

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 23372 of 2013

ORDER:

Heard Sri Mahadeva Kanthrigala, learned counsel for the petitioners and Sri Praveen Kumar Gadi, learned standing counsel appearing for respondents.

2. The petitioner filed this writ petition to issue, a writ of Mandamus declaring the action of the 3rd respondent in issuing the proceedings No.I-48A/Admn/2010.Compassionate /4360, dated 22/23.02.2010 and letter No.1-48A/Admn./2010/1714, dated 30.10.2014 issued by the 2nd respondent rejecting the case of the petitioners for appointment of compassionate grounds as illegal, improper, unjust, arbitrary and contrary to the proceedings No.19(9)/2012/D(Lab), dated 08.08.2012 of the 1st respondent and further direct the respondents to consider the case of he 1st petitioner for appointment on compassionate grounds in any suitable post.

3. The case of the petitioner, in brief, is as follows:

a) The father of the petitioner was appointed as Mazdoor on 01.01.1975 and while he was in service as Grade II in the pay scale of Rs.950-1150-E.B-25-1400 with basic pay of Rs.3,875/-, died on 17.05.1998 leaving behind the petitioners and three sisters.

b) The 2nd petitioner made a representation on 10.09.1998 to the concerned authorities for compassionate grounds. But the respondent authorities instead of issuing appointment under compassionate grounds as per eligibility/educational qualifications, made her to compete with other candidates in oral interview conducted on 22.09.2003 and rejected her candidature on the ground that she failed in the interview and to qualify for the appointment on compassionate grounds.

c) The 2nd petitioner relinquished her rights to get compassionate appointment to the 1st petitioner as he is only one son to look after the entire family and the 2nd petitioner is not in a position to bear the entire family in these days without having any source of income due to harness and ill-health. Therefore, the 1st petitioner made a representation on 02.01.2006 as he attained majority in the year 2000 to the

respondents requesting appointment on compassionate grounds by enclosing relevant documents.

d) As there was no response on the said representation,, the 1st petitioner made another representation on 15.02.2010 and the same was rejected on 22/23.02.2010 that the compassionate appointment shall be considered within three years of time frame and that the 2nd petitioner has already been considered earlier for appointment on compassionate grounds, but she failed to qualify for appointment on compassionate grounds and that there are no recruitments in the Mint at present.

e) The father of the 1st petitioner died in the year 1998 while in service, after his death, his mother has been receiving family pension, entire family consisting of five members.

f) The 1st petitioner approached the Central Administrative Tribunal seeking to condone the delay in M.A.No.919 of 2012 in OASR No.3621 of 2012 and the same was rejected on 21.01.2013 that the Tribunal has no jurisdiction to maintain the OA. Hence, this writ petition is filed.

4. The Counsel for the Petitioner places reliance on the following judgments and contends that the Writ Petition has to be allowed as prayed for.

a) Judgment of the Andhra Pradesh High Court dated 25.02.2021 passed in W.P.No.24086/2004.

b) Judgment of the Division Bench of Andhra Pradesh High Court dated 01.10.2021 passed in W.A.No.206/2021.

5. The Counsel for the Respondent places reliance on the following judgments and contends that the Writ Petition has to be dismissed.

a) Judgment of the Apex Court datd 23.05.2012 passed in Civil Appeal No.6224/2008 reported in Union of India and another v Shashank Goswami and another¹. Paras 9 and 10

b) Judgment of the Apex Court in Union of India & Others v. Amrita Sinha, dt. 11.12.2021 reported in 2021 Law Suit (SC) 834. Para 10.

¹ (2012) 11 SCC 307

c) Judgment of the Apex Court reported in (2004) 7 SCC 265 in Punjab National Bank & Others v. Ashwini Kumar Tanjea in Civil Appeal No.5256/2004 decided on 16.08.2004. Para 7.

