

A. Ravi Kumar Vs. Managing Director, A.P.S.R.T.C. and anr.

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SooperKanoon Citation : sooperkanoon.com/444132

Court : Andhra Pradesh

Decided On : Jun-08-2000

Reported in : 2000(4)ALT506

Judge : S. Ananda Reddy, J.

Acts : Service Law

Appeal No. : W.P. No. 22355 of 1998

Appellant : A. Ravi Kumar

Respondent : Managing Director, A.P.S.R.T.C. and anr.

Advocate for Def. : C.V. Ramulu, S.C.

Advocate for Pet/Ap. : S.M. Subhan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Ananda Reddy, J.

1. This writ petition is filed seeking a declaration that the action of respondents in rejecting the claim for appointment on compassionate grounds in the second respondent-Corporation in any of the vacant posts as illegal, arbitrary, contrary to

well established principles of law and consequently directing the respondents to appoint the petitioner forthwith in any one of the suitable posts.

2. It is stated by the petitioner that his father late A. Veera Raghava Rao while serving as a Driver in the respondent-Corporation at Vijayawada, died in harness on 11-10-1993. Thereafter the petitioner made an application to the second respondent seeking appointment on compassionate grounds. In response to the said application the petitioner was interviewed on 19-1-1996 for the post of Conductor and thereafter no orders were passed either appointing the petitioner or rejecting his claim. Aggrieved by the said inaction, the petitioner approached this Court by filing a W.P. No. 19313 of 1996 and the said writ petition was allowed by this Court dt. 13-9-1996, directing the respondents to consider the claim of the petitioner for appointment to the post of Conductor under the scheme providing for 'compassionate appointments' and communicate the decision to the petitioner within a period of 6 weeks from the date of receipt of the copy of the order. Thereafter the second respondent passed an order on 12-11-1996 rejecting the case of the petitioner on the ground that the elder son of late A. Veera Raghava Rao was already employed in the Corporation as a Conductor and is working at Vijayawada. Therefore, there is no provision to consider the case of the writ petitioner. Aggrieved by the said proceedings the present writ petition has been filed.

3. The learned Counsel for the petitioner Sri S.M. Subhan contended that the respondents are in error in denying the claim of the petitioner for appointment on compassionate grounds. It is also stated by the learned Counsel that this Court directed the Corporation under similar circumstances to provide compassionate appointments even though one of the members of the family is already employed who was appointed on merit basis. In fact the learned Counsel specifically contended that though the brother of the petitioner was already employed in the respondents-Corporation but he was separated from the family and was living separately since his appointment in the Corporation in the year 1989, whereas the father of the petitioner died in the year 1993. On the date when the petitioner's father died in the year 1993, there is no other earning member in the family. Therefore, the petitioner is entitled for appointment on compassionate grounds.

4. The above contention of the Counsel for the petitioner is opposed by the Standing Counsel for the respondent-Corporation. In fact the learned Counsel relied upon another judgment of this Court rendered by a learned Single Judge in case of *M. Sundar Raju v. Managing Director, APSRTC, Hyderabad*, : (1999)ILLJ685AP , where it was held that the compassionate appointment is not a constitutional right or common law right and the Writ of Mandamus cannot be issued to make appointment on compassionate grounds. The learned Counsel also contended that though it was averred in the affidavit that the petitioner's brother was appointed in the year 1989 and got separated but this fact could not be enquired into. Therefore, he contended that an opportunity may be given to verify whether petitioner's brother got separated and in fact the family of the petitioner is in harness. In reply the learned Counsel for the petitioner contended that the judgment rendered by the learned Single Judge was subject matter of writ appeal. Even the Division Bench has upheld the order of the learned Single fudge. The Division Bench of this Court has considered the contentions elaborately and thereafter rendered its judgment directing the Corporation to provide employment even in case where one of the members of the family was already employed if such member of the family had already got separated and if there is no assistance to the family and under such circumstances one of the dependants of the employee who died in harness is entitled for appointment under the scheme formulated by the Corporation.

