



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3463]

MONDAY ,THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE G.NARENDAR
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT APPEAL NO: 461/2023

Between:

The District Collector and Others

...APPELLANT(S)

AND

P Raju and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.GP FOR SERVICES IV

Counsel for the Respondent(S):

1.M R TAGORE

The Court made the following:

JUDGMENT:- *(per Hon'ble Sri Justice G.Narendar)*

Heard learned G.P.(S-IV) for the Appellants and Mr.M.R.Tagore,
learned counsel for the Respondents.

2. The intra-Court Appeal is directed against the order of the learned
Single Judge dated 03.02.2023 rendered in W.P.(AT).No.1461 of 2021
whereby the learned Single Judge has been pleased to allow the writ
petition setting aside the impugned proceedings issued by the appellants
denying the demand of the petitioner for appointment on compassionate

grounds and further directed the Appellants to consider and provide employment to the petitioner in any suitable post within eight (08) weeks.

3. The case of the Appellants is that the said direction is unsustainable in view of the fact that the deceased i.e., the father of the petitioner who died in harness was never a government servant and that the appointment on compassionate grounds is a policy evolved by the State for the benefit of the dependants of the Government servants alone.

4. It is further contended by the learned G.P.(S-IV) appearing for the Appellants that the appointment of the deceased employee was engaged on NMR only basis since 01.04.1985 and was employed as a sweeper with the Dowleswaram Gram Panchayat. That the aspect of regularization was considered by the appellants and his status as NMR was converted into last grade service and a minimum time scale of pay was granted. But later, *vide* proceedings, dated 06.02.1993 the said conversion order came to be withdrawn.

5. The deceased employee/NMR then preferred O.A.No.768 of 1993 questioning the withdrawal of the MTS and the same came to be allowed with a direction to continue the NMR/deceased employee on time scales (MTS) with liberty to complete the enquiry. That the employee unfortunately passed away on 03.05.2016 while he was still being continued as an NMR on MTS basis, as directed by the Tribunal.

6. The above narration of facts is not disputed by the petitioner/respondent herein. From the narration above, it is apparent that the deceased employee/NMR had accepted the directions issued by the Tribunal in O.A. referred *supra*. No further attempts have been made, nor is any material placed before us, to demonstrate that any effort was made by the deceased/NMR to have his services regularized. This being the undisputed position, the question that stares at this Court is *whether the demand of the petitioner for appointment on compassionate grounds is maintainable?*

7. The issue has a history and can be traced to litigation originating as way back as in 1989; that the Tribunal issued orders in R.P.No.1704 of 1989 directing the Municipality to regularize the services of the applicant's husband and thereafter grant appointment on compassionate grounds.

8. It is pertinent to note that Act 2 of 1994 had not come into force. As on this, it appears that this position has been adopted by the Courts wherever the claim for compassionate appointments were made and where the Courts found that the deceased employee was entitled for regularization, orders to nominally regularize the services and thereafter the claim for compassionate appointment have been granted.

9. We had called for the file from the Finance Department and it would reveal that the State and its Departments, more particularly, the

Panchayat Raj and the Municipalities have been resisting the claim for appointment on compassionate basis. More so, when the claimants were not dependants of persons appointed on NMR through consolidated pay basis to casual or temporary basis.

10. In fact, the present stand of the appellants can also be gleaned from the note sheet, a copy of which is placed before us, wherein the note sheet reflects reference to proceedings of the Tribunal in R.P.No.1704 of 1989, W.P.No.18888 of 1993 and O.A.No.4349 of 1992 and few other petitions. Ironically, the note sheet would also reveal that the executive was aware that a decision was required to be taken. This decision is reflected in G.No.52390/454/A3/Pc-III/98 in page no.4 of the note sheet.

11. From a reading of the above, what can be discerned is that, the erstwhile employees i.e., the relatives of the claimants were all entitled for regularization and in that view, the cases have been considered for appointment on compassionate basis.

