation based upon the Regional Medical Board’s opinion. Therefore, the Tribunal was right in dismissing his original application though on different grounds. Hence we find no reason to interfere with the order of the Tribunal. Accordingly the Writ Petition is dismissed. However, the 1st petitioner’s terminal and pensionary benefits, which do not appear to have been settled so far, shall be settled within a period of three months from the date of receipt of a copy of this order.

21. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.



V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

19th January, 2018
Js.

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AND
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