6. Perused the record :

7. The facts as borne on record and as evidenced by material documents filed by the Petitioner herein and also undisputed by the Respondents are as follows :

a) The 1st Petitioner vide his representation dt. 02.01.2006 and 15.02.2006 addressed to the General Manager, India Government Mint, Hyderabad, A.P., made a request for providing compassionate appointment.

b) Vide impugned proceedings No.I-48A/Admn/2010/Compassionate/4360, dt. 22/23.02.2010, the 3rd Respondent herein rejected 1st Petitioner's request for compassionate appointment and subsequently in pursuance to the interim orders of this Hon'ble Court dt. 04.10.2013 passed in WPMP NO.28692/2013 in W.P.No.23372 of 2013 directing the Respondents to consider the case of the 1st Petitioner's

appointment on compassionate grounds in any suitable post, the Deputy General Manager, India Government Mint, IDA Phase-II, Cherlapally, R.R. District, Hyderabad – 500 051, considered 1st Petitioner's case vide Proceedings dt. 30.10.2014 vide No.I-48A/Admn/2010/ 1714 and rejected the same

c) I.A.No.2/2019 in WP No.23372/2013 is filed seeking a direction to the 2nd Respondent to reconsider the application of the 1st Petitioner for appointment on compassionate grounds as per the office Memo F.No.14014/3/2011-Estt(D), dt. 26.07.2012 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training).

d) I.A.No.1/2019 in W.P.No.23372/2013 is filed to permit the Petitioner to seek amendment prayer by adding the following after dt.22/23.02.2010 in 5th line of main prayer in the Writ Petition as under :

“and letter No.I-48A/Admn/2010/1714, dt. 30.10.2014 issued by the 2nd Respondent”.

The said I.A.No.1/2019 was ordered as prayed for as per Court's order dt.28.06.2022.

8. The last 3 paras of the impugned proceedings No.I-48A/Admn/ 2010.compassionate/ 4360, dt. 22/23.02.2010, are extracted hereunder:

"The candidature of Smt. Swaroopa, W/o. Late Jaipalswamy, F.NO.819, was again considered for compassionate appointment in the year 2003 alongwith other candidates and called for a oral interview on 22.09.2003 vide this Mint Memo No.I-240/pers/maz/03/2550 dt. 11.09.2003. However, the said candidate did not qualify for appointment in the Screening Committee's opinion/interview.

As per orders, the compassionate appointment shall be considered within 03 years of time frame After 03 years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again.

Since the case of Smt Swaroopa, wife of Late Shri K.Jaipalswamy T.No.819 has already been considered earlier for appointment on compassionate grounds and she failed to qualify for appointment on compassionate grounds, and also there are no recruitments in this Mint at present as per the directions, it is hereby informed that we are not in a position to again consider your request for appointment on compassionate grounds as per the orders.

No further correspondence will be entertained in this regard".

9. The subsequent impugned proceedings Letter No.I-48A/Admn/2010/1714, dt. 30.10.2014 issued by the 2nd Respondent reads as under :

Proc.No. I-48A/Admn/2010/1714

Dated : 30.10.2014

To

*Sri K.Jai Barath, S/o Late K.Jaipal Swamy,
Ms.K.Saroopa, W/o Late K. Jaipal Swamy,
H.No.23-4-65/A, Sultan Shahi, Hyderabad-A.P.*

Sir,

Sub:- W.P.No.23372 of 2013 – reg.

With reference to order dt. 04th October, 2013 in WPMP NO.28692/2013 in WP No.23372/2013 of the Hon'ble High Court of A.P., your case has been examined and you are not found fit for compassionate appointment as per rules. Further, as already been informed vide this Mint letter No.1-48/Admn/2010/ Compassionate/4360, dt. 22/23.02.2010, your case was considered twice earlier and not found fit. In fact, requests for compassionate appointment can be considered for upto 3 years and thereafter after, it shall be treated as closed and not considered again as per rules.

This is for your information.

*Yours faithfully,
Sd/-
(S.B. BEHERA)
Deputy General Manager*

10. The learned counsel for the petitioner brings on record during the course of hearing the proceedings dt. 09.09.2020 vide F.No.148A/PER/2020-21/1016 of the Joint General Manager (HR) and Head Office India Government Mint, Cherlapally, Hyderabad and bare perusal of the same

indicates that around seven cases whose application's had been pending consideration for many years i.e. for considerable period, as having been considered and provided with compassionate appointment during the period 2020-2021 and 2021-2022 under SPMCIL Compassionate Appointment Scheme 2012, the same however, has not been denied by the Respondents herein.

