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Court : Andhra Pradesh

Decided On : Sep-16-1997

Reported in : 1998(2)ALD87; 1998(2)ALT324

Judge : B.S. Raikote, J.

Acts : Constitution of India - Articles 14 and 16

Appeal No. : Rev. WPMP No. 14635 of 1997 and Batch

Appellant : Apsrtc, Hyd., and anr.

Respondent : Challa Venkatesh Rao and anr.

Advocate for Pet/Ap. : Mr. Y. Vivekanandaswamy, ;SC for APSRTC, ;Mr. T. Dasaradharamayya and ;Mr. K.S. Mallikharjuna Rao, Advs.

Judgement :
ORDER

1. These proceedings arise out of two writ petitions i.e. W.P.No.2002/96 and W.P. No.3489/96. C.C.No.29/97 is filed by Challa Rajaylakshmi complaining the dis-obedience of the order of this Court dated 11-3-1996 passed in W.P.No. 2002/96 in which there is a direction of this Court to the following effect:

'The respondents are hereby directed to . appoint the petitioner on compassionate ground on a suitable post, within a period of three months from the date of receipt

of a copy of this order'

2. C.C.No.517/97 is filed by Challa Venkateswara Rao, complaining the dis-obedience of the order of this Court dated 26-2-1996 passed in W.P. No. 3489/96 which reads as under :

'In the circumstance pleaded by the petitioner, I think it appropriate to direct the Respondents 1 & 2 to consider the case of the petitioner for appointment to a suitable post on compassionate grounds in the light of the circulars of the Corporation and also in the light of the Judgment of a Division Bench of this Court inW.P. No. 1611/94, dated 27-11-1995 within a period of four months from the date of receipt of a copy of this order.'

3. The APSRTC, who is the respondent in both the writ petitions, has filed two review petitions, contending that according to the circulars of the Corporation only one person can be appointed on compassionate grounds. Late Chiranjeeva Rao, was driver in the A.P.S.R.T.C. and he has died. Tn these circumstances, Challa Rajyalakshmi who is the wife has filed W.P.No.2002/96, and obtained the direction that her case may be considered for appointment on compassionate grounds. Likewise, Challa Venkaieswara Rao, the eldest son of the deceased, has filed another writ petition i.e. W.P.No.3489/96 and has obtained a direction that his case may be considered for appointment on compassionate grounds. Thus, there are two directions to the Corporation to consider these two persons for appointment on compassionate grounds. Since only one person can be appointed on compassionate grounds, the A.P.S.R.T.C has filed two review petitions. The review W.P.MPSR. No.109386 of 1996 is filed for reviewing the order of this Court dated 26-2-1996 passed in W.P.No.3489 of 1996 and review W.P.MPSR.No. 12745 of 1997 is filed for reviewing the order of this Court dated 11-3-1996 passed in W.P.No.2002 of 1996, These two review petitions are filed seeking a suitable direction at the hands of the Court for appointment any one of these two persons.

4. There is an application W.P.M.P. No.14634 of 1997 to condone the delay of 195 days in filing the review petition in W.P.No.3489 of 1996. In W.P.No.2002 of 1996, W.P.MP.No.8710/1997 is filed to condone the delay of 306 days in filing Rev.W.P.M.P.S.R.No.l2745/1997. By accepting the cause shown in the affidavit,

filed in support of the above review petitions and in view of the fact that the orders passed in two writ petitions are required to be considered by this Court and also in view of the fact that, only one person can be appointed on compassionate grounds, I think it appropriateto condone the delay in representing the Rev.W.P.M.P.SR.No.l09386 of 1997 and also the delay in filing the review petitions and accordingly the petitions are ordered.

5. Now, by this common judgment, I am disposing of both the contempt petitions and also both the review petitions.

6. Heard the learned Counsel for the petitioner and also the Standing Counsel for the respondent Corporation.

7. It is not in dispute that under numerous circulars that have been issued, from time to time by the Corporation, only one person can be appointed on compassionate grounds. Now, I have to see whether Challa Rajyalakshmi, the widow of the deceased should be appointed or the appointment should be given in favour of Challa Venkateswara Rao, the eldest son of the deceased.