12. In one of the notes placed before us, titled as “Note for Circulation” and on the page number 10, the Government appears to have evolved certain criteria where they can consider cases of persons for employment on compassionate basis subject to certain conditions which are as under:

“Based on the various judgements of A.P. High Court and A.P. Administrative Tribunal and also taking into view that the N.M.Rs. could not be regularised in time due to administrative reasons it has been proposed to consider the cases of the dependants of deceased N.M.Rs.

for compassionate appointments, subject to fulfilment of the following conditions:

- 1. If the deceased N.M.R. is fully eligible for regularisation in terms of G.O.Ms.No.212, Fin.,
dated 22-4-94 and could not regularised due to administrative reasons the case of dependants of deceased N.M.R. can be considered as per the scheme of compassionate appointment.*
- 2. A substantive vacancy shall be available for regularisation of the deceased N.M.R.*
- 3. The appointment has to be considered without recourse to supernumerary post.*
- 4. Regularisation of the deceased N.M.R. shall be done notionally on earlier date of death of N.M.R. This regularisation shall only be taken into consideration for the purpose of eligibility to compassionate appointment to the dependants of deceased employee. It shall not confer any other benefits such as arrears of salary, Family Pension and other benefits.”*

13. Followed by a note dated 24.05.1999, it would reflect that the issue of dependants of NMRs seeking appointment on compassionate basis has drawn the attention of the State.

14. The above discussion appears to have certified in the form of G.O.Ms.No.118, dated 18.08.1999. The same refers to two other G.Os, namely G.O.Ms.No.212, dated 22.04.1994, which permitted regularization of services on daily wage/NMR/consolidated pay person/part time employees and G.O.Ms.No.687, dated 03.10.1977, which permitted to compassionate appointment of dependants of deceased Government servants. The State taking a holistic view appears to have proceeded with unformulated policy as reflected *vide*

G.O.Ms.No.118 by which certain criteria was stipulated in order to enable such claimants to have their claims positively considered. The criteria stipulated under the said G.O. is as under:-

“The Government have examined the matter. The benefit of compassionate appointment is now not available under the rule to those who are not regular employees. The Government after careful examination of the matter, have decided to consider the cases of the dependants of the deceased daily Wage or N.M.R. or Consolidated Pay person or Contingent worker on full time basis or Part-time employees for compassionate appointment only in the following cases, namely:-

(1) If the deceased Daily Wage or N.M.R. or Consolidated Pay person or Contingent worker on full time basis/Part-time basis was fully eligible for regularisation under section 7 of the Andhra Pradesh (Regulation of appointments to Public Services and Rationalisation of Staff Pattern and Pay structure) Act, 1994 read with G.O.Ms.No.212, Fin. & Plg. (FW.PC.III) Department., dated the 22nd April, 1994 and G.O. (P) No.112, Pin. & Plg. (F.PC.III) Department, dated the 23rd July, 1997 who could not be regularised due to administrative reasons, the case of dependants of only such deceased Daily Wage or N.M.R. or Consolidated pay person or Contingent worker can be considered for compassionate appointment from the date of issue of orders;

(2) While doing so, it has to be ensured that regular vacancy is available for deemed regularisation of the deceased Daily Wage or N.M.R. or Consolidated pay person or Contingent worker and the appointment has to be considered without recourse to creation of supernumerary post; and

(3) This appointment of the dependant which is based on deemed regularisation of the deceased person in of G.O.Ms.No.212, Fin. & Plg. (FW.PC.III) Department., dated the 22nd April, 1994 and G.O.(P) No.112, Fin. & Plg. (FW.PC.III) Department., dated the 23rd July, 1997 as on the date of his death and therefore it shall not confer any other benefits such as arrears of Salary, Family Pension and other benefits to the deceased employee or his/her dependants.

All the Departments of Secretariat/Heads of Departments are requested to process the cases of compassionate appointment to the dependants of deceased Daily Wage or N.M.R. or consolidated pay person or Contingent worker on full time basis or part-time worker in pursuance of above scheme and obtain the clearance of the Government in Finance & Planning (FW.PC.III) Department before orders are issued for such appointment.”

15. The recipients to whom the G.O. is marked also included all the Municipal Commissioners, the Commissioners of Municipal Corporation at Hyderabad, Vijayawada, Visakhapatnam, Guntur, Warangal, Kurnool, all Administrators of Urban Development Authorities, all Secretaries of Zilla Grandhalaya Samasthas through the Director of Public Libraries.

16. The G.O.Ms.No.118, dated 18.08.1999, pertinently refers to the provisions of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 [‘Act’] and more particularly to Section 7 of the said Act.

17. From a reading of the above, it is apparent that the State has drawn up a policy whereby the persons who were entitled to regularization in terms of the law and the G.O.Ms.No.212, dated 22.04.1994, were directed to be regularized and where in respect of such persons, the State could not pass orders of regularization on account of administrative reasons (as described in the note sheet), it was considered appropriate to direct the appointment of their dependants on compassionate grounds subject to certain conditions.

