

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION Nos. 2288 and 35834 of 2022

WP No.2288 of 2022

Between:

Thota Jaswanth

...Petitioner

AND

The State of Telangana rep. By its Principal Secretary, Power and Energy Department, Secretariat, Hyderabad – 500 004 (TS) and four others

...Respondents

WP No.35834 of 2022

Between:

B.Rrvind Reddy

...Petitioner

AND

The State of Telangana rep. By its Principal Secretary, Energy, Power and Environment, T.S. Secretariat, Hyderabad and three others

...Respondents

COMMON ORDER PRONOUNCED ON: 31.03.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/No
be marked to Law Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH
+WRIT PETITION NOs.2288 of 2022

%Dated 31.03.2023

Thota Jaswanth

...**Petitioner**

AND

\$ 1. The State of Telangana represented by its Principal Secretary, Power, Energy Department, T.S.Secretariat, Hyderabad and four others

...**Respondents**

+WRIT PETITION NOs.35384 of 2022

B.Arvind Reddy

...**Petitioner**

AND

\$ 1. The State of Telangana represented by its Principal Secretary, Energy, Power and Environment Department, T.S.Secretariat, Hyderabad and four others

! Counsel for Petitioner in WP No.2288 of 2022 : Sri C.Raghu

! Counsel for Petitioner in WP No.35834 of 2022: Sri P.Ravi Shankar

^ Counsel for Respondent No.1 both petitions : Govt. Pleader for
Services-IV

^ Counsel for Respondent No.2 to 4 : Sri G.Vidya Sagar
in WP No.2288 of 2022 Learned Senior Counsel

^ Counsel for Respondent No.2 to 4 : Ms.V,Uma Devi
in WP No.35384 of 2022

< GIST :

> HEAD NOTE :

1. 2013 (3) ALT 153
2. (2005) 10 SCC 289
3. (2019) 3 SCC 653
4. 2021 SCC ONLINE AP 3109
5. 2015 (7) SCC 412
6. 2019 (3) SCC 653

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION Nos.2288 & 35834 of 2022

COMMON ORDER:

1. Since the issue involved in both the writ petitions is one and the same, they were heard together and being disposed of by way of this common order.

2. Heard Sri C.Raghu, Learned Senior Counsel appearing for the petitioner in W.P.No.2288 of 2022 and Sri P.Ravi Shankar, Learned Counsel appearing for the petitioner in W.P.No.35834 of 2022, and learned Government Pleader for Services-IV appearing for respondent No.1, and Sri G.Vidya Sagar, learned Senior Counsel for respondents 2 to 4 in W.P.No.2288 of 2023; Ms.V.Uma Devi, Learned Counsel appearing for the respondents 2 to 4 in W.P.No.35384 of 2022.

The case of the petitioner in W.P.No.2288 of 2022

3. The learned Counsel appearing for the petitioner submits that father of the petitioner viz., Thota Venkateswar Rao died on 10.09.2019 while he was in service as Dozer Operator in KTPS O&M, leaving behind the petitioner, his brother and mother as his legal heirs, who are the dependants of on the deceased. After death of his father the petitioner made a representation to the respondents authorities for providing employment, on compassionate grounds, but the same was rejected on 27.03.2021 through the impugned letter on the ground that the mother of the petitioner viz., Thota Laxmi is receiving family pension of Rs.41,823/- and the grandmother of the petitioner also receiving pension of Rs.30,000/- per month, and hence the dependant family members of the deceased employee are not in indigent condition as per Clause 3

(i) under B.P.Ms.No.119 dated 10.02.1982, which stipulates that the dependants of the deceased employee, who dies in harness leaving behind his family in indigent circumstances only, are entitled for employment under compassionate grounds which is against very scheme of formulated for providing compassionate appointment to the dependants of the deceased employee.