8. A Division Bench of this Court in General Manager, District Central Co-operative Bank Limited, Ongole v, S. Vasudeva Reddy, 1996 (3) ALD 250 (DB) laid down certain guidelines for the appointment on compassionate grounds. Para 15 of the said judgment reads as under:

'Based on the authoritative pronouncements of the Supreme Court the following principles emerge which should guide while considering cases relating to appointment in public services on compassionate grounds :

(a) Appointment on compassionate ground is an exception to the general rule of equality enshrined in Articles 14 and 16 of Constitution of the India. That too, only, in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means.

(b) The employment on compassionate ground can be made only to classes III and IV posts notwithstanding the higher qualifications of the dependent or the post held by the deceased employee.

(c) The consideration for employment in post on compassionate ground is not a vested right which can be exercised at any time or offered after whatever lapse of time.

(d) Compassionate employment has necessarily to be made in accordance with rules or executive instructions issued by the Government or public authority concerned.

(e) And above all, such appointment should be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant. Denial of appointment of dependent on compassionate ground on account of any ban imposed for fresh appointments would be arbitrary.'

9. The above Division Bench of this Court followed the Judgment of the Supreme Court in Umesh Kumar Nagpal v. State of Haryana and others, : [1994]3SCR893 in which the Hon'ble Supreme Court ruled that :

'the whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source or livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employmentin such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must

be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.'

10. From the authoritative pronouncement of the Supreme Court and also the Division Bench of this Court it is clear that the object of granting compassionate appointment is only to enable the family to tide over the sudden crisis when resulted due to death of a bread earner of the family and the object is not to give a member of such family a post or an employment much less a post for post held by the deceased. In other words, the object of the appointment on compassionate grounds is to see that the family which is immediately deprived of the source of livelihood, in the death of deceased employee, is saved from the sudden financial crisis by giving an appointment to one of the members of the family.

11. In the instant case, the widow of the deceased and the son of the deceased are seeking appointment on compassionate grounds. Smt. Challa Rajyalakshmi contends that she is entitled to be appointed on compassionate grounds being the widow of the deceased. On the other hand, Challa Venkateswara Rao seeks the appointment, on compassionate grounds being the son of the deceased. I should make it dear at the stage itself either being a widow or being a son, one has no vested right to be appointed as such. Insuch circumstances, the Courts have to see who can be the bread-winner of the family.

12. The learned Counsel appearing for the Challa Rajyalakshmi contended that under the circulars of the Corporation a woman is entitled to be appointed on compassionate grounds in the A.P.S.R.T.C. He also brought to my notice a Division Bench Judgment of this Court dated 17-7-1995 passed in Writ Appeal No. 614/95. In that case, the Division Bench has observed that the A.P.S.R.T.C. cannot deny an appointment to a female, in the Corporation, when there are other females already working and thus observed that a female also can be appointed on compassionate grounds. But, in the instant case, nobody is contending that

Challa Rajyalakshmi being a woman cannot be appointed at all.

13. The simple case of Challa Venkateswara Rao, the step-son of the Rajyalakshmi is that he may be appointed on compassionate grounds as against her stepmother. According to him, he being the eldest male member he can look after the entire family better than his step-mother. He further submitted that there is another son of the deceased by name Chiranjeevi N. Rao, who is physically handicapped and he is living with him.

