



IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE NINALA JAYASURYA**

WRIT APPEAL No. 294 of 2021

(Taken up through video conferencing)

The Secretary, the Andhra Pradesh Residential
Educational Institutional Society, Pamulapati
Sivaiah Complex, Koritapadu, Guntur,
Guntur District.

.... Appellant

Versus

Karavanji Lalithakumari, W/o Satyarao,
H.No.9-14-73, Dammala Street,
Srikakulam, Srikakulam District,
Andhra Pradesh and others

.... Respondents

Counsel for the appellant : Mr. L.V.S. Nagaraju

Counsel for respondent No.1 : Mr. G.U.R.C. Prasad

Counsel for respondent Nos.2 & 3 : None appeared

Date of hearing : 02.09.2021

Date of Pronouncement : 04.10.2021

JUDGMENT

(Per Ninala Jayasurya, J)

The present writ appeal is preferred against the order dated 23.02.2021 passed by the learned Single Judge in W.P.No.4401 of 2016, wherein and whereby the proceedings of the 2nd respondent/appellant dated 07.10.2014 rejecting the request of the writ petitioner/1st respondent for compassionate appointment was set aside and a direction was issued to consider the case of the writ petitioner for appointment in any suitable post subject to her eligibility, within a period of six weeks from the date of receipt of a copy of the order.



2. The case of the writ petitioner as per the averments made in the writ petition is that one Smt. P. Umamaheswari is mother of the petitioner, who worked as a Multi-Purpose Worker in A. P. Residential School, S.M. Puram, Srikakulam District, and that she died in harness on 01.02.2014 leaving the petitioner in penury without any means of livelihood. The petitioner's father died, prior to the death of her mother, and the petitioner is having one brother who got married during the lifetime of their mother against her wishes and living separately. The petitioner was married to one Mr. Satyarao in the year 2005 during the lifetime of her mother, and due to family disputes, he deserted the petitioner in the house of her mother in the year 2010 and since then, they are residing separately. The petitioner is solely dependent on her mother and not having any means of livelihood.

i) Against the above background position, the petitioner made an application to the 2nd respondent seeking compassionate appointment enclosing the death certificate of her mother and also no objection certificate given by her brother. But, said application was rejected by the 2nd respondent by proceedings dated 07.10.2014 on the ground that she did not produce the death certificate of her mother and also no objection certificate from other family members. The said proceedings of the 2nd respondent impugned in the writ petition are as follows:

*“PROCEEDINGS OF THE SECRETARY :: A.P.R.E.I. SOCIETY (R) ::
HYDERABAD*

Present:- Smt. B. Seshukumari, M.Sc., M.Ed.,

Rc.No.4443/A3-2/14

Dt.07-10-2014

*Sub:- Estt., APREI Society (Regd.), Hyderabad – Representation of
Smt. K. Lalithakumari, D/o late Smt. P.Umamaheswari, MPW,
APRS, S.M. Puram, Srikakulam District for the appointment
on compassionate grounds – Rejection of proposal – Reg.*

*Ref:- Representation of the individual through the Principal, APRS,
S.M. Puram, Srikakulam District.*



In the reference cited, the Principal, APR School, S.M. Puram, Srikakulam District has submitted proposals for the appointment on compassionate grounds to Smt. K. Lalithakumari, D/o late Smt. P. Umamaheswari, MPW, APRS, S.M. Puram, Srikakulam District, whose mother was expired on 01.02.2014.

After verification of certificates of the incumbent, it was observed that the incumbent has not enclosed the following certificates:

- 1) Death certificate of the deceased person*
- 2) No objection certificate from other family members*

However, as per G.O.Ms.No.350, General Administration (Ser-A) Department, dated 30.07.1999, Smt. K. Lalithakumari, D/o late Smt. P. Umamaheswari, MPW is not eligible for the appointment on compassionate grounds since she is not the only daughter and is having one younger brother, who is a Govt. employee.

Therefore, Smt. K. Lalithakumari, D/o late Smt. P. Umamaheswari, MPW is hereby informed that her representation for providing appointment on compassionate grounds is not feasible for consideration under the above reason.

Receipt of the proceedings should be acknowledged.

