

(2001) 10 AP CK 0117

Andhra Pradesh High Court

Case No: Writ Petition No. 13489 of 2001

Government of Andhra Pradesh
and Others

APPELLANT

Vs

D. Gopaiah

RESPONDENT

Date of Decision: Oct. 12, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 142, 15, 15(2), 16

Citation: (2001) 6 ALD 759 : (2001) 6 ALT 553 : (2002) 93 FLR 12

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J; G. Raghuram, J

Bench: Full Bench

Advocate: A. Srinivasulu, Vedula Srinivas, M. Ratna Reddy, C. Srinivas Baba, N. Kumar Dev, M. Surender Rao, P.V. Subramanya Sarma, R.S. Murthy, M. Srinivasa Babu, K.L.N. Swamy, Government Pleader for Services-I, Government Pleader for Services-II, A.G. and Government Pleader for Services-III, for the Appellant;

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.

Whether compassionate appointments on the ground of medical invalidation satisfy the requirement of Article 16 of the Constitution of India is the question involved in these writ petitions.

2. Before advertng to the said question, we may refer to certain government orders issued in this regard.

3. The Government of Andhra Pradesh vide G.O.Ms.No. 504, General Administration (Services-A) Department, dated 30-7-1980 has extended the scheme of compassionate appointment introduced in G.O.Ms.No. 687, dated 3-10-1977, to the spouse/daughter/son of a Government servant who retired on medical invalidation under Article 441 of Andhra Pradesh Pension Code (Vol. 1) subject to the conditions mentioned therein.

4. By G.O.Ms.No. 309 General Administration (Services-A) Department dated 4-7-1985, the Government had confined the benefit of compassionate appointment to son/daughter/spouse of government employee, who retires from service on medical grounds five years before attaining the age of superannuation, irrespective of the age of superannuation prescribed for the posts and services.

5. The Government vide G.O. Ms. No. 214 dated 9-6-1998 issue a the instructions as regards the scrutiny of the proposals of compassionate appointments on medical invalidation in respect of cases pertaining to offices at District Level and the State Level.

6. By Memo No. 36299/Ser.A/99-1 dated 25-6-1999, the Government has clarified that the required period of five years of left over service of government employees, who retire on medical invalidation, shall be reckoned from the date of issue of orders of retirement on medical invalidation:

7. The Government has relaxed the condition of five years leftover service of one D. Gopaiah, Attender of Office of Engineer-in-Chief on the date of his retirement on medical invalidation by G.O.Ms.No. 260 dated 13-6-2001 on the ground that the reason for short fall in the left over service was due to delay in processing the case by the administrative Department.

8. By reason of Articles 14 and 16 of the Constitution of India, great hopes and aspirations were generated in the minds of the people of India that employment shall not be given on descent. Public employment is considered to be public wealth. The economy of the State has taken a tilt from agriculture to public employment and the growth rate of employment has increased to 34%. On a plain reading, Article 16 of the Constitution of India carries no exception. The Apex Court, however, in [Yogender Pal Singh and others Vs. Union of India others](#) , stated:

"While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution."

9. The Apex Court referred to its earlier decision in [Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others](#) , and held that grant of public employment only on descent is impermissible.

It was opined:

"We are of opinion that the claim made by the appellants for the relaxation of the Rules in their cases only because they happen to be the wards or children or relatives of the police officers has got to be negatived since their claim is based on "descent" only, and others will thereby be discriminated against as they do not

happen to be the sons of police officers. Any preference shown in the matter of public employment on the grounds of descent only has to be declared as unconstitutional."

10. The matter relating to grant of compassionate appointment only in limited situation took its root in public employment. The State and the Central Governments issued several circulars, took various policy decisions and also changed their policy decisions from time to time resulting in spurt in litigation. A close study of the circulars issued by the State as also the pattern of litigations generating therefrom leads us to take judicial notice about -gross abuse of the schemes and inherent lack of safeguards.

