

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 15476 of 2017

Between:

S.Ravi Babu and another

... Petitioners

And

Prof. Jayasankar T.S. Agricultural University

... Respondent

JUDGMENT PRONOUNCED ON: 01.11.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 15476 of 2017**

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> Head Note:

! Counsel for the Petitioners : Mr S.Satyanarayana Rao

^Counsel for the Respondents:

Standing counsel for respondent

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 15476 of 2017****ORDER:**

Heard learned counsel for the petitioners and learned standing counsel appearing on behalf of the respondent.

2. This writ petition is filed to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus and call for records pertaining to the present impugned Memo No.12041/Com.Appt.Ser.(NT)/A2/2015, dated 12.08.2016 of the respondent and set aside or quash the same by declaring the entire action of the respondent in rejecting the genuine claim of the 1st petitioner for appointment under the scheme of Compassionate grounds on the untenable ground that the other parents was retired from service and is in receipt of service pension as highly illegal, arbitrary, unjust, and contrary to law laid down by the High Court in W.P.No.16242 of 2013, dated 20.06.2013 in the similar subject matter and consequently to direct the respondent to re-consider the claim of the 1st petitioner for appointment under the scheme of Compassionate grounds of Medical invalidation scheme in a suitable post without

reference to the present impugned Memo No.12041/Com./Appt./Ser.(NT)/A2/2015, dated 12.08.2016 of the respondent.

3. The order impugned passed by the respondent dated 12.08.2016 vide Memo No. 12041/Com./Appt./Ser.(NT) /A2/2015, dated 12.08.2016 reads as under:

"With reference to the letter 6th cited, the Principal Scientist (Agronomy) & Head, Agricultural Research Institute, Rajendranagar, Hyderabad is informed that, the University vide Proc.No.103/SC/A1/2012, dated 05.05.2012 has adopted Circular Memo No.3548/Ser.G/A2/2010-8, General Administration (Ser.G) Department, dated 24.03.2012, wherein the Government have clarified to all the appointing authorities, that, pension can be treated as 'earning' and pensioner can be treated as an 'earning member' and also that the dependant children of a Government employee, who died while in service, cannot be considered for appointment under the scheme of compassionate appointment, when the other parent, who had retired from service, and is in receipt of service pension.

Hence, it is requested to inform Sri S.Ravi Babu, Son of Smt S.Ramulamma, who worked as Agricultural workman at Agricultural Research Institute, Rajendranagar, Hyderabad and retired from service on Medical Invalidation on 30.05.2015, that his representation for appointment under the scheme of Compassionate grounds, cannot be considered as Sri S.Anthiah, the other parent of the applicant was retired from service and is in receipt of service pension."

PERUSED THE RECORD.

4. A bare perusal of the order impugned in Memo No. 12041/Com./Appt./Ser.(NT)/A2/2015, dated 12.08.2016 of the respondent herein clearly indicates that the request of the petitioners to consider compassionate appointment to the 1st petitioner cannot be considered since the 2nd petitioner, who is the mother of the 1st petitioner retired from service on 30.05.2015 voluntarily on Medical Invalidation and is receiving service pension every month, and further Sri S.Anthaiah, the other parent of the 1st petitioner and husband of the 2nd petitioner is also a service pensioner receiving monthly pension.

5. **Para 8 of the counter affidavit filed by the respondent reads as under:**

"It is submitted that the Government has issued Cir.Memo No.3548/Ser.G/A2/2010-8 General Administration (Ser.G Department, dated 24.0.2012 that the object of providing compassionate appointment to the dependants of a government servant dying in harness is to mitigate hardship caused to the family of the deceased on account of his unexpected death and it is granted only when the financial condition of the family is in penury. Where one of the parents of the applicant is in service or in receipt of service pension and family pension, and lumpsum retirement benefits the dependant child is not entitled to seek compassionate appointment, since there is no financial distress. It is further observed that pension is an allowance or stipend or deferred salary paid to a Government employee

in consideration of his past service. The petitioner, therefore, can be regarded as an earning member of the family. The family which has a person drawing pension cannot be said to be without an earning member and consequently the scheme of compassionate appointment cannot be invoked to the dependant in such case. The said G.O. has been adopted by the University vide Proc.No.103/SC/A1/2012, dated 05.05.2012. In view of the above said orders, the 1st petitioner is not eligible for compassionate appointment."

6. It is submitted by learned counsel for the petitioner and also learned standing counsel for the respondent that the issue involved in this writ petition is squarely covered by the judgment dated 01.10.2021 passed in W.P.No.9551 of 2021.

7. The issue involved in this writ petition is no more *res integra*. It was held in several decisions of this court that family pension cannot be treated as an income. A judgment dated 20.06.2013 of the Division Bench of this Court in W.P.No.16242 of 2013, dealing with an identical situation as in the present case observed as follows:

"Merely because family pension is being paid to the wife of the deceased, the same is not a ground to deprive the benefit of compassionate appointment under this scheme notified by the Government for the children of the deceased, who die in harness"

8. The same view is expressed by a learned Single Judge in WP.No.27465 of 2017 dated 30.08.2017, which was affirmed by a Division Bench in WA.No.700 of 2018 dated 29.11.2018 and another Division Bench in WP.No.30329 of 2019 dated 24.07.2019 wherein the Government Memo dated 24.03.2012 was taken note of.

9. In WA.No.700 of 2018 dated 29.11.2018 (while dealing with a situation wherein compassionate appointment was rejected on the ground that claimants' father was drawing service pension), it was held as under:

*"In **STATE OF U.P. V/s. BRAHM DATT SHARMA** [(1987) 2 SCC 179] , the Supreme Court made it clear that pension is not a bounty but a right earned by the Government servant on the basis of the length of service rendered by him. The same principle was reiterated in **D.D.TEWARI (DEAD) THROUGHS V/s. UTTAR HARYANA BIJLI VITRAN NIGAM LTD** [(2014) 8 SCC 894]."*

10. In view of the above, this Court is of the opinion that the impugned Memo No. 12041/Com.Appt.Ser.(NT)/A2/2015, dated 12.08.2016 of the respondent is unsustainable and liable to be set aside.

11. Accordingly, the Writ petition is allowed setting aside the impugned Memo No. 12041/Com.Appt.Ser.(NT)/A2/2015,

dated 12.08.2016 of the respondent and the respondent is directed to consider the case of the petitioner for compassionate appointment by thoroughly examining his financial condition and eligibility as per Rules. The said exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 01.11.2022

Note: L.R. copy to be marked
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