*Sd/- B.Seshukumari
SECRETARY."*

- ii) It may be noted that along with the writ petition, Family Member Certificate dated 05.03.2014 and No-Earning Member Certificate dated 03.07.2014 issued by the Tahsildar, Srikakulam, along with the Death Certificate of the mother of the petitioner dated 24.03.2014 were filed.



3. The 2nd respondent filed a counter affidavit. It was stated that as per the Family Member Certificate dated 05.03.2014, the petitioner's brother was shown as unmarried and in the Death-cum-Retirement Gratuity proposals submitted by the petitioner's brother for grant of gratuity of their mother Smt. P. Umamaheswari, in the relevant columns of the application dated 16.04.2014, the brother of the petitioner was shown as un-married and employed as a Teacher and the petitioner was shown as married and unemployed. On the basis of the same, it was pleaded that the petitioner's averment that her brother was married is absolutely false and no authentic document was submitted by her along with the application for compassionate appointment to justify that she is dependent on her mother.

i) While referring to the Circular Memo No.60681/Ser.A/2003-1 dated 12.08.2003 issued by the Government of Andhra Pradesh, General Administration (SER-A) Department, it was pleaded that the petitioner's representation was rejected on the reason that she is not the only daughter of the deceased employee, but she is having one younger brother, who is a Government employee. It was also stated that the petitioner's brother joined as Physical Education Teacher on 19.10.2009 in Z.P. High School, Kornni of Gara Mandal, and later joined in the High School, Budumuru on 02.11.2019 as School Assistant (Physical Education) on promotion, and that the said position clearly discloses that the petitioner's brother is a Government employee i.e., an earning member since 19.10.2009 and the same confirms his status as Teacher as mentioned in the application made with regard to the gratuity of the petitioner's mother. It was further stated that in view of the Circular Memo referred to above, the case of the petitioner for providing appointment on compassionate grounds is not feasible and therefore, there is no infirmity in the order impugned in the writ petition.



ii) The relevant documents referred to in the counter-affidavit i.e., copy of the application made by the petitioner's brother with reference to pensionary benefits of the deceased employee dated 16.04.2014, copy of the Circular Memo issued by the Government dated 12.08.2003, and copy of letter dated 30.12.2020 of the District Educational Officer, Srikakulam, enclosing the details with regard to the employment of the petitioner's brother furnished by the Head Master, Zilla Parishad High School, Budumuru, Srikakulam District, were filed.

4. As seen from the record, no reply-affidavit denying the averments made in the counter-affidavit of the 2nd respondent appears to have been filed.

5. The learned Single Judge, considering the submissions made by the respective counsel and relying on the judgment of the Hon'ble Supreme Court in **Balbir Kaur Vs. Steel Authority of India Limited**, reported in (2000) 6 SCC 493, and a decision of a Division Bench of the Madras High Court in **the Superintending Engineer Vs. V. Jaya**, reported in (2007) 6 MLJ 1011, allowed the writ petition by an order dated 23.02.2021 *inter alia* holding as follows:

“16) Upon careful perusal of the comprehensive note on the scheme of compassionate appointment to the dependents of the deceased Government employees issued vide Circular Memo No.60681/Ser.A/2003-1, General Administration (Ser.A) Department, dated 12.08.2003, in which it is provided that one of the dependent family members of the deceased Government employee, who die in harness, there being no other earning member in the family are eligible for appointment to a job in Government services. As per the said scheme, dependent family member means a spouse, son/daughter of regular government employees. As per the said scheme, it is provided that in the family of the deceased government employee, if the son, who is employee, is separated from the family and if the family is without an earning member, the spouse/son/daughter out of the remaining family may be considered for compassionate appointment.



17) *In the present case, the petitioner is claiming that her brother viz., Chandrasekhar separated from the family and living separately during the life time of her mother. If the contention of the respondents is carefully scrutinized, it appears from their contention that the brother of the petitioner was a government employee, and as such, the petitioner is not entitled for consideration on compassionate appointment. The respondents never contended that the petitioner and her brother are living jointly and the contention of the petitioner that her brother separated from their family is correct or not. Under these circumstances, there is no option to this Court to believe the contention of the petitioner that her brother separated from the family during the life time of her mother and living separately. In view of that situation, it has to be construed that the petitioner is the only person depending on her mother and she lost her bread winner for untimely death of her mother.*

