

Hindustan Aeronautics Ltd vs Smt. A. Radhika Thirumalai on 9 October, 1996

Equivalent citations: AIR 1997 SUPREME COURT 123, 1996 (6) SCC 394, 1996 AIR SCW 4283, (1996) 9 JT 197 (SC), 1997 (1) SERVLJ 105 SC, 1996 (9) JT 197, 1997 ALL CJ 1 49, (1997) 1 ANDH LT 374, (1997) 1 APLJ 36, 1996 SCC (L&S) 1427, (1997) 90 FJR 472, (1997) 76 FACLR 933, (1997) 1 LABLJ 492, (1997) 1 LAB LN 132, (1997) 1 SCT 329, (1996) 4 SCJ 195, (1996) 6 SERVLR 21, (1997) 1 ESC 101

Bench: S.C. Agrawal, G.T. Nanavati

PETITIONER:
HINDUSTAN AERONAUTICS LTD.

Vs.

RESPONDENT:
SMT. A. RADHIKA THIRUMALAI

DATE OF JUDGMENT: 09/10/1996

BENCH:
S.C. AGRAWAL, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.C. AGARWAL, J. :

Special Leave granted.

Hindustan Aeronautics Ltd., appellant herein, is a public sector undertaking having a number of units in the country and one such unit is located at Hyderabad. The appellant has made rules providing for employment on compassionate grounds. Rule 78.1 prescribes that one of the dependents of the deceased employee could be

considered for appointment in the company, in preference to other applicants without being sponsored by the employment exchange. In Rule 78.3 it is, however, laid down that the General Managers are empowered to effect such appointment depending upon available ability of vacancies in the respective staffing cadre/authorization. A.S. Thirumalai, the husband of the respondent, was employed as Senior Inspector [Quality Control] in the Hyderabad Unit of the appellant. He died on August 10, 1987. After his death the respondent submitted an application for appointment on compassionate grounds. Since a number of other applications had been received earlier for such appointment on compassionate grounds the name of the respondent was put on the wait list of candidates who had applied for employment on compassionate grounds. Her name was at Sl.No. 22 in the said wait list. On account of a ban having been imposed on further appointments in the various units of the appellant no appointment could be made on compassionate grounds out of the said wait list. The respondent filed a writ petition [W.P.No. 12896 of 1991] in the Andhra Pradesh High Court praying for a writ of mandamus directing the appellant to provide suitable permanent employment to the respondent by creating a supernumerary post. The writ petition was opposed by the appellant on the ground that no vacancy was available since there was a ban on fresh recruitment and, therefore, appointment could not be given to the respondent. The learned Single Judge of the High Court by judgment dated July 21, 1995 issued a writ of mandamus directing the appellant to consider the candidature of the respondent on compassionate grounds to any suitable post in Class III or Class IV only and, if found suitable and eligible to appoint her to such post within a period of two months. The learned Single Judge rejected the submission urged on behalf of the appellant that since there was a ban on further recruitment the appointment could not be given on compassionate grounds to the respondent. Reliance was placed on the observations contained in the decision of this Court in *Smt. Sushma Gosain & Ors v. Union of India & Ors.*, 1989 (40 SCC 468. The appeal filed by the appellant against the judgment of the learned Single Judge was dismissed by the Division Bench of the High Court by judgment dated April 26, 1996. It was held that appointment on compassionate grounds is given notwithstanding whether there is any vacancy in the regular service or cadre or post, by creating supernumerary post and continuing such supernumerary appointment until a regular vacancy is made available and the dependent of the bread winner is brought to the main stream of the service. Feeling aggrieved by the said judgment of the Division Bench of the High Court the appellant has filed this appeal.

Shri A.N. Jayaram, the learned senior counsel appearing for the appellant, has submitted that the appellant is a high-tech Government company essentially attempting to meet defence requirements of aircrafts and that during the last 10 years, owing to change of policies, there is a serious decline in the work-order position and as a result the appellant is compelled to progressively decrease its manpower by placing a ban on fresh recruitment and offering incentives for voluntary retirement. It has been pointed out that during the period April 1, 1987 to

April 1, 1996 there has been a progressive reduction of the workforce including Class III and IV employees in all the units including the Hyderabad unit. The submission is that the High Court was in error in holding that even when there is no vacancy available and there is a ban on fresh recruitment it was incumbent on the appellant to give appointment on compassionate grounds to the respondent. Shri Jayaram has placed reliance on the decisions of this Court in *Life Insurance Corporation of India vs. Asha Ramchandra Ambekar & Anr.*, 1994 (2) SCC 718; *Umesh Kumar Nagpal vs. State of Haryana & Ors*, 1994 (4) SCC 138; *State of Haryana vs Naresh Kumar Bali*, 1994 (4) SCC 448 and *Himachal Road Transport Corpn. vs. Shri Dinesh Kumar*, 1996 (4) SCALE 395.

