

Andhra High Court

A.P. Cooperative Central ... vs Unknown on 23 April, 2002

Author: A Lakshmanan

Bench: A Lakshmanan, G K Tamada

ORDER Ar. Lakshmanan, J.

1. Heard Sri A.K.Jayaprakash Rao, the learned counsel for the appellant and Sri P.Nageswara Sree, the learned counsel for the respondent. The unsuccessful writ petitioner is the appellant in this appeal. The writ petition was filed for a mandamus declaring the action of the respondent in proceedings dated 20.11.2001 refusing to consider the case of the appellant for appointment on compassionate ground, as illegal, unjust and contrary to law and to grant all consequential benefits.

2. The case of the appellant is that her late husband joined the services of the respondent-bank as watchman/attendar and had put in 17 years of service and that he was illegally dismissed from service by order dated 17.2.1994. Aggrieved by the said order of removal her husband filed an appeal before the appellate authority under Section 48 of the A.P. Shops and Establishments Act, 1988 (for short 'the Act') which was numbered as S.E.29 of 1994. During the pendency of the said appeal her husband died on 15.12.1995 and that the appellate authority allowed the appeal directing the respondent therein to provide suitable employment to the appellant and also directed payment of 50% of the back wages. However, the 2nd appellate authority in the appeal filed by the respondent (S.A.No.4 of 1999) modified the order of the 1st appellate authority by judgment dated 31.12.1999 to the extent of directing employment to the appellant but confirmed the order for payment of wages from 21.4.1994 to 9.3.1999.

3. According to the appellant, since the order of removal was set aside and her husband was deemed to be in service and thereafter died in harness her case may be considered for compassionate appointment as per the service regulations of the respondent-bank. Elaborating the said submission the learned counsel for the appellant submitted that while the appellant's husband was working in Nellore branch, charge sheet was issued alleging that he had wilfully disobeyed the lawful orders issued by the Regional Manager on 20.4.1990 and that he was found under the influence of alcohol while on duty and that on the basis of the report of the enquiry officer the punishment of deferment of one annual increment without cumulative effect for a period of six months was inflicted by an order dated 31.12.1991. However, the respondent therein suo motu passed the order dated 17.2.1994 after lapse of more than two years modifying the order dated 31.12.1991 and awarding capital punishment of dismissal from service.

4. When the appellant filed writ petition No.5526 of 2000 before this Court seeking consideration of her case for appointment on compassionate ground this Court disposed of the writ petition directing the respondent to consider her case. In pursuance of the said direction given by this Court the respondent now passed orders erroneously denying the appellant compassionate appointment on the ground that her husband was not in service at the time of his death. It is submitted by the learned counsel for the appellant that the order of dismissal passed against the husband of the appellant was set aside and therefore he was deemed to be in service; therefore the reason assigned by the respondent that the appellant's husband was not in service and therefore the appellant is not

entitled for consideration of her case for appointment on compassionate ground, is untenable and unsustainable in law. In support of his contention the learned counsel relied on the judgment reported in *ELURI MARTHAMMA v DIVISIONAL RAILWAYS MANAGER, S.C.RAILWAY*<sup>1</sup> by which a Division Bench of this Court held that the deceased employee in that case who was a casual labourer worked uninterruptedly for 15 years in Railways and had thereby acquired the status of temporary worker and therefore his widow is entitled to family pension. Considering the case of the claim for compassionate appointment the Bench held that the petitioner therein who is the widow of the deceased-workman belonged to Scheduled Caste and was entitled for appointment on compassionate ground which is a welfare scheme, benevolent in nature, and meant for down-trodden and that the technicalities such as limitation should have no role to play and that the claim of the petitioner or her son for compassionate appointment cannot be rejected merely on the ground of delay.

5. The learned counsel again relied on the judgment of the apex court in *BASUDEO TIWARY v SIDO KANHU UNIVERSITY*<sup>2</sup> wherein the apex court held that when the termination was declared invalid, in case of a deceased employee, he would be deemed to have died in harness. In the instant case the respondent refused to consider the case of the appellant on compassionate ground for the reason that the appellant's husband was not in active service even though the termination was declared invalid by the authority under Section 48 of the Act as confirmed by the second appellate authority also.