18) *In G.O.Ms.No.350, General Administration (Ser.A) Department, dated 30.07.1999, it is clarified that when there is only a married daughter to the deceased government employee without older or younger brothers or sisters and the spouse of the deceased government employee is not willing to avail the compassionate appointment, such married daughter may be considered for compassionate appointment provided she is dependent on the deceased government employee. As per this clarification also the case of the petitioner can be considered though she is a married daughter of the deceased government employee, even in the absence of any proof about her desertion with her husband.”*

6. Aggrieved by the orders of the learned Single Judge, the present appeal has been instituted on various grounds.

7. Heard Mr. L.V.S. Nagaraju, learned counsel for the appellant/2nd respondent, and Mr. G.U.R.C. Prasad, learned counsel for the 1st respondent/writ petitioner.

8. Mr. L.V.S. Nagaraju submits that the order of the learned Single Judge is not sustainable in the facts and circumstances of the case. He contends that as per the relevant Government Orders and the Circular Memo dated 12.08.2003 providing for a



comprehensive note on the scheme of compassionate appointment provides for appointment, the criteria, *inter alia*, to a job in Government service stipulates thus:

“(i) One of the dependent family members of the deceased Government employee who die in harness, there being no other earning member in the family.”

He submits that in the present case, as is evident from the materials/documents filed along with the counter-affidavit, the petitioner’s brother is an earning member in the family, who is a Government employee and therefore, the petitioner is not entitled for compassionate appointment. He further contends that it is the projected case of the petitioner that her brother was married and started living separately, as his marriage was against the wishes of their mother. He further contends that in the application submitted by the petitioner’s brother for the purpose of pensionary benefits of their deceased mother, it is clearly stated that the brother of the petitioner was un-married and working as a Teacher. Therefore, the whole case of the petitioner that her brother was married and living separately and due to the death of their mother, on whom she is dependent, she lost her livelihood, has no legs to stand.

i) He further submits that though it is claimed by the petitioner that she was deserted by her husband, no material has been filed indicative of her submission that she is dependent on her mother due to the said reason. He contends that the learned Single Judge had not taken into account the documents, which support the case of the appellant, and erred in recording conclusions without examining the effect of the same as also without appreciating the averments in paras 5 and 6 of the counter-affidavit. The learned counsel also submits that the interpretation of the learned Single Judge with regard to the entitlement of married daughter to compassionate appointment on the basis of G.O.Ms.No.350 dated 30.07.1999 is not correct, inasmuch as the situation contemplated



under the said G.O. is not attracted to the facts of the present case. Making the above submissions, the learned counsel urges that the order under appeal is liable to be set aside.

9. Refuting the said contentions, Mr. G.U.R.C. Prasad, learned counsel for the 1st respondent/writ petitioner, submits that there is no illegality or irregularity in the order passed by the learned Single Judge and the same is well considered. He submits that the learned Single Judge, on an overall appreciation of the facts of the case and taking into account the undisputed fact that the petitioner's brother is living separately, recorded categorical findings that the petitioner is solely dependent on her mother and keeping in view the laudable object of the scheme of compassionate appointment, which is a social security measure to help the families of the deceased Government employees, issued the direction impugned in the writ petition, and the same cannot be found fault with, under any stretch of imagination. The learned counsel submits that the Family Members Certificate and No-Earning Member Certificate dated 05.03.2014 and 03.07.2014, respectively, issued by the concerned Tahsildar are only for the limited purpose mentioned therein and the same would not enure any benefit to the petitioner. The learned counsel specifically points out that even as per the Circular Memo dated 12.08.2003, on which reliance is placed by the appellant/2nd respondent, the case of the petitioner deserves consideration. The relevant portion in the said Circular Memo dated 12.08.2003 reads as follows:

(i) In the family of the deceased Government employee, if the son who is employed is separated from the family and if the family is without an earning member, the spouse/son/daughter out of the remaining family may be considered for compassionate appointment."

i) Referring to the said clause, the learned counsel for the writ petitioner submits that even assuming that the petitioner's brother is an employee, as he separated from the family, due to the death of the petitioner's mother, there is no earning member and being



the daughter out of the remaining family, the petitioner is entitled for compassionate appointment. Submitting so, the learned counsel states that the contentions advanced by the learned counsel for the appellant deserve to be rejected. He also submits that the learned Single Judge had taken into account the effect of death of the bread-winner on the remaining members of the family and to mitigate the financial hardship, felt it appropriate to issue the direction which was well within his discretion and therefore, the same warrants no interference by this Court. Accordingly, he submits that the appeal is liable to be dismissed.