5. Heard both sides and considered the material on record as well as the judgments placed before me. The petitioner's claim is that his father died in harness while in service. Therefore, he is entitled for appointment on compassionate grounds. Though the petitioner has gone for interview as early as in the year, 1996 but no orders have been passed. Therefore, the petitioner approached this Court by filing W.P. No. 19313 of 1996 which was allowed by this Court, directing the respondents to pass appropriate orders. Thereafter the second respondent passed an order rejecting the claim of the petitioner on the ground that the elder son of the deceased Veera Raghava Rao was already employed in the Corporation, therefore the petitioner who is the second son is not entitled for appointment on compassionate grounds. The said order is impugned in the present writ petition. Though the eider son was provided employment on merit in

the year, 1989 he got separated from the family and is living separately. Therefore, there is no earning member to assist the family after the demise of late Veera Raghava Rao. The learned Counsel also relied upon the two decisions of this Court where favourable orders were passed by the learned Single Judges. But the Standing Counsel of the Corporation relied upon another decision rendered by the another Single Judge rejecting the claim. However at the time of hearing the learned Counsel for the petitioner stated that a writ appeal was filed against the judgment of the learned Single Judge granting the relief in favour of the petitioner in W.A. No. 265 of 1992 against the order in W.P. No. 8949 of 1990. The said writ appeal was dismissed confirming the order of the learned Single Judge. It is also brought to my notice that in a batch of writ petitions in W.P. No. 1611 of 1994 a Division Bench of this Court considered an identical issue and passed orders on 27-11-1995 giving following directions to the Corporation:

(1) (i) the priority laid down in Circular No. PD-112/1987, dated 5-10-1987.

(ii) whether any member of the family, who is already employed either on compassionate grounds or otherwise, is not residing with the family and not assisting the family on the date of death or retirement of employee as the case may be or the date of completion of 25 years of service; and

(iii) the petitioners fulfil all other requirements viz., qualifications, age etc., as per the circulars issued from time to time.

(2) the respondents shall complete this exercise within a period of three months from the date of receipt of a copy of this order.

6. In view of the above it is clear that even though one of the members of the deceased family is employed earlier i.e., prior to the death of said employee which appointment was effected on merits and if such person is not continuing as a member of the family on the date of the death of the employee, one of the dependants of the deceased employee is entitled for appointment on compassionate grounds.

7. Admittedly, in the present case though the elder son of late Veera Raghava Rao was employed in Corporation, such employment was provided in the year 1989, long prior to the death of Veeraraghavarao who died on 11-10-1993, he was also separated from the family of the Veeraraghava Rao immediately after he was appointed in the year 1989. When once the said elder son of Veeraraghava Rao was separated and living away from the family he should not be considered as a member of the family for the purpose of providing compassionate appointment to the dependants. In fact it was specifically pleaded in the affidavit which fact was not denied by the respondents-Corporation. When once this position is clear that late Veera Raghava Rao died in harness while serving the Corporation on 11-10-1993, the petitioner who is one of the dependents, is entitled to be provided employment on compassionate grounds. Though it was contended by the learned Standing Counsel for the respondent that the Corporation may be given an opportunity to enquire into the contention of the petitioner that his elder brother got separated and he is not looking after the family.

I do not find any merit in the above contention when a specific plea was made in the affidavit and which plea was not denied; there is absolutely no justification to give another opportunity to the Corporation to enquire into the said averment. In fact the petitioner was interviewed as long back as on 19-1-1996. Till to-day the petitioner is going round the Courts seeking the relief. In the above circumstances, the impugned order is set aside and the respondents are directed to provide employment to the petitioner under the scheme of compassionate appointment within a period of two months from the date of receipt of the copy of this order.

9. The writ petition is allowed accordingly. No costs.