6. In our opinion, both the above judgments will be of no assistance to the appellant. In fact before the Division Bench which rendered the judgment in *ELURI MARTHAMMA* (1 supra) many decisions on compassionate ground and also on the ground of limitation have not been placed. The judgment in *BASUDEO TIWARY* (2 supra) has no application to the facts of this case and is distinguishable. In the instant case aggrieved by the order of removal passed by the management the appellant's husband filed an appeal before the appellate authority under Section 48 of the Act and during the pendency of the appeal he died on 15.12.1995. The appellate authority passed orders directing the respondent to provide suitable employment to the appellant herein on compassionate ground and also directed payment of 50% back wages. However, the 2nd appellate authority modified the said order of the appellate authority by order dated 31.12.1999 cancelling the order directing employment to the appellant but confirmed the order of payment of wages from 21.4.1994 to 9.3.1999. Therefore, the direction issued by the appellate authority to give employment on compassionate ground was set aside by the 2nd appellate authority and 50% of back wages alone was directed to be paid to the appellant since her husband died on 15.12.1995. By any stretch of imagination the appellant's husband could not be treated differently as a person who was in active service. Therefore, the said judgment has no application to the facts of this case.

7. The law is well settled. The Supreme Court in many cases has decided that the consideration for compassionate appointment is not a vested right and such right cannot be exercised at any time in future. The object is to enable the family to get over the financial crisis and the compassionate appointment cannot be claimed and offered after long lapse of time and after the crisis is over. In our opinion writ of mandamus cannot be claimed and issued contrary to what is provided in the rules. The dependants of the deceased employee do not stand to acquire any right of employment nor does

any such right accrue to them by mere death of such Government servant and therefore they cannot claim it as a matter of right.

8. A Division Bench of the Rajasthan High Court comprising of Dr.AR.Lakshmanan, Chief Justice and Justice Mohd. Yamin in BOARD OF RAJSTHAN v RAJENDRA<sup>3</sup> held that mere death of an employee in harness does not entitle his family members to compassionate appointment and its object is to enable the penurious family to tide over the financial crisis and not to provide employment and that the very purpose of compassionate appointment is to redeem the family from immediate financial hardship. In other words, the mode of employment by succession is not permissible in law and that offering appointment after an inordinate delay from the date of death of the employee would not serve the purpose of granting immediate financial relief to redeem the grieved family from financial constraints. The Supreme Court in LIFE INSURANCE CORPORATION OF INDIA v ASHA RAMACHANDRA AMBEKAR<sup>4</sup> had observed that, however hard the case may be, appointment on compassionate grounds should not be ordered if the case does not fall within the scope of law. The Supreme Court also held that there may be pitiable situation but on that score the statutory provisions cannot be put aside. This opinion of the Supreme Court was reiterated in STATE OF HIMACHAL PRADESH v JAFLI DEVI<sup>5</sup>. The Supreme Court in H.S.E.B. v NARESH TANWAR<sup>6</sup> held that extending such concessions over the years could not be allowed, so that by such lapse of time the heir of the deceased employee attains majority and then becomes eligible for being considered for appointment. The Supreme Court in the recent judgment in the case of SANJAY KUMAR v STATE OF BIHAR has again affirmed the said view<sup>7</sup>.

9. In the instant case the learned Judge dismissed the writ petition on the ground of laches. The appellant's husband died on 15.12.1995. The appellant made her representation for compassionate appointment only in the year 2000 ie after a lapse of more than four years, which was rightly rejected by the authorities and also by the learned single Judge on the ground of limitation. In our opinion, delay has always been held to be a valid criterion to refuse appointment on compassionate ground, object being to provide immediate assistance to the family in times of sudden financial crisis. In this context we may simply refer to the following decisions without extracting passages therefrom.

STATE OF UP v PARASNATH<sup>8</sup>(delay of 17 years).

H.S.E.B. v HAKIM SINGH<sup>9</sup> (delay of 14 years).

H.S.E.B. v NARESH TANWAR (6 supra) (delay of 12 years).

JAGDISH PRASAD v STATE OF BIHAR<sup>10</sup> (delay of 23 years).

UNION OF INDIA v BHAGWAN SINGH<sup>11</sup> (delay of 20 years).

10. As already noticed, in SANJAY KUMAR v STATE OF BIHAR<sup>12</sup> the Supreme Court held that there cannot be a reservation of vacancy till the dependant becomes major/eligible for appointment if he is a minor at that time unless there is some special provision in that regard.

11. For the foregoing reasons we are of the opinion that the appellant has not made out a case for consideration of her claim for compassionate appointment. The appeal fails and is accordingly dismissed. No costs.