10. This Court has considered the submissions of both the learned counsel and perused the materials available on record.

11. The petitioner laid her claim for compassionate appointment on the foundation that the petitioner's brother got married during the lifetime of their mother against her wishes and left the house, while she was alive and living separately since then, and further that the petitioner was living with her mother, as her husband deserted her. Since her mother died in harness and she is dependent on her mother, she was left destitute, without any means of livelihood. Basing on G.O.Ms.No.350 dated 30.07.1999, on which reliance is placed, the case of a married daughter can be considered in the circumstances enumerated in the said G.O., the relevant portion of which, may be extracted for better appreciation as under:

“3. Certain cases have been referred to the Government seeking clarification for compassionate appointment of married daughter in cases where the deceased Government employee is having only a married daughter and spouse without any other children.

4. In such cases Government hereby clarify that where there is only a married daughter to the deceased Government employee without older or younger brothers or sisters and the spouse of the deceased Government



employee is not willing to avail the compassionate appointment, such married daughter may be considered for compassionate appointment, provided she is dependent on the deceased Government employee and subject to satisfying, the other conditions and instructions issued on the scheme from time to time.”

12. A reading of the above clarification goes to show that the married daughter is entitled for consideration of her case for compassionate appointment, provided that she is dependent on the deceased Government employee, and further that the married daughter is without older or younger brothers or sisters and the spouse of the deceased Government employee is not willing to avail the compassionate appointment. However, such a situation is not present in the case on hand, since the petitioner is having an younger brother. In view of the above position, the contention of the learned counsel for the 1st respondent/writ petitioner that the petitioner’s case falls within the parameters laid down in G.O.Ms.No.350 dated 30.07.1999 deserves to be rejected. Application of the said clarification to the facts of the present case, in the opinion of this Court, is not correct and the findings recorded on the basis of the same are not sustainable.

13. Be that as it may. Circular Memo dated 12.08.2003, on which both the learned counsel placed reliance, which provides for a comprehensive note on the scheme of compassionate appointment to the dependents of the deceased Government employees, is also required to be considered. As per the said Circular Memo, twin requirements are to be satisfied for appointment to a job in Government service under the scheme of compassionate appointment, which may be extracted for ready reference as under:

“I. The objective of the Compassionate Appointment Scheme:

(i) One of the dependent family members of the deceased Government employee who die in harness, there being no other earning member in the family.”

**II. Dependent family member means:-**

- (a) Spouse }
 } of regular Govt. employees
(b) Son/Daughter }

(i) In the family of the deceased Government employee, if the son who is employed is separated from the family and if the family is without an earning member, the spouse/son/daughter out of the remaining family may be considered for compassionate appointment.”

14. It may also be relevant to note here that similar clarification as provided in para 4 of G.O.Ms.No.350 dated 30.07.1999 with regard to eligibility of a married daughter without older or younger brothers or sisters and the spouse of the deceased Government employee who is not willing to avail the compassionate appointment, is also incorporated in the aforesaid Circular Memo.

15. Testing the case of the petitioner with reference to the above requirements, as seen from the materials available on record i.e., Clause I (i) of the Memo dated 12.08.2003, the case of the petitioner would not be attracted, since her younger brother is an earning member in the family – a Government Teacher. However, the petitioner’s case is required to be examined, in the light of Clause II (i) of the Memo referred to above, which provides for consideration of compassionate appointment to spouse/son/daughter out of the remaining family where the son of a deceased Government employee is employed and separated from the family and thereby the family is without an earning member. To claim such a benefit, it is to be established that the employed son of the deceased was separated from the family. It is the case of the petitioner that her brother separated from the family after getting married against the wishes of her mother during her lifetime and he is living separately since then. However, the documents on record belie the case of the petitioner that her brother is married.



