

Mohd. Zaheer Ahmed Vs. Depot Manager, Apsrtc and Others

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Court : Andhra Pradesh

Decided On : Aug-11-1999

Reported in : 1999(5)ALD716; 2000(2)ALT400

Judge : C.V.N. Sastri, J.

Acts : [Constitution of India](#) - Article 16(2)

Appeal No. : WP No. 33835 of 1998

Appellant : Mohd. Zaheer Ahmed

Respondent : Depot Manager, Apsrtc and Others

Advocate for Def. : Mr. K. Harinath, SC for APSRTC

Advocate for Pet/Ap. : Mr. T. Pulla Rao, Adv.

Judgement :

ORDER

1. The petitioner's father was employed as a driver in Andhra Pradesh State Road Transport corporation. On 10-2-1993 the petitioner's father submitted an application to permit him to retire from service on medical grounds. By a letter dated 15-3-1993 he was permitted to retire on the ground of medical invalidation. But unfortunately a few days thereafter the petitioner's father died on 27-3-1993. Thereafter in the month of April, 1993 the petitioner submitted an application for

providing him with a compassionate appointment as conductor. The said application was forwarded by the first respondent to the second respondent for consideration vide letter dated 24-9-1993. Thereafter there was no further communication from the respondents. The petitioner after waiting for nearly five years has filed the present writ petition on 3-12-1998 seeking writ of mandamus declaring the inaction of the respondents in not considering his case for appointment on compassionate grounds as highly arbitrary, illegal and consequently to direct the respondents to appoint the petitioner for any suitable post on compassionate grounds.

2. In the counter-affidavit filed on behalf of the respondents the facts are not disputed. It is however contended that though as per the circular instructions which were then in force children of employees who retired prematurely on medical grounds were eligible for compassionate appointments, they come under category II and as such the petitioner could not get selected as per the order of priority for filling up the three vacancies which arose till 1998. Subsequently this Court as well as the Apex Court held that the circulars issued by the Corporation providing employment to the children of the employees who are retired on medical grounds, retired on attainment of superannuation, retired and subsequently expired or inservice candidates having completed 25 years of service etc., are violative of Article 16(2) of the [Constitution of India](#). In view of the said pronouncements of this Court and the Apex Court the provision for compassionate appointment is now confined only to the children of the employees who died in harness and as such the petitioner is not eligible for compassionate appointment.

3. The learned Counsel for the petitioner has submitted that the case of the petitioner has to be considered with reference to the circular dated 15-2-1995 which was in force at the time when he made the application and the subsequent change in the law cannot affect his rights. The learned Counsel in support of his contention sought to rely on certain orders passed by this Court upholding a similar contention and he has drawn my attention to one of such orders passed by me in Writ Petition No. 8785 of 1996 dated 13-6-1996. The said order was passed by me following the judgment of the Division Bench in Writ Petition No.1611 of 1994 and Batch dated 27-11-1995 wherein it was held that the circular dated 15-2-

1995 restricting the provision of appointment on some compassionate grounds only to the children of employees who died in harness and excluding the children of all other categories of employees for the said benefit is only prospective in operation and that all cases which arose prior to the said date will have to be dealt with in accordance with the circulars which were in force prior to that date. However, the Apex Court has subsequently clarified the legal position and authoritatively pronounced that the provision for compassionate appointment to the children of all other categories of employees, other than the employee who died in harness, is violative of Article 16(2) of the constitution of India. The law laid down by the Apex Court is binding on me. Though the case is a hard case, in view of the law laid down by the Apex Court the petitioner is not entitled for any relief in this writ petition and the writ petition is accordingly dismissed. No costs.

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