



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
WRIT PETITION NO: 16963 OF 2015

Between:

1. Bestha Ramanjaneyulu, son of late Telugu Sunkanna @ Bestha Sunkappa,
House No. 4/163, Ramchandranagar, Manthralayam village & Mandal,
Kurnool District - 518 345.
2. Smt Telugu Lakshmi Devi, wife of late Telugu Sunkanna @ Bestha Sunkappa,
House No. 4/163, Ramchandranagar, Manthralayam village & Mandal,
Kurnool District - 518 345.

...PETITIONER(S)

AND:

1. A.P. Tourism Development Corporation Limited, Regd. Office : Tourism House, No. 3-5-891, Himayathnagar, HYDERABAD -500027 rep. by it's Vice-Chairman & M.D.
3. The District Social Welfare Officer, State of A.P., Kurnool District, KURNOOL.

...RESPONDENTS

Counsel for the Petitioner(s): MANOJ KUMAR BETHAPUDI

Counsel for the Respondents: HANUMANTHA RAO BACHINA

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****WRIT PETITION No.16963 of 2015****JUDGMENT:-**

Heard Sri B.Manoj Kumar, learned counsel for the petitioners and Ms. Swarupa Reddy, learned counsel representing Sri Bachina Hanumantha Rao, learned counsel for the respondent No.1/AP Tourism Development Corporation Limited (in short 'the Corporation') and perused the material on record.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners for a writ, order of direction more particularly in the nature of writ of mandamus, declaring the action of respondent No.1/Corporation in not appointing the petitioner (petitioner No.1) in a suitable post on compassionate ground, pursuant to the G.O.Ms.No.214, GAD dated 09.06.1998 read with G.O.Ms.No.661, GAD dated 23.10.2008, consequent upon the retirement of the father of petitioner No.1 (husband of petitioner No.2) on the ground of medical invalidation.

3. The prayer made in this writ petition reads as under:-

“For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue orders, direction or wit more particularly in the nature of writ of Mandamus for declaration declaring that the both the both the terms, Telugu and Bestha are synonymous and that the failure of the respondent No.1 in not appointing the petitioner in a suitable post on regular basis in the A.P. Tourism Development Corporation Limited under Medical Invalidation scheme under G.O.Ms.No.214 GAD dated 09.06.1998 r/w G.O.Ms.No.661 GAD dated 23.10.2008 as illegal and arbitrary and violation of the Article 14, 16 and 21 of the Constitution of India and consequently direct the Respondent No.1 to appoint the petitioner in a suitable post in the Corporation on a regular basis under Medical Invalidation scheme forthwith duly extending him all the attendant



service benefits retrospectively with effect from 26.07.2001, i.e., date of retirement of his father and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

4. During arguments Sri B. Manoj Kumar, learned counsel for the petitioners submitted that the prayer as made in the writ petition be considered for the petitioner No.1 i.e. the son as under the G.O.Ms.No.214 dated 09.06.1998, the compassionate appointment on the ground of medical invalidation can be given to one of them only.

5. The petitioner No.1, henceforth be referred as the petitioner.

6. Late Telugu Sunkanna @ Bestha Sunkappa, father of the petitioner, who worked as scavenger in the Tourism Guest House of the Corporation at Manthralayam, Kurnool District, and after putting in service of about 13 years on regular basis, was declared not fit to continue in service *vide* proceedings Rc.No.2088/43/2000, dated 26.07.2000 by the Medical Board of the Government General Hospital. Consequently he was retired from service *vide* order of the Corporation, dated 04.09.2001 w.e.f. 26.07.2001 on ground of medical invalidation. He requested the Corporation *vide* letter, dated 09.05.2001 to give compassionate appointment to the petitioner under G.O.Ms.No.214, dated 09.06.1998. Later on Telugu Sunkanna @ Bestha Sunkappa, died on 09.09.2001.

7. The Corporation, pending consideration of the petitioners' case, appointed the petitioner on contract basis *vide* proceedings Rc.No.32/P2/Admn/2001, dated 26.09.2001.

8. Later on *vide* the impugned proceedings Rc.No.APTDC/Admn/P1/27/2008, dated 25.03.2010, the



respondent No.1 rejected the request to appoint the petitioner on regular basis under the G.O.Ms.No.214, recording that the petitioner was not entitled for such appointment on the following two (2) grounds:-

(i) that the scheme under G.O.Ms.No. 214 GA (SER.A) Department, dated 09.02.1998, was dispensed with *vide* subsequent G.O.Ms.No.203, dated 27.04.2002, G.O.Ms.No.305, dated 17.07.2002 and G.O.Ms.No.198, dated 04.07.2003, referred in the impugned order.