The case of the petitioner in W.P.No.35834 of 2022

4. The learned Counsel appearing for the petitioner submits that father of the petitioner viz., B.Ammi Reddy died on 20.04.2020 while he was in service as Foreman Grade-IV in Coal Plant Operation, Office of Superintendent Engineer /O&M/RTS-B Ramagundam, leaving behind the petitioner, his mother and two sisters as his legal heirs, who are the dependants of on the deceased. After death of his father ,the petitioner

made a representation to the respondent No.3 on 02.10.2020 through proper channel, seeking appointment on compassionate grounds, who in turn forwarded the same to the respondent No.4. Subsequently, the petitioner submitted the application for job under the scheme of employment of the dependant, duly enclosing the relevant documents, such as No-objection certificate from the family Members, as sought for by the respondent No.4. While it being so, the petitioner received the impugned letter rejecting the application of the petitioner stating that under Clause 3 (i) under B.P.Ms.No.119 dated 10.02.1982 the dependants of the deceased employee, who dies in harness leaving behind his family in indigent circumstances only entitled for employment under compassionate ground and since the mother of the petitioner is receiving family pension and the

petitioner is not entitled for employment under compassionate grounds, which is arbitrary, irregular and against very scheme formulated for providing compassionate appointment to the dependants of the deceased employee.

5. The learned Counsel for the petitioners in both the petitions further submits that mere sanction of family pension to the wife of the deceased employee cannot come in the way of giving/providing employment under the compassionate grounds and the Hon'ble Apex Court time and again reiterated the said principle. The rejection of the applications of the petitioners for appointment on compassionate grounds is nothing but circumventing the rules and also frustrating the scheme of compassionate appointment which was formulated to mitigate the loss or hardship

caused to the deceased family and requested to allow both the writ petitions.

6. The Learned Counsel appearing for the petitioners, in support of their contention, relied on the following judgments:

1. ***Commissioner of Police, and others Vs. K.Padmaja***¹
3. ***Govind Prakash Verma vs. LIC of India and others***²
3. ***State of Himachal Pradesh and another Vs. Shashi Kumar***³
4. ***Andhra Bank (now Union Bank of India Vs. P.Rajashekar***⁴
5. ***Canara Bank Vs M.Mahesh Kumar***⁵

7. The learned Senior Counsel appearing for the respondents submits that the application of the petitioner in WP No.2288 of 2022 for providing compassionate appointment was forwarded to the

1. 2013 (3) ALT 153
2. (2005) 10 SCC 289
3. (2019) 3 SCC 653
4. 2021 SCC ONLINE AP 3109
5. 2015 (7) SCC 412

Vigilance Wing of TSGENCO and after conducting enquiry submitted its report stating that the grandmother of the petitioner in W.P.No.2288 of 2022 is receiving a family pension of Rs.30,000/- per month, and mother of the petitioner is receiving family pension of Rs.41,823/- consequent on death of the father of the petitioner and therefore the petitioner in W.P.No.2288 of 2022 is not entitled for compassionate appointment in terms of B.P.Ms.No.119 dated 10.02.1982.

8. The learned Counsel appearing for the respondents submits that the petitioner in W.P.No.35384 of 2022 is not entitled for appointment on compassionate grounds as the wife of the deceased-employee is receiving family pension and the respondent No.4 passed the impugned order basing on

the B.P.Ms.No.119, dated 10.02.1982 and requested to dismiss the writ petition.

9. The learned counsel for the respondents in support of their contention relied on the following judgment:

6. *State of Himachal Pradesh Vs. Shashi Kumar*⁶

10. After hearing both sides this Court is of the considered view that in both the cases the respondents-Corporation rejected cases of the petitioners herein for providing appointments on compassionate grounds, on the ground that in one case spouse and mother of the deceased-employee receiving family pension and in another case the spouse of the deceased-employee is receiving family pension. The respondents rejected the claim of the

6. 2019 (3) SCC 653

petitioners in terms Clause 3 (i) of B.P.Ms.No.119 dated 10.02.1982, as the petitioners are not in indigent condition.

Clause 3 (i) of B.P.Ms.No.119 dated 10.02.1982 reads as follows:

A child i.e. a son, a daughter or spouse of a deceased Board-Employee who dies in harness leaving his family in indigent circumstances while in service be appointed as LDC or equivalent post, Attender or Record Assistant without the media of employment exchange, subject to the condition that there being no other earning member in the family”

11. In the above said clause there is no mention about receiving of family pension is a bar for providing appointment on compassionate grounds to the dependants of the deceased-employee. Moreover, Clause-2 of B.P.Ms.No.119 dated 10.02.1982, reads as follows:

“ The scheme of providing employment to dependants of deceased Board employee while in service was reconsidered by the A.P.E.E. Board and it was decided that that instead of following a policy different from State Government the orders of the State Government in the matter shall be followed in Toto with the following provisions , followed by the Government.

