

Auditor General Of India vs G.Ananta Rajeswara Rao on 8 April, 1993

Equivalent citations: 1994 AIR 1521, 1994 SCC (1) 192, AIR 1994 SUPREME COURT 1521, 1994 AIR SCW 999, 1994 LAB. I. C. 754, 1994 (1) SCC 192, 1994 (2) ALL CJ 695, 1994 ALL CJ 2 695, (1993) 8 SERVLR 420, (1994) 2 LABLJ 812, (1994) 1 LAB LN 566, (1994) 26 ATC 580, 1994 SCC (L&S) 500

Author: K. Ramaswamy

Bench: K. Ramaswamy, R.M. Sahai

PETITIONER:
AUDITOR GENERAL OF INDIA

Vs.

RESPONDENT:
G.ANANTA RAJESWARA RAO

DATE OF JUDGMENT 08/04/1993

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SAHAI, R.M. (J)

CITATION:
1994 AIR 1521 1994 SCC (1) 192

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This appeal, by special leave, arises against the judgment of the Andhra Pradesh High Court in Writ Appeal No. 20 of 1981 dated February 3, 1981. The respondent made an application to the appellant to appoint him as a clerk as his father died in harness in 1967 while working in the office

of the Auditor-General, Government of India at Andhra Pradesh. He was qualified for appointment. He passed his PUC examination and he applied for the appointment on compassionate grounds. The application was made on December 26, 1978. Since he was not considered nor appointed, he filed Writ Petition No. 6173 of 1979 and the learned Single Judge dismissed the writ petition. On appeal, while dismissing, the Division Bench declared that the Memorandum is violative of Article 16(2) of the Constitution as the appointment of a descendant is ultra vires Article 16(2). However, while granting leave, the appellant had given an undertaking to absorb him in any vacancy that would arise in future. The respondent appears to have been appointed. He is not represented in the appeal.

2.The only question that arises for decision is whether the Memorandum is violative of Article 16(2) of the Constitution? Article 14 genus provides equality of opportunity and equal protection of the laws and it prohibits discrimination. Article 16(2) species prohibits discrimination, thus:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State." (emphasis supplied) The High Court held that the appointment of son/daughter/near relative (widow) of the erstwhile employee of the Government would tantamount to appointment on descent and therefore is violative of Article 16(2). It is contended for the State that the Memorandum envisages appointments purely on compassionate grounds in the circumstances enumerated in Office Memorandum No. 14014/1/77-Estt.(D), Government of India, dated November 25, 1978. It provides that Secretaries or Joint Secretaries in the Ministries/Departments are competent to appoint, in relaxation of the procedure of recruitment through the Staff Selection Commission or Employment Exchange, but subject to the other requirements set out therein, the son/daughter or near relative of the government servant (it is stated by the learned counsel that widow of the deceased is near relative), who died in harness leaving his family in immediate need of assistance, in the event of there being no other earning member in the family, to a Group 'C' post or Group 'D' post. After the proposal for such appointment has been approved by the Joint Secretary incharge of the Administration or Secretary in the Ministry or Department concerned, it would be made. The Memorandum also provides for the fulfilment of the qualifications prescribed for the post. So it is not violative of Article 16(2). We find no force to accept in toto.

3.In paragraph 5, it is stated that in deserving cases even where there is an earning member in the family, a son/daughter/near relative of a government servant who dies in harness leaving his family in indigent circumstances, may be considered for appointment to the post. All such appointments are, however, to be made with the prior approval of the Secretary of the Ministry/Department concerned, who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the number of dependents left by the deceased government servant, the assets and liabilities left by him, the income of the earning member as also his liabilities, whether the earning member is residing with the family of the deceased government servant and whether he should not be a source of support to other members of the family.

4. In paragraph 6, it is stated that in exceptional cases when a Department is satisfied that the condition of the family is indigent and in great distress, the benefit of compassionate appointment may be extended to the son/daughter or near relative of government servant retired on medical grounds under Rule 36 of the Central Civil Service (Pension Rules), 1972 or corresponding provisions in the Central Civil Regulations. Para 7 dealt with the ban on recruitment in Group 'C' posts and direction was given to make appointments to group 'D' posts and paragraph 8 relates to the certain clarifications and para 9 relates to the imposition of the conditions or the condition to be accepted by the person appointed to the post. Para II (a) provides that the appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications required for the post consistent with requirement of the maintenance of efficiency of administration. Para II (b) provides that these instructions do not restrict employment of sons/daughters or near relatives of deceased Group 'D' employee to a Group 'D' post alone. As such a son/daughter or near relative of a deceased employee can be appointed to a Group 'C' post for which he is educationally qualified, provided a vacancy in Group 'C' exists and para 11 (c) provides that the appointments have to be cleared at the Head of Department level, and as all the vacancies are to be pooled for compassionate appointment, it may be ensured that subordinate and field offices got an equitable share in the compassionate appointments.

5. A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted.

6. The Division Bench of the Andhra Pradesh High Court relied upon in the judgment in P.S. Geeta v. Central Bank of India, Bombay'. Therein the circulars issued under the Banking Companies

(Acquisition and Transfer of Undertakings) Act for appointment of the sons of the employees were sought to be implemented. The vires thereof had come up for consideration and the Division Bench held that reservation of 25% to the sons of the employees of the banks and relaxation of the educational qualifications and relaxation of the percentage of marks for appointment were held to be violative of Article 16(2) of the Constitution. We agree with the reasoning and ratio of the above judgment.

7.Learned counsel relied upon *Sushma Gosain (Smt) v. Union of India*' and *Kamala Gaiind (Smt) v. State of Punjab*'. In the first case, it is only the reiteration of what has been stated in the Memorandum but the question of vires was not considered. In the second case, the Punjab Government due to special circumstances prevailing therein, had issued instructions to appoint the children of the deceased government employees and the provision was made to appoint to the Class I post. Under those circumstances, the direction was given to consider the person who was eligible for appointment to the Class I post. This ratio does not assist us to determine the vires when a Memorandum was challenged under Article 16(2) of the Constitution. That question was not in issue in that case. The appeal is allowed in part. No costs.