11. Paras 5, 6 and 7 of the counter affidavit filed by Respondents No.1 to 3 read as under :

Para 5 :

It is further submitted that on the basis of her application for compassionate appointment, the candidature of Smt K.Swaroopu was considered by a committee constituted to investigate and to determine the eligibility for compassionate appointment at the office of 2nd Respondent. The Committee after consideration, recommended the candidature of 2nd Petitioner and the same was forwarded by the 2nd Respondent to the 1st Respondent Ministry vide Letter No.I-2/99-2000/ADO/4878, dt. 13.03.2001 seeking permission for appointing her on compassionate appointment. However, it is to submit that her appointment could not be finalized as approval for the said appointment was not received from the Ministry of Finance.

Para 6 :

Furthermore, it is submitted that candidature of Petitioner No.2 was once again considered by the office of 2nd

Respondent in the year 2003 along with other candidates. A Memo hearing No.I-240/Pers./Maz/03/2550-0, dt. 11.09.2003 was issued to her to report on 22.09.2003 for Physical Ability and Oral Test. It was clearly brought out in the said memo that the decision of the IG Mint in all matters clearly brought out in the said memo that the decision of the IG Mint in all matters relating to eligibility, acceptance or mode of selection, conduct of interview will be final and binding on the candidates. Subsequently, on appearance for the said tests, the Screening Committee which considered candidates for the said appointments did not find the candidature of 2nd Petitioner suitable for compassionate appointment.

Para 7 :

It is submitted that in the meantime Department of Personnel & Training (DoPT), Government of India issued instructions vide office memorandum No.14014/19/2002-Estt.(D), dt. 05.05.2003 fixing time frame for consideration of candidature for compassionate appointments. According to the said O.M., maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again. It is further submitted that since, the case of the Petitioner No.2 has already been considered earlier for appointment on compassionate grounds and the fact that she failed to qualify for appointment on compassionate grounds, her case cannot be considered any further.

12. Paras 15 and 16 of the counter affidavit filed by the Respondents No.1 to 3 read as follows :

Para 15 :

It is further submitted that in pursuance of the decision of the Union Cabinet on 2nd September, 2005, the Government of India had decided to corporatize the existing functions of the 2nd Respondent which was earlier functioning under the Department of Economic Affairs. Accordingly, the 2nd Respondent was transferred to Security Printing & Minting Corporation of India Limited (SPMCIL) which is a wholly owned company of the Government of India under the Administrative Control of Department of Economic Affairs, Ministry of Finance on 10.02.2006. As on date, the 2nd Respondent office is guided by the policies and instructions issued by SPMCIL, New Delhi. A scheme called SPMCIL Compassionate Appointment Scheme – 2012 was introduced by the company which is only applicable as on the date for 2nd Respondent's Office. As per Rule 4 of this scheme, the scheme shall apply only to all categories of employees of SPMCIL, who are in regular employment of the company till the date of death. Therefore, even with respect to this policy, the candidature of the Petitioner No.2 cannot be considered as the father of the 1st Petitioner expired during the regime when the 2nd Respondent office was directly functioning under Government of India.

Para 16 :

It is submitted that with reference to Para No.8 that, it is not disputed that DoPT vide its O.M.No.14014/3/2011-Estt.(D), dt. 26.07.2012 withdrew 03 year time limit prescribed vide

its earlier O.M.No.14014/19/2002-Estt.(D), dt. 05.05.2003, however, the case of the Petitioner No.2 pertaining to the year 1988 has already been considered and the candidature has not been accepted by the Screening Committee. Therefore, the candidature of Petitioner No.1 cannot be considered afresh in the guise of relinquishment of rights of Petitioner No.2. Further, it is to submit that amendment of the rules has a prospective effect and not a retrospective effect. Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

