

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.1654 OF 2017

JUDGMENT: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. This writ appeal is filed challenging the order dated 1.6.2017 passed by the learned single Judge in W.P.No.34419 of 2013.

2. Heard Sri B. Mayur Reddy, learned Standing Counsel for TSRTC and Sri S.M. Subhan, learned Counsel for the respondent.

3. Brief facts of the case are as follows:

(i) The father of the respondent died on 10.12.1991 while working as Assistant Depot Clerk. On 17.4.1993, the respondent made a representation to provide employment to him on compassionate grounds. The respondent was provisionally selected for the post of Clerk and he was subjected to medical examination. Thereafter, no further orders were issued. Hence, the respondent filed W.P.No.11489 of 2001 and this Court disposed of the said writ petition directing the respondent herein to appear before the concerned hospital and to obtain fitness certificate, while directing the appellants herein to consider the case of the respondent herein sympathetically as he is physically handicapped. As the appellants failed to appoint him in any post, the respondent filed another writ petition viz., W.P.No.19348 of 2004 and this Court by order dated 8.11.2004 directed the Regional Manager to consider his case for appointment under bread winner scheme. In pursuance of the orders of this Court in W.P.No.19348 of 2004, the respondent was called for interview and was informed by order dated 30.12.2004 that he was not entitled to cleaner post due to amputation of his right leg. Aggrieved by

the same, the respondent filed W.P.No.34419 of 2013. The learned single Judge having considered all the material on record and the submissions made by both the Counsel, allowed the writ petition directing the appellants herein to consider the claim of the respondent herein for provision of employment under the Bread Winner Scheme according to his suitability and eligibility to any post other than the posts of Driver, Conductor, Shramik and Constable, within a period of two months from the date of receipt of the copy of the order. Challenging the order of the learned single Judge, the present appeal has been filed by the appellants.

4. Learned Standing Counsel for the appellants submits that the respondent was selected as Shramik under bread winner scheme and was subjected to medical examination and after medical examination, he was declared as unfit by APSRTC-Tarnaka Hospital for the post of cleaner as his right leg was amputated upto knee and thereafter, the respondent requested the appellants for re-examination since he had been provided artificial leg, and the appellants directed him to appear in Tarnaka Hospital for re-examination on 29.3.2005 and again on 12.11.2005, but the respondent herein did not appear for the said re-examination even on the date of filing the writ petition i.e., in the year 2013. He further submits that there was delay of 8 years in filing the writ petition by the respondent herein and therefore, the writ petition filed by the respondent ought to have been dismissed.

5. The learned Counsel for the respondent submits that the respondent is pursuing his case since the date of the death of his father, but the Corporation failed to consider his case on the ground that there is a ban on appointment on compassionate grounds, and therefore, the contention of the appellants that there was delay on the part of the respondent, has no

force. He further submits that now the Corporation issued circular instructions to consider the cases pending from 1998 to till date and therefore, the case of the respondent can be considered under PH category, and that the order of the learned single Judge does not warrant any interference.

6. While issuing notice before admission, on 8.11.2017, this Court granted interim suspension of the order of the learned single Judge.

7. It is pertinent to note that as per the directions of this Court on 27.2.2018, the appellants filed an additional affidavit with the details of the posts reserved for differently abled persons under the provisions of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The appellants stated in their affidavit that in the year 1996 a ban was imposed on the direct recruitment of all posts except drivers, conductors and cleaners and therefore, the posts offered under the scheme of compassionate appointment are restricted to Driver, Conductor and Cleaner. Further, it is stated that comprehensive instructions on the Scheme of compassionate appointment were issued vide Circular No.PD-30/2000, dated 5.5.2000 and as per the said Circular, the posts offered under the Scheme are Driver Grade II, Conductor Grade II and Shramik, and the respondent is not eligible for any post notified under the scheme of compassionate appointment and now, he is aged about 47 years and therefore, he cannot claim the compassionate appointment as a matter of right as there is a settled proposition that compassionate appointment cannot be claimed as a matter of right.

8. It is informed to this Court by the learned Counsel for the respondent that the respondent acquired degree qualification and he is fully

eligible and qualified to be appointed in any clerical post, and that the learned single Judge had considered the case elaborately and allowed the writ petition under extraordinary circumstances directing the appellants herein to consider the claim of the respondent for employment under Bread Winner Scheme according to his suitability and eligibility to any post other than the post of Driver, Conductor, Shramik and Constable.

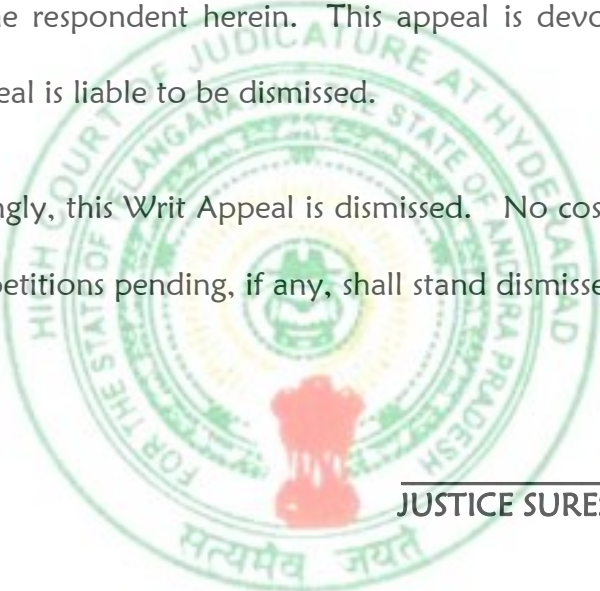
9. The contention of the learned Standing Counsel appearing for the appellants is that consideration of the case of the respondent for the post of Driver, Conductor, Shramik and Constable, would be a futile exercise because the respondent by virtue of his disability would not be clearing the medical fitness. Further, he contends that in the year 1997, 2004 and 2005, the case of the respondent was considered and he was declared as unfit as his right leg was amputated upto knee, and when once it was declared that the respondent is not medically fit, the question of considering his case again and again would not arise as it would not be in the interest of the Bread Winner Scheme.

10. Each case has to be examined based on its individual merits and demerits. The appellants cannot as straight jacket formula apply the scheme of compassionate appointment/Bread Winner Scheme and contend that only against the post of Driver, Conductor, Shramik and Constable the scheme would be operated. The case of the respondent is an exceptional case. Taking into account the extraordinary circumstances in the present case and the crisis of the bereaved family, and relying upon the observations and remarks of the Hon'ble Justice S.B. Sinha published in (2005) 3 SCC J-1, the learned single Judge allowed the writ petition specifically giving a direction to the appellants herein to consider the case

of the respondent to any suitable post other than the post of Driver, Conductor, Shramik and Constables.

11. Admittedly, the respondent acquired degree qualification and he is eligible for the clerical post. In view of the disability of the respondent, the appellants ought to have considered the case of the respondent for the post to which he is suitable, but they should not have considered his case for the post of Conductor, Driver, Shramik and Constable, to which he is not eligible. The grounds raised by the learned Standing Counsel in this appeal have already been considered by the learned single Judge while allowing the claim of the respondent herein. This appeal is devoid of merits and hence, this appeal is liable to be dismissed.

12. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.



JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 5.7.2018
Nn.

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
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WRIT APPEAL No.1654 OF 2017

(Order delivered by AKS,J)



05/07/2018

Nn.