16. As seen from the Family Members Certificate dated 05.03.2014 issued by the Tahsildar, Srikakulam, in the relevant column, the petitioner's brother was shown as unmarried. Even assuming, as contended by the learned counsel for the writ petitioner, that the said certificate is for a limited purpose as mentioned therein and would not enure any benefit to the petitioner, the application submitted by the petitioner's brother with regard to the pensionary benefits of their deceased mother, cannot be lost sight of. The application form of the petitioner's brother dated 16.04.2014 exhibited along with the counter-affidavit of the appellant/2nd respondent, which is after two months from the death of their mother on 01.02.2014, contains the columns with regard to the marital status and employment details etc., wherein it was stated as under:

“K. Chandra Sekhar – 31 years – Son – Unmarried – Teacher”

17. The applicant is no other than the brother of the petitioner who, according to the petitioner, is stated to have married against the wishes of their mother and living separately. However, the above referred document turns down the case of the petitioner that her brother was married. Once the foundation goes, the whole edifice falls. In the light of the above documentary evidence, the case of the petitioner that her brother was married and living separately or separated from the family, which attracts the situation as provided in the Circular Memo referred to above, cannot be accepted. Further, the petitioner did not state anything in the affidavit about her brother's status regarding employment and she has not filed any document, which lends support to her case that she is dependent on her deceased mother.

18. It may also be relevant to note that the documents filed along with the counter-affidavit are neither disputed nor any reply to the counter-affidavit is filed denying the statements made therein. Further, the burden lies on the petitioner, who is seeking compassionate appointment, to substantiate her case, as such an appointment is not an



alternative for regular employment. The case of the petitioner has to stand or fall on the pleas advanced by her. Therefore, the observation of the learned Single Judge that the appellant/2nd respondent never contended that the petitioner and her brother are living jointly, would be of no consequence, in view of the specific assertions in the counter-affidavit denying the case of the petitioner that her brother was married and the petitioner is dependent on her mother. There is no dispute with regard to the proposition as laid down and relied on by the learned Single Judge in **Balbir Kaur's** case referred to supra that in considering the case for compassionate appointment, the authorities are supposed to adopt a humane outlook. However, such an appointment shall satisfy the prescriptions/norms as laid down in the schemes, else it would lead to ingenious claims.

19. The Hon'ble Supreme Court in a recent case in **N.C. Santosh Vs. State of Karnataka and others**, reported in (2020) 7 SCC 617, *inter alia* opined that dependants of the deceased employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's Policy. In the present case, the documents on record *ex facie* disprove the claim set up by the petitioner on the premise that her brother is married and living separately. She failed to satisfy the twin requirements in terms of the Circular Memo dated 12.08.2003.

20. In this regard, it may be appropriate to refer to the expression of the Hon'ble Supreme Court in **Bhawani Prasad Sonkar Vs. Union of India**, reported in (2011) 4 SCC 209, which reads thus:

"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit,



in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.”

In the light of the above factual and legal position of the case, this Court finds that the proceedings dated 07.10.2014 impugned in the writ petition is sustainable in law.

21. Further, as pointed out by the learned counsel for the appellant/2nd respondent, the documents, which support the case of the appellant and which are fatal to the case set up by the petitioner, were not taken into consideration by the learned Single Judge. Under the said circumstances as also for the reasons/conclusions arrived at supra, this Court is of the considered opinion that the order under appeal needs to be interfered with by this Court, in exercise of its appellate jurisdiction in terms of the provisions of the Letters Patent.

22. Accordingly, the Writ Appeal is allowed and the order dated 23.02.2021 passed by the learned Single Judge in W.P.No.4401 of 2016 is set aside. No order as to costs.

23. As a sequel, miscellaneous applications, if any, pending shall stand disposed of.

ARUP KUMAR GOSWAMI, CJ

NINALA JAYASURYA, J
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Note: L.R. copy be marked.

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W.A.No.294 of 2021

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
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HON'BLE MR. JUSTICE NINALA JAYASURYA**

WRIT APPEAL No.294 of 2021

4th October, 2021

cbs



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>HEAD NOTE :

! Counsel for the appellant : Mr. L.V.S. Raju

^ Counsel for respondent No.1 : Mr. G.U.R.C. Prasad

^ Counsel for respondent Nos.2 & 3 : None appeared

? CASES REFERRED :

1) (2000) 6 SCC 493

2) (2007) 6 MLJ 1011

3) (2020) 7 SCC 617

4) (2011) 4 SCC 209