13. CONCLUSION :

14. A bare perusal of the SPMCIL Compassionate Appointment Scheme 2012 indicates that the objective of the scheme is to grant appointment on compassionate grounds to a dependent family member of a company employee dying in harness, leaving his family in penury and without any means of livelihood and to relieve the family of the employee concerned from financial destitution. The core aim of the object of providing compassionate appointment in general is to relieve the family from financial sufferings being faced for the sudden demise of the bread winner of the family. The sufferings being faced by the dependents of

the deceased employee for sudden demise of the bread winner could be solved for some extent by providing compassionate appointment to one of the dependents of the deceased employee to look after the family. In the present case a bare perusal of both proceedings impugned dt.22/23.02.2010 and 30.10.2014 clearly indicate that the same had been passed mechanically by the 3rd and 2nd Respondent respectively without any application of mind in a routine manner, without giving any credence to the very objective of the SPMCIL Compassionate Appointment Scheme 2012.

15. If at para 5 of the counter affidavit filed by the Respondents No.1 to 3 extracted above, it is contended that the committee after consideration recommended the candidature of the 2nd Petitioner and the same was forwarded by the 2nd Respondent to the 1st Respondent Ministry vide Letter No.I-2/99-2000/ADO/4878, dt. 12.03.2001 seeking permission for appointment of the 2nd Petitioner on compassionate appointment, her appointment could not be finalized as approval for the said appointment was not received from the Ministry of

Finance. The counter affidavit is however, silent as to why the 2nd Petitioner's appointment though recommended by the competent authority way back in 2001 could not be approved by the Ministry of Finance.

16. Para 6 of the counter affidavit extracted above curiously further states that the 2nd Petitioner's case was again considered by the office of the 2nd Respondent in the year 2003, but however, that the then Screening Committee did not find 2nd Petitioner suitable for compassionate appointment.

17. Para 7 of the counter affidavit extracted above says that after 3 years if compassionate appointment is not possible to be offered to the applicant his or her case will be finally closed and will not be considered again. Para 15 of the counter affidavit extracted above indicates that the candidature of the 2nd Petitioner cannot be considered as father of the 1st Petitioner and the husband of the 2nd Petitioner expired during the regime when the 2nd Respondent office was directly functioning under Government of India.

18. This Court opines that there is no justification in rejecting Petitioner's case for compassionate appointment on all the above referred grounds and the same are unreasonable and erroneous. As per para 16 of the counter affidavit extracted above it is contended by the Respondents that the case of the 2nd Petitioner cannot be considered since the 2nd Petitioner's candidature has not been accepted by the screening committee, this Court opines that the Petitioners are only victimized and denied of their legitimate rights for compassionate appointment on very flimsy, illegal, unreasonable, malafide grounds.

19. This Court opines that since it is clearly borne on record that DoPT vide its O.M.No.14014/3/2011-Estt(D) dt. 26.07.2012 withdrew 03 year time limit prescribed vide its earlier O.M.No.14014/19/2002-Estt(D) dt. 05.05.2003 and the proceedings No.19(O)/2012/D(Lab), dt. 08.08.2012 of the 1st Respondent clearly indicates that the instruction contained in OM dt. 05.05.2003 has been withdrawn.

Therefore the impugned proceedings No.I-48A/Admn/2010-Compassionate/4360, dt 22/23.02.2010 of the 3rd Respondent herein cannot be sustained.

20. This Court opines that the proceedings impugned No.I-48A/Admn/2010/1714, dt. 30.10.2014 of the 2nd Respondent herein also cannot be sustained since the same is passed in a routine mechanical manner, hastily without any application of mind holding that the Petitioner was not fit for compassionate appointment as per rules and further on the ground that the request for compassionate appointment can be considered for up to three years. This is totally contradictory to the contents of O.M.No.14014/3/2011-Estt(D), dated 26.07.2012.