(ii) that on verification of the petitioner's certificates it is found that the petitioner's name is Sri Bestha Ramanjaneyulu, son of late Sri Bestha Sunkappa, where as the person who was retired on Medical Invalidation ground his name is "Telugu Sunkanna". Thus the claim of the petitioner as son of Telugu Sunkanna appears to be false.

9. Sri B.Manoj Kumar, learned counsel for the petitioner submits that *vide* G.O.Ms.No.661 General Administration (SER.G) Department, dated 23.10.2008, the Government revived the appointments on medical invalidation grounds and in view thereof, the petitioners case could not be rejected pursuant to the G.O.Ms.No.214, 09.06.1998 but required consideration under G.O.Ms.No.214 dated 09.06.1998 read with G.O.Ms.No.661 dated 23.10.2008, but the G.O.Ms.No.661 was not even referred in the impugned order.

10. Sri B. Manoj Kumar placing reliance on the judgment of the Hon'ble Apex Court in **Secretary to Government Department of Education (Primary) and Others Vs. Bleemesh @ Bheemeppa**¹, Para 19, next contended that as on the date the petitioner's father

¹ (2021) SCC Online SC 1264



retired on medical invalidation ground the G.O.Ms. No. 214, dated 09.06.1998 was applicable, the petitioner's case required consideration under the G.O.Ms.No.214 dated 09.06.1998, irrespective of the fact that the scheme under the said G.O, was later on dispensed with in the year 2002. He submits that the date of retirement was a determinate or invariable factor, which should be taken into consideration.

11. With respect to the second ground of rejection, learned counsel for the petitioner submits that 'Manthralayam' in Kurnool District, is situated on the border of the Karnataka State. The Telugu people of the State of Andhra Pradesh who inhabit in the borders of the Karnataka State also speak, Kannada language and follow Kannada customs and traditions. They adopt the names of Kannada people and the term, 'Appa' is suffixed to their names. Further, pointing out the difference between 'Bestha' and 'Telugu', he submits that the petitioner belongs to fisherman community, which is recognized as a Backward Community by the Government of Andhra Pradesh, under BC-A group, item No.1 as BESTHA. The petitioner and the persons like the petitioner are also called as Telugollu (Telugu) or Jalari or Gangaputra, which are all synonymous and refer to the single community of fishermen. Only for this reason, there was difference in the name of the petitioner's father as 'Telugu Sunkanna' & 'Bestha Sunkappa' in different public records, but those names refer to one and the same person i.e. the petitioner's father.

12. Learned counsel for the petitioner next submits that the petitioner's father also, in his application, Ex.7, dated 09.05.2001 requested the Corporation, addressed the petitioner as his elder



son Mr. B.Ramanjaneyulu. He submits that B. stands for 'Bestha'. The Corporation itself gave appointment to the petitioner on contract basis *vide* order, dated 26.09.2001, by name "B.Ramanjaneyulu", son of late "T.Sunkanna" and now such objection is being raised having no force.

13. On the first ground of rejection, the learned counsel for the Corporation submits that in **Government of Andhra Pradesh Vs. D. Gopaiah**², the Full Bench of this Court declared that there could be no appointment on compassionate grounds in case other than the death of employees in harness. The scheme for compassionate appointment of a dependent, on retirement of an employee on medical invalidation was unconstitutional. The State Government by G.O.Ms.No.203, dated 27.04.2002 gave effect to the decision of the Full Bench by dispensing with the scheme for compassionate appointment on the ground of medical invalidation. However, the judgment of the Hon'ble Full Bench in **D. Gopaiah (supra)** was set aside by the Hon'ble Apex Court in **V.Sivamurthy vs. State of Andhra Pradesh and others**³.

14. On the second ground, the facts as stated by the learned counsel for the petitioners and also pleaded in paragraph Nos.7 and 8 of the writ petition could not be disputed by the learned counsel for the respondents/Corporation.