18. There is no dispute in this position. Neither does the petitioner dispute this position. In fact, reliance is also placed on G.O.Ms.No.118. If that be the admitted position, the question that arises for consideration is *whether the order of the learned Single Judge, impugned in this intra Court appeal, has recorded compliance with G.O.Ms.No.118?*

19. We have given our close attention to the order impugned. The order of the learned Single Judge does not disclose any discussion with regard to the compliance with the conditions stipulated under G.O.Ms.No.118.

20. Be that as it may, a reading of the conditions stipulated under G.O.Ms.No.118 dated 18.08.1999 would require certain material to be looked into and certain facts to be asserted. The material placed before this Court does not reflect ascertainment of such facts. In the absence of the deceased employee being eligible for regularization, we do not see any basis which would entitle his dependants to seek the relief of appointment on compassionate grounds.

21. That apart, it is no more *res integra* that appointment on compassionate grounds is a matter of policy and only where such policy is framed by an employer, it would vest a right in the dependant, to have his case considered for appointment on the basis of compassionate grounds.

22. In the case on hand, neither the petitioner nor the respondents have placed any material in support of their respective contentions.

23. It was imperative on the part of the petitioner to place such material which would demonstrate that the erstwhile employee/NMR/part time employee, was entitled to have his case considered for regularization of his services in terms of the law laid down by the Courts or the policies of the State.

24. On the contrary, we also do not find any material being placed by the respondents/the appellants herein to demonstrate that the deceased employee was not entitled for regularization on account of grounds 1 or 2 or 3.

25. In the absence of such pleadings and such particulars, this Court is of the considered opinion that the learned Single Judge has gravely erred in directing appointments to public posts in the absence of a finding of entitlement or in the absence of a right, vesting such entitlement to claim such appointment. It is needless to state that the Courts are required to guard themselves against granting such directions, directing employment which admittedly is not a regular course of employment rather a mode of employment which affords equal opportunity to all and which would ensure that the best of the available talent/resources are at the disposal of the employer in order to ensure efficient discharge of duties.

26. The very basis or the objective behind providing employment on compassionate grounds is to ameliorate the living conditions of dependants of the Government employee who passes away unexpectedly and suddenly and leaves his dependants in the lurch and facing a financial crunch or where the family is in financial distress and it is to provide succour to such families that the policy of appointment on compassionate grounds came into being.

27. On an analysis of the facts of the case, we find not even a discussion nor is there a cursory finding rendered on this aspect of the matter also. The object of compassionate appointment is not to create a hereditary office but to address a particular situation in which the family of the deceased employee, who dies in harness, is not left at the mercy of the Society or avert a situation where they are deprived of shelter over their heads and food on their plate or education to the children of the deceased Government employee.

28. On the other hand, a reading of the order impugned reveals that the learned Single Judge has approached the subject as if the policy of compassionate appointment vests a right of employment with the dependants. It is no more *res integra* that the right to employment on compassionate appointment is not a vested right but a right that is qualified by the compliance with certain pre-requisites and subject to there being a policy.

29. In that view of the matter, we are of the considered opinion that the order impugned warrants interference at the hands of this Court.

30. Accordingly, the Writ Appeal is *allowed in part* and the order impugned is set aside and the matter is remitted back to the 1st appellant-District Collector, who shall conduct an enquiry and draw up a report whereby the Collector shall be hold by a speaking order and render a finding as to whether the deceased employee was entitled for regularization of his services in terms of the G.O.Ms.No.212 dated 22.04.1994 and whether there is compliance with the requirements of G.O.Ms.No.118 dated 18.08.1999.

31. The Collector shall also render a finding as to whether the Department has a policy or the rules regulating appointment to the Zilla Panchayats, enables appointment on compassionate grounds. The Collector shall also render a finding whether the family of the dependants is economically self sufficient and lastly, render a finding as to whether the applicant was dependant on the erstwhile employee who passed away in harness and whether the remaining members of the family have no objections to consider his case for employment on compassionate grounds.

32. The petitioner shall appear before the 1st appellant on 09.04.2024 at 03:00 pm and submit his claims by providing all particulars as noted in the instant order and as is required by the law which would enable the

1st appellant to consider the case of regularization of the services of the erstwhile employee.

33. In the event, such a finding is rendered holding the erstwhile employee as being entitled for regularization of services, then the case of the petitioner for appointment on compassionate grounds shall be considered independently and as a consequential to the right to regularization.

34. The writ appeal stands ordered accordingly. There shall be no order as to costs.

In view of the disposal of the Writ Appeal, the pending miscellaneous petitions, if any, shall stand closed.

JUSTICE G.NARENDAR

JUSTICE NYAPATHY VIJAY

Date: 11th March, 2024

RKS