- i) No relaxation in Educational qualifications or age need to given in such cases*
- ii) The claim with eligibility for employment should be within One year from the date of death.*

12. The G.O.Ms.No.687, General Administration Department dated 03.10.1977 was issued by the then Government of Andhra Pradesh, formulating the Rules for providing appointment on compassionate grounds, which was adopted by the Government of Telangana, and in subsequent amendments made from time to time to the said G.O, there is no provision to take into

account of the family pension while providing employment to the dependants of the deceased employee who died in harness.

13. The Division of this Court in **Commissioner of Police and others Vs. K.Padmaja (supra 1), at para No.9**, held that:

“.....Yet another defence is taken by the learned counsel that as the wife of the deceased is getting family pension, the applicant is not entitled for compassionate appointment. But the same cannot be accepted. Merely because family pension is be accepted. 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 died in harness”.

14. The Hon’ble Supreme Court in **Govind Prakash Verma Vs. LIC of India and others (Supra 2)**, at par No.6, held that:

“ In our view, it was wholly irrelevant for the department authorities and the learned Single Judge to take into

consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules”

15. The Hon’ble Apex Court in **Canara Bank and another Vs. M.Mahesh Kumar (supra 5)**, at para Nos.19 to 22, held that:

“19. Insofar as the contention of the appellant-bank that since the respondent’s family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of

majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

20. In Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors., (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

“13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security

drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.”

21. *Referring to Steel Authority of India Ltd.’s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents’ family is having any other income to negate their claim for appointment on compassionate ground.*

22. *Considering the scope of the Scheme ‘Dying in Harness Scheme 1993’ then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as*

per the Scheme (1993) then in existence. We do not find any reason warranting interference”

16, The judgment relied on by the learned Senior Counsel for the respondents in ***State of Himachal Pradesh and another Vs. Sashi Kumar (supra 6)*** does not apply to the instant case as the respondent therein questioned the policy of the Government of Hmachal Pradesh in fixing the income slab for providing compassionate appointment. Para No.9 of the said judgment reads as follows:

“ Para No.10 of the policy stipulates that the government has introduced a number of welfare measures, which have made a significant difference to the financial position of families of government servants who die in harness. Hence, the policy stipulates that benefits received by the family on account of those welfare measures “may be kept in view” while considering cases of employment assistance on compassionate grounds. The policy proceeds to enumerate the welfare measures which, on the date of its formulation, were available to families of deceased employees.

Paragraph 10(c) of the Policy, which has a bearing in this case, is in the following terms:

“(c) The provision of employment assistance was introduced in 1958 and since then a number of welfare measures have been introduced by the Govt. which made significant difference in the financial position of the families of the Govt. servants dying in harness. The benefit received by the family on account of these measures may be kept in view while considering cases of employment assistance on compassionate grounds. Such measures, in brief, which are at present available to the families of the deceased employees are as under:

.xxx xxxxx

17. In the State of Himachal Pradesh, the said Scheme contemplates that payments which have been received on account of welfare measures provided by the State including family pension are to be taken into account and fixed the income limits for providing compassionate appointment. But in the State of Telangana no such provision was made in the compassionate appointments scheme issued in G.O.Ms.No.687, General Administration Department,

date 03.10.1977 and the same was also not mentioned in the B.P.Ms.No.119, dated 10.02.1982.

18. In view of the same, the impugned Orders passed by the respondents viz., Lr.No.CE/(O&M)/KTPSVII Stage/DS /ADM/PO/ADM/AM(HR)/B.4/D.NL.286/21 dated 27.03.2021 passed by the respondent No.3 in W.P.No.2288 of 2022; and Lr.No.SE/(O&M)/RTS DE (AT&P)/DM/HR/JPO/F.PF/D.No.571/21 dated 28.06.2021 passed by the respondent No.4 in W.P.No.35834 of 2022 are liable to be set aside and accordingly set aside.

19. With the above findings, both the writ petitions are allowed and the respondents are directed to reconsider the cases of the petitioners for providing appointments on compassionate grounds without taking into account of the family pension being

received by the spouse or mother of the deceased-employees, within twelve (12) weeks from the date of receipt of copy of this order. There shall be no order as to costs.

20. Miscellaneous petitions pending if any shall stand closed. There shall be no order as to costs.

JUSTICE K.SARATH,

Date:31.03.2023

***Note:
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b/o***