21. The Respondent No.1 to 3 herein contends at para 9 of the counter affidavit that the request of the Petitioners is belated. Respondents No.1 to 3 herein cannot malafidely, illegally, unilaterally, irrationally, mechanically, erroneously without application of mind reject the request of the Petitioner for compassionate

appointment on the ground that it is belated request since the representations of the Petitioners as borne on record and even acknowledged by the Respondent authority are dt. 02.01.2006, 15.02.2006 and the deceased employee expired on 17.05.1998 as per the Family Members Death Certificate dt. 17.05.1998. The Division Bench of A.P. High Court vide its Judgement dt. 01.10.2021 in W.A.No.206/2021 in Andhra Bank Now Union Bank of India & Others v. B Rajasekhar observed in a case of rejection of compassionate appointment on the ground of delay at para 11 as under :

"So far as the contention that nearly 22 years have gone by from the date of death of the father of the respondent/writ petitioner and, therefore, the case of the respondent/writ petitioner for compassionate appointment needs no consideration at this length of time is concerned, we are unable to accept the said contention. At the earliest point of time, the mother of the respondent/writ petitioner had approached the authorities of the bank for compassionate appointment of the respondent/writ petitioner, which was rejected on most untenable grounds prompting the respondent/writ petitioner to assail such rejection of compassionate appointment to him. Even in the second round of consideration, the bank had rejected his case

on unjustifiable ground, as held by the learned single judge and affirmed by us. The respondent/writ petitioner cannot be denied his right to compassionate appointment accrued under the Scheme, for the delay that had occasioned over which he had no control. It is not in dispute that on the date of consideration, he was in requirement of compassionate appointment. In these circumstances, we see no good ground to take a view that only because of lapse of considerable time, he should be denied compassionate appointment”.

22. The said judgement of the Division Bench A.P. High Court dt. 01.10.2021 passed in W.A.No.206/2021 was confirmed by the Apex Court in its judgement dt. 14.02.2022 in SLP (C) No(s).19846/2021 in Andhra Bank Now Union Bank of India & Others v. B Rajasekhar.

23. The Apex Court in its recent judgement decided on 20th May, 2022 in Malaya Nanda Sethy v. State of Orissa & Others², at para 17 and 18 of its judgement observed as follows :

Para 17 :

“We are constrained to direct as above as we have found that in several cases, applications for

² 2022 SCC Online SC 684

appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order or rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

Para 18 :

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a trady way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at

an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.

24. The further plea of the Respondents No.1 to 3 that the employee expired in the year 1998 and the Writ Petition is filed in the year 2013 and the family had been able to manage for 15 years and the same can be considered as adequate proof that the family has some dependable means of subsistence cannot be accepted at all.

25. This Court opines that the said grounds are all illogical, unreasonable, illegal and invented only to deny the legitimate rights of the Petitioners for compassionate appointment.

26. For all the circumstances and reasons explained above this Court opines that the judgments relied upon by the counsel for the respondents have no application to the facts of the present case and taking into

consideration the observations of the Division Bench of A.P. High Court in W.A.No.206/2021, dt. 01.10.2021 in Andhra Bank Now Union Bank of India & others v. B.Rajasekhar and subsequently confirmed by the Apex Court vide its order dated 14.02.2022 and the observations of the Apex Court dated 20.05.2022 in Judgement reported in 2022 SCC Online SC 684 in Malaya Nanda Sethy v. State of Orissa & Others referred to and extracted above the writ petition is allowed and the proceedings No.1-48A/Admn/2010.Compassionate/1360, dated 22/23.02.2010 issued by 3rd Respondent and the proceedings No.1-48A/Admn/2010/1714, dated 30.10.2014 issued by the 2nd Respondent are set aside as contrary to the proceedings No.19(O)/2012/D(Lab), dt.08.08.2012 of the 1st Respondent and the Respondents are directed to reconsider the case of the 1st Petitioner for appointment on compassionate grounds in any suitable post within 4 weeks from today duly taking into consideration the observations of the Apex Court extracted above and also the fact that

under similar circumstances 7 cases had been considered by the Respondents herein and compassionate appointments provided under SPMCIL Compassionate Appointment Scheme 2012 vide F.No.148A/Per/2020-21/1016, dt. 09.09.2020 without holding the said applications filed by the said 7 applicants as belated requests for compassionate appointment. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 26.09.2022

Note: L.R. copy to be marked
b/o
kvrn