11. Before further adverting to the aforementioned question, we may notice that the petitioners themselves stated that in the State of Andhra Pradesh, no appointment had been made as a ban had been in vogue since 1987. The appointments are being made only on contract basis by way of schemes, which *stricto sensu* violate the recruitment rules and Articles 14 and 16 of the Constitution of India. A lot of employment is generated through the populist scheme of regularisation of services. There are schemes for employment for displaced persons, schemes for taking over the services of the taken over projects, landless persons and so on and so forth. A person can obtain appointment in terms of aforementioned schemes or on contract basis, on political pressures, on demand of trade unions, as also on the pressures of the Nongovernmental organisations. The long and short of the matter is that unless there is somebody to push his case, an employment cannot ordinarily be obtained by a citizen in terms of Articles 14 and 16 of the Constitution of India. The majority of the population faces the paradox of articulated programmes for obtaining employment.

12. The schemes for grant of compassionate appointment on medical invalidation, as noticed hereinbefore, had been made wider and wider. The State has for one reason or the other compromised with the basic principles underlying grant of public employment and has deviated from the constitutional norms; sometimes it widened the scope and ambit of grant of appointment on compassionate ground to such an extent that it had to backtrack its steps. The State's policy decision in this regard had never been on firm root. They took different steps at different times depending on the whims and caprice of the concerned officer or acted on pressure of the Employees' Unions.

13. The law interpreting Articles 14 and 16 of the Constitution of India in this regard has also undergone ups and downs.

14. All employees one day or the other have to retire on superannuation on attaining the age prescribed therefor. Some persons may be unfortunately forced to take voluntary retirement on medical grounds. Can sympathy for those few unfortunate permit the State to evolve a scheme, which would be violative of Article

16(2) of the Constitution of India? Should the society tolerate such schemes, which are observed more in their breach? Abuse or misuse of such scheme is for all intent and purport stands admitted.

15. In terms of Article 37 of the Pension Rules, an employee after twenty years of service gets his full pension with an option to commute 40% per cent thereof. By reason of such statutes the State discharges its obligations towards the retired employees.

16. In [Director of Education \(Secondary\) and Another Vs. Pushpendra Kumar and Others](#), the Apex Court while explaining the purpose of compassionate appointment held:

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful employment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee."

17. In [State of Haryana and Others Vs. Hawa Singh](#), the Apex Court, while considering the entitlement of a son of incapacitated father, who retired from service on being found medically unfit for driving heavy vehicles, for compassionate appointment, set aside the direction of the High Court for providing suitable job to one of the sons of such driver commensurate with the educational qualifications possessed by him. The Apex Court directed the State to give an alternative job to the respondents strictly following its decision in [Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another](#).

18. The Apex Court in [Lal Chand Vs. State of Haryana and Others](#), while explaining the meaning of words "blind" and "Nakara" appearing in the Haryana Roadways Circulated dated 23-11-1992 held that the appellant who was declared unfit to

perform even light duty was not "Nakara" in the sense used in the Circular and therefore not entitled to compassionate appointment of his son.

19. In [Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others](#), the Apex Court held that compassionate appointment could not be denied on the ground Family Benefit Scheme was available inasmuch it was not a substitute for compassionate appointment.

20. The Apex Court in [Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai](#), has observed that when there was a total ban on fresh recruitment and therefore no vacancy was available, the candidate should not insist that he should be appointed on compassionate ground.

21. In [State of H.P. and Another Vs. Jafli Devi \(Smt.\)](#), the Supreme Court has opined that the policy laid down by the employer regarding compassionate appointment should not be departed from while reviewing action arising out of such policy. It was observed that an appointment on compassionate ground has to be given in accordance with the relevant rules and regulations.

22. In [Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another](#), the Apex Court observed that appointment on compassionate ground has to be made in accordance with law, relevant, rules and regulations that have been framed by the authority in that regard and the Court cannot direct appointments to be made contrary to statutory instructions.

23. In none of the aforementioned cases, however, the question raised herein was raised.

24. Humanitarian considerations were the sole justification for appointment on compassionate ground as the concept rests in its very name. The rationale therefore, as expressed in many judgments, is by reason of death of an employee, who is bread earner for the family, the members of the family are confronted with a distressful situation involving economic misery wherefor the law has to be bent a little to provide some redress to the family in distress. (See [Smt. Sushma Gosain and Others Vs. Union of India \(UOI\) and Others](#), [Director of Education \(Secondary\) and Another Vs. Pushpendra Kumar and Others](#), .