14. From the nature of the controversy between the step-mother and the step-son, it is to be ascertained, if an appointment is given, who could be the bread-winner to the family. Eitherside has not brought to my notice any circular of the Corporation which provides, preference to one person as against other. Therefore, it cannot be said that either a widow has preference over the son of the deceased or vice-versa. That means, the authorities have to see who could be the effective immediate bread-winner to the family. In a similar circumstances, His Lorship Justice Mishra, High Court of Madras (now the Chief Justice of this Court) in Arputha Mary v. The Chairman, Neyveli Lignite Corporation, 1990 (2) Law Weekly 518, observed that:

'The main question to be considered in all such cases is, who, if given appointment,would, as observed by the Supreme Court, provide the needed bread to the family. If the step-son is likely to neglect the stepmother and step-brothers and step-sisters, and even his own sister, who is presently with the mother, evidently, he would not provide that needed bread to the family. He would corner the benefit of compassion for himself, and thus defeat the very purpose for which such considerations have been introduced and appointments on compassionate grounds have been sanctioned. If, on the other hand, it is only because the son of the deceased is the step-son of the petitioner, that she has chosen to object to the appointment given to him. she is acting more against the basics of the compassion, mainly guided by her prejudices. The son, in such a case, would deserve the appointment if he is found to be ready and willing to provide the bread as the deceased provided to the family'.

15. Since, we have to find out between these two competing persons who could be the better bread winner for the family, I directed the parties to file their additional affidavits indicating as to how one would be in a position to look after the entire family, in view of the fact that, admittedly, Challa Venkateswara Rao is living separately along with his handicapped brother, and the step-mother is living separately with her only minor son. Accordingly, they have filed their additional affidavits.

16. Challa Venkateswara Rao has stated in his additional affidavit that he would pay Rs.10,000/- (Rupees ten thousand only) at the time of his regularisation to his step-mother in case an appointment is given to him. On the other hand, Challa Rajyalakshmi (step-mother) has stated that at the time of the death, her husband has given nomination to the A.P.S.R.T.C. regarding Provident Fund, L.I.C. amount and Gratuity amount etc., as under :

Provident FundRs. 13,000/-S.BT.Rs. 25,000/-L.I.C.Rs. 15.000/-Total

Rs. 53,000/-

17. She further stated that after the death of her husband, her step-son has gone away from the house along with the physically handicapped brother and living separately and whereas she is living with her minor son of five years old separately in a thatched house. She stated that her step-son will not look after her. She further stated that she has come to know that physically handicapped son is not being looked after by Challa Venkateswara Rao and his care would be necessary, since he is 90% physically handicapped. She further stated that she would look after not only her five year old son, but her physically handicapped step-son also, with affection and with utmost care. She is also prepared to give a sum of Rs. 600/- (Rupees six hundred only) per month to Challa Venkateswara Rao till he gets a job, if he is not prepared to live with her along with her minor son and physically handicapped step-son. But, these averments made in the respective affidavits of the both parties require to be considered with reference to the materials in the Corporation. How the other amounts like gratuity are paid to these persons requires to be verified with reference to the records of the Corporation.

18. In view of the judgment of the Supreme Court reported in : (1994)IILLJ173SC and also the judgement of this Court reported in 1996(1)ALD 563 (D.B.) this Court cannot decide who is competent person to be appointed and such a decision shall be necessarily left, with the authorities, I think it appropriate to remand the matter to the authorities to consider, who, one of these two persons, should be appointed in the circumstances of this case.

19. For the above reasons, I think it appropriate to review both judgment the and orders passed by me in two Wnt Petitions. Accordingly, 1 pass the order as under:

20. I set aside my judgment and order dated 11.3.1996 passed in W.P.No. 2002 of 1996 and also the judgment and order dated 26-2-1996 passed in WP.No.3489 of 1996 and remand both the matters to the respondent-Corporation to consider afresh and to issue appropriate appointment orders oncompassionate grounds to one of these two persons in the circumstances of the case.

21. The petitioners in both the Writ Petitions are directed to appear before the respondent- Corporation of 15th October 1997, at 11 -00 a.m. and file the additional affidavits, if any, indicating how each one of them would lookafter the entire family including the physically handicapped person, and within one month thereafter the Corporation shall decide the case of both the petitioners. Consequently, I dismiss the C.C.Nos.29 of 1996 and 517 of 1997 as not surviving. No costs.

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