15. I have considered the submissions of the learned counsels for the parties and perused the material on record.

16. A perusal of the impugned order shows that the petitioners case has been rejected simply on the ground of the G.O.Ms.No.203, dated 27.04.2002, G.O.Ms.No.305, dated 17.07.2002 and

² (2001) 6 An LT 553

³ (2008) 13 SCC 730



G.O.Ms.No.198, dated 04.07.2003, which were issued pursuant to the Full Bench judgment in **D. Gopaiah (supra)**, but the said judgment was set aside by the Hon'ble Apex Court in the case of **V.Sivamurthy (supra)** and subsequent thereto the G.O.Ms.No.661, dated 23.10.2008 was issued by which the policy of compassionate appointment on Medical Invalidation pursuant to G.O.Ms.No.214, dated 09.06.1998 has been revived. Though the impugned order was passed on 25.03.2010 and by that date G.O.Ms.No.661, dated 23.10.2008 had already been issued, but the same does not find consideration. In view of the G.O.Ms.No.661, dated 23.10.2008 as also the judgment of the Supreme Court in **V.Sivamurthy (supra)**, the petitioner's case requires consideration under G.O.Ms.No.214, dated 09.06.1998. The impugned order cannot be sustained on the first ground.

17. There is another aspect of the matter, in **Secretary to Government, Department of Education (primary) and others vs. Bheemesh Alias Bheemappa**⁴, the Hon'ble Apex Court has held that there is no principle of a statutory interpretation which permits a decision on the applicability of a rule to be based upon an indeterminate or variable factor. It was further held that a rule of interpretation which produces different results depending upon what the individuals do or do not do is inconsiderable. It was held that the applicability of a modified scheme should depend upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor. Paragraph No.19 of **Bheemesh Alias Bheemappa (supra)** is being reproduced as under:-

“19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the

⁴ (2021) SCC Online SC 1264



employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. **There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor.** Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. **A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable.** This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.”

18. In the present case also, the date of the retirement of the father of the petitioner on Medical Invalidation ground, is a determinate factor and therefore the applicability of the



G.O.Ms.No.214, dated 09.06.1998, should have been considered on the date of the retirement of the petitioner's father and not the later G.O.Ms.No.203, dated 27.04.2002, G.O.Ms.No.305, dated 17.07.2002 and G.O.Ms.No.198, dated 04.07.2003, which dispensed with the scheme under the G.O.Ms.No.214, dated 09.06.1998 and particularly when the scheme of compassionate appointment of the dependents of the employees retiring on the ground of Medical Invalidation was revived by G.O.Ms.No.661, dated 23.10.2008 and thus even on the date of consideration of the petitioner's case, the policy was in force.

19. With respect to the submission of the petitioner's counsel as recorded in Paragraph No.11 (supra), challenging the second ground of rejection, in view of the writ petition pleadings and in the absence of any denial, the Court finds force in the submission of learned counsel for the petitioner that in view of the said practice regarding use of suffix 'Appa' & 'Anna' as also prefix 'Bestha' & 'Telugu' there is difference in the name of the petitioner's father in the records, which is not a valid ground for rejection of the petitioner's case, particularly when, a perusal of the application submitted by the petitioner's father to the Corporation clearly mentioned the petitioner's name as "B.Ramanjaneyulu", son of late "T.Sunkanna" and in the petitioner's appointment order on contract basis also the respondents/Corporation mentioned the same name of the petitioner as well as of his father, without any objection at any time. Consequently, the second ground of rejection can also not be sustained.

20. However, it is clarified that the above observations, in view of the submission of learned counsel for the petitioner with respect to



the use of suffix 'Appa' or 'Anna' and the difference as pointed out between 'Bestha' and 'Telugu', are only for the purposes of the present case.

21. For all the aforesaid reasons, the petitioner's case requires consideration in terms of the G.O.Ms.No.214, dated 09.06.1998.

22. The impugned order cannot be sustained and is hereby quashed.

23. The Vice-Chairman & M.D, A.P.Tourism Development Corporation Limited/respondent No.1 is directed to pass fresh orders in accordance with law under the G.O.Ms.No.214, dated 09.06.1998, expeditiously, preferably within a period of three (03) weeks from the date of production of copy of this judgment/order before the said authority.

24. It is made clear that this Court has not made any observation on the merit of the entitlement of the petitioner for compassionate appointment under the scheme either way.

25. The writ petition is allowed with the aforesaid observations and the directions.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

Date: 30.06.2022
SCS



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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Date: 30.06.2022

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