25. A right to compassionate appointment is not a vested right. Such appointment must pass the test of the scheme and the rules as has been held in ASHA RAMACHANDRA AMBEKAR (supra). In most of the cases, different States have issued executive orders as regards compassionate appointment rather than making it as a part of the service rules. Had the compassionate appointment come to stay, they have to be incorporated into statutory service rules instead of leaving them open to the realm of the Executive (See [K.V. Krishnamani Vs. Lalit Kala Academy](#), . The concept of appointment on compassionate ground, though commenced with a need to succour to a distressed family, which has been thrown on roads practically on the

death of earning member, has slowly expanded over the years by taking in different situations. The benefit granted by the State has grossly been abused. In the judicial service alone in the years 2000 and 2001 as many as 100 applications were filed out of which 55 proposals have been accepted in the year 2000 and the rest are pending consideration. In several judicial pronouncements the conflict of humanitarian concepts and the law has been taken note of, which resulted in ad hoc jurisprudence. No appointment on compassionate ground to a dependant of employee, who was in service on extension, can be granted during the extended period of service. (1999(4) SLR 46 (Cal.))

26. The basic principles, which emerge from the judicial precedents, are:

"1. The right to compassionate appointment is not a vested right.

2. It is in the nature of an exception to the doctrine of equality.

3. The basis of the compassionate appointment is to extend succour to the members of the family, which are confronted by a pitiable situation by reason of the death of the earning member.

4. The Court should not go beyond the formulation of the executive orders.

5. It is desirable to frame statutory rules.

6. The compassionate appointment should not be made in a manner contravening the existing statutory rules and regulations.

7. No Mandamus can be issued to appoint. Only a direction to consider should be issued."

27. A question has arisen as to whether a special concession should be read into Articles 14 and 16 of the Constitution of India. It is contended that these schemes have been made having regard to the expanded doctrine of life as adumbrated in Article 21 of the Constitution of India. But, in our opinion, some harmony between the schemes and Articles 14 and 21 in constitutional context is a must. The Courts while interpreting the constitutional provisions are required to take into consideration the distinction made by the constitution-makers in Articles 15(2) and 16(2) of the Constitution of India. The concept of humanitarian consideration must be infused while deciding a particular case. The Court while considering the validity of the scheme on the touchstone of Articles 15 and 16 of the Constitution of India must take into consideration the plight of the general unemployed class. The question as to whether the scheme relating to grant of compassionate appointment on medical invalidation would come within the purview of protective discrimination or affirmative action or not, although "arises for consideration, it may not be necessary to express our final opinion on that. There cannot, however, be any doubt that all schemes are subject to judicial review as regards their constitutional validity. Such powers of judicial review are based on several factors.

28. As indicated hereinbefore, it has almost become a rarest of rare case where an appointment is granted on a regular basis upon following the procedure laid down under the recruitment rules, as also the provisions of Andhra Pradesh (Regularisation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structures) Act (Act 2 of 1994) as amended by Act 3 of 1998 and further amended by Act 27 of 1998.

29. The question must also be considered from the purview as to how many exceptions can be allowed to be made to Article 16 of the Constitution of India having regard to the scope of employment. The consideration must also arise as regards the plight of mute citizens. The right of development and violation thereof to the general population must also be a relevant criterion. By reason of such process protanto denial of equal opportunity has taken place. Death compared to sickness stands on a higher footing. While considering the cases of the sick employees, the Court cannot lose sight of the cases of sick unemployed.

30. If the doctrine that public employment is public wealth is given its true meaning, we are of the opinion that too many exceptions cannot be read in Article 16. "The question as regards the validity of the scheme of medical invalidation-did not come up for consideration in many cases.