Shri Nageshwara Rao, the learned counsel appearing for the respondent, has supported the impugned judgment of the High Court and has submitted that since appointments have admittedly been made by the appellant on compassionate grounds in the medical department there was no reason why the respondent could be given an appointment on compassionate grounds in that department.

In *Umesh Kumar Nagpal* [Supra] this Court has pointed out that appointment in public services on compassionate ground has been carved out as an exception, in the interest of justice, to the general rule that appointments in the public services should be made strictly on the basis of open invitation of applications and merit and no other mode of appointment nor any other consideration is permissible. A compassionate appointment is made out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided the family would not be able to make both ends meet and the whole object of granting such appointment is to enable the family to tide over the sudden crisis. This court has also laid down that an appointment on compassionate ground has to be given in accordance with the relevant rules and guidelines that have been framed by the concerned authority and no person can claim appointment on compassionate grounds in disregard of such rule or such guideline [see : *Life Insurance Corporation vs. Asha Ramchandra Ambekar*(supra)].

In the appellant company appointment on compassionate grounds is governed by rules. Under Rule 78.1 provision is made that one of the dependants of the deceased employee could be considered for appointment in the company in preference to other applicants without being sponsored by employment exchange. But in Rule 78.3 it has been laid down that such appointment would be made depending upon the availability of vacancies in the respective staffing cadre/authorization. In other words, an appointment on compassionate grounds can be made only if a vacancy is available. According to the appellant no vacancy is available since there is surplus labour and the policy of the appellant is to progressively reduce the workforce and with that end in view a ban has been imposed on fresh recruitment and the appellant is also offering incentives for voluntary retirement. The learned Single Judge of the High Court was of the view that in spite of such a ban on fresh recruitment it was obligatory for the appellant to make appointment on compassionate grounds. The learned Single Judge has placed reliance on the following observations of this Court in *Sushma Gosain* [supra] at p.470:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, 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."

In Umesh Kumar Nagpal [supra] it has been indicated that the decision of Sushma Gosain [supra] has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course. The observations on which reliance has been placed by the learned Single Judge in Sushma Gosain [supra] have to be read in the light of the facts of that particular case. In that case the appellant, Smt. Sushma Gosain, after the death of her husband, who was working as Storekeeper in the Department of Director General Border Road, sought appointment as Lower Division Clerk on compassionate grounds. In January, 1983 she was called for the written test and later on for interview and had passed the trade test. She was, however, not appointed till January, 1985 when a ban was imposed on appointment on ladies in the said Department. Having regard to these facts this Court has observed :

"..... Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid Government memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1983 when the ban on appointment of ladies was imposed.

The denial of appointment is patently arbitrary and cannot be supported in any view of the matter." [p.470].

In the instant case the ban on fresh recruitment was in force when the respondent submitted the application for appointment on compassionate grounds. The decision in Sushma Gosain [supra] has, therefore, no application in the facts of this case.

A situation similar to the present case arose in Himachal Road Transport Corporation vs Dinesh Kumar (supra). In that case this Court was dealing with two cases where applications had been submitted by the dependents of the deceased employees for appointment on compassionate grounds and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal and the Tribunal directed the Himachal Road Transport Corporation to appoint both of them as Clerk on regular basis. Setting aside the said decision of the Tribunal this Court has observed :

"..... In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint

persons when vacancies are not available. If persons are so appointed and paid salaries, it will be mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post."

[p.397] As regards the submission of Shri Nageshwara Rao that the respondent could be given compassionate appointment in the medical department it may be stated that there is nothing to show that any appointment on compassionate ground has been made in the medical department after the respondent had submitted her application for such appointment. It cannot, therefore, be said that any vacancy is available for making such appointment in that department. All that can be said is that in the event of the appellant making fresh appointment on a Class III or Class IV post the application of the respondent for appointment on such post shall be given due consideration in accordance with her ranking in the waiting list.

For the reasons aforementioned we are unable to uphold the impugned judgment of the High Court. The appeal is accordingly allowed, the judgment of the High Court dated April 26, 1996 in the writ Appeal No. 103 of 1996 as well as the judgment of the learned single judge dated July 21, 1995 in W.P. No. 12896 of 1991 are set aside and the writ petition filed by the respondent is dismissed. No order as to costs.