31. The matter relating to unconstitutionality of compassionate appointment came up for consideration before the Apex Court in [Auditor General of India and others Vs. G. Ananta Rajeswara Rao](#), . The Memorandum, which was the subject matter of the said decision, provided that Secretaries or Joint Secretaries in the Ministries/Department are competent to appoint, in relaxation of the procedure of recruitment through the Staff Selection Commission or Employment Exchange, but subject to the other requirements set out therein, the son/daughter or near relative of the government servant, who died in harness leaving, his family in immediate need of assistance, in the event of there being no other earning member in the family, to a Group "C" post or Group "D" post. The High Court found that the Memorandum was not violative of Article 16(2) of the Constitution of India. The Apex Court referring to Clause (2) of Article 16 stated the law thus:

"A reading of these various clauses in the memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative, which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments by compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on

grounds of descent clearly Violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/ daughter or widow of the deceased Government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the memorandum to appoint the persons to these posts on the ground of compassion."

32. The Apex Court, therefore, clearly held that the appointment on compassionate ground in favour son/daughter or widow of a government servant, who died in harness, to assist me family to relieve economic distress by sudden demise of the employee is valid and it is not the ground of descent simpliciter, but exceptional circumstance for the grounds mentioned. It was observed that in other respects Article 16(2) is clearly attracted.

33. There cannot, therefore, be any doubt whatsoever that the Apex Court has put its seal in the matter of grant of compassionate appointment on any ground other than death.

34. We may notice that in SURESH KUMAR v. STATE OF HARYANA AIR 2001SCW 2545, the Apex Court has upheld the judgment of the High Court in striking down Rule 1 of the Punjab Police Rules, 1934 in terms whereof there was no requirement of making any public advertisements inviting applications nor there was any requirement to intimate the employment exchange with regard to the vacancies likely to be filled up. However, having regard to the fact that by application of the said provisions, 1600 police personnel had been appointed; the Apex Court issued certain directions in exercise of its power under Article 142 of the Constitution of India.

35. Although the question of vires of the Scheme was not specifically raised in the writ petitions, but having regard to the importance thereof, the said question was permitted to be raised by the learned counsel appearing for the parties. In this regard, we have heard the learned counsel for the parties in great details. In [S. Sreenivasa Jaideep and Another Vs. The Registrar, Andhra University, Waltair and Another](#), P.A. Choudary. J., has clearly held:

"For the above reasons alone this writ petition should fail. But it appears to me that this writ petition should be dismissed on much more substantial grounds. This writ" petition is based upon a claim that the children of the University employees can constitutionally have certain number of seats in the University reserved for them. It is undoubted that there is such a rule providing for reservation for the children of the University employees and has been in force for quite some time. Yet the question is whether such a rule can be upheld. I am clearly of the opinion that the

rule is wholly unconstitutional. In fact, it is shocking that a rule conferring special favours in the State owned educational institutions run at the cost of the public exchequer should have been made and enforced by the University. The Charter of the Andhra University shows that it is open to all on terms of equality. The rule in question, in my opinion, is contrary to the University charter. It is equally contrary to the great cultural others of our country which praise and prize education not only as a great instrument for self-help, and self-realisation, but also as a virtue in itself..... Any rule providing for preference to be shown for the mediocre cannot be justified even if the mediocre children happened to be the children of the University employee. In that view, I am clearly of the opinion that the rule of reservations made in favour of the children of the University employees which is the basis of this writ petition is itself unconstitutional."

In that case, the question regarding the constitutionality of the provisions was taken up by the learned Judge suo motu.

36. For the reasons aforementioned, we are of the opinion that appointment on compassionate ground on medical invalidation does not satisfy the requirement of Article 16 of the Constitution of India and any policy decision taken by the State is unconstitutional. The question is answered accordingly. Writ Petition Nos. 13489, 16974, 16346, 14493, 17631, 22651, 24528 of 2000, 1020, 4095, 4574, 4602, 7956, 12253, 12509, 12897, 13253, 14114, 9394, 10843, 12862 and 13152 of 2001 are, therefore, allowed and Writ Petition No. 20940 of 2000 is dismissed. But in the facts and circumstances of this case, there will be no order as to costs.