

**(2014) 07 AP CK 0119**

**Andhra Pradesh High Court**

**Case No:** Writ Appeal No. 1411 of 2005

Shaik Amanullah

APPELLANT

Vs

Bharat Sanchar Nigam Ltd.

RESPONDENT

**Date of Decision:** July 3, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 16(2)

**Citation:** (2015) 1 ALD 162

**Hon'ble Judges:** M. Satyanarayana Murthy, J; L.N. Reddy, J

**Bench:** Division Bench

**Advocate:** K.V. Subrahmanya Narusu, Advocate for the Appellant; C. Yadagiri, Advocate for the Respondent

**Final Decision:** Dismissed

### **Judgement**

M. Satyanarayana Murthy, J.

Aggrieved by the order dated 01.02.2005, passed in Writ Petition No. 17621 of 2004 by a learned single Judge of this Court, the unsuccessful petitioner therein preferred this Writ Appeal.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in Writ Petition No. 17621 of 2004.

3. The petitioner filed writ petition No. 17621 of 2004 to declare the proceedings No. TA/STA(R)/13-205/205/2000, Hyderabad, dated 05.06.2004 issued by the 1st respondent-Bharat Sanchar Nigam Limited (BSNL) as illegal, arbitrary and to appoint him in any suitable post in BSNL. It was alleged that his father applied for voluntary retirement on medical invalidation grounds due to ill-health, through representation dated 03.01.1999 and the 1st respondent permitted the petitioner's father to retire on medical invalidation by proceedings dated 27.01.2000, at the age of 52 years. He stated that their family consists of their parents, the petitioner and his two brothers and two sisters. The eldest daughter was married and living separately with her

husband; eldest son contracted inter-caste marriage and left the family. Stating that he is unable to sustain himself and his dependants with meager pension, the petitioner's father made a representation dated 23.10.2000 with a request to appoint the petitioner on compassionate grounds. He complained that though he was asked to furnish the particulars in pro forma issued by the 1st respondent and accordingly the required particulars were furnished, the claim was rejected rough order dated 05.06.2004, after 3 years.

4. The respondents filed a counter-affidavit opposing the writ petition. They admitted the fact that the petitioner's father was retired on medical invalidation. However, they contested the matter on various grounds stating inter-alia that 1st son of the retired employee is working in a private firm, earning Rs. 9,000/- p.a. and his 2nd son is an Auto Driver, earning about Rs. 12,000/- p.a. It is further contended that representation of the petitioner's father was forwarded to the Circle High Power Committee, which is the competent body to consider and appoint any family member on compassionate grounds and in turn the BSNL Corporate Office, New Delhi vide its letter dated 15.05.2004 intimated that the High Power Committee has considered and rejected the request of petitioner's father, since there are earning members in the family and he was not living in indigent condition. It was also mentioned that he was getting Rs. 1,020/- p.m. as pension at the relevant point of time.

5. The learned single Judge dismissed the writ petition observing that petitioner's father is having financial support from his two sons and that he is not living in economic distress.

6. Learned counsel for the appellant submits that the learned single Judge did not consider the specific contention that the petitioner's brother is not supporting the family, economically, and living separately, and that the conclusion that the financial status of the petitioner's father, who retired on medical invalidation, is not in distress; is not based on any material. It is also urged that non consideration of undisputed facts by the learned single Judge constitutes an error and that if the fact, borne out by the record is accepted, the appellant is entitled to be granted the relief.

7. Learned counsel for the respondents submits that the claim of the appellant was considered with reference to the scheme and he was found ineligible. He contents, that the learned Single Judge has taken the correct view of the matter.

8. Petitioner's father by name Shaik Syedullah, retired from service of BSNL on medical invalidation. He had three sons and two daughters. The appellant claimed that benefit under the scheme of voluntary retirement on medical invalidation. It provides for appointment on compassionate grounds, to one eligible family member, if the family of the retired employee on medical invalidation, is in economic distress. The Government of India issued Official Memorandum, dated 09.10.1998, framing certain guidelines for appointing a family member of the

voluntary retired employee on medical invalidation or the employee who died while in service. To appoint any family member of a retired employee on medical invalidation, certain eligibility criteria are prescribed in the Memorandum. They read:

"(a) The family is indigent and deserves immediate assistance for relief from financial destitution and

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules."

9. As seen from the 1st condition, the main intention of the scheme for appointing a member of the family of retired employee on medical invalidation is to provide necessary financial assistance or relief to the family which deserves immediate help. In the instant case, the petitioner's father, who availed benefit under voluntary retirement scheme on medical invalidation, has three sons and two daughters. The daughters were already married. His elder son was employed in a private firm earning Rs. 9,000/- p.a. and his 2nd son is an Auto Driver earning an amount of Rs. 12,000/- p.a. The learned single Judge took note of this and dismissed the writ petition. The same is challenged on the ground that the allegation in the affidavit that the remaining two sons are not supporting the family is not traversed by the respondents.

10. In fact, in the counter itself the respondents contended that the elder son of the petitioner's father is working in a private firm and his 2nd son is an auto driver and they are living jointly. Once that is said, it is for the appellant to file reply affidavit. The learned single Judge, upon appreciation of available material on record, relating to the financial support for the family and the pension being received by the petitioner's father and other amount received towards retirement benefits i.e., death cum retirement gratuity of Rs. 78,638/-, Commutation of pension of Rs. 95,717/- and Leave Encashment of Rs. 23,386/- felt that the family is not in distress.

11. In [Auditor General of India and others Vs. G. Ananta Rajeswara Rao](#), the Apex Court held as follows:

"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."

12. In another decision of the Apex Court in [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), the Apex Court laid down the following guidelines:

"(i).....

(ii).....

(iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

(iv) Offering compassionate appointment as a matter of course in respect of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible."

13. Keeping in view of these two guidelines, the authorities are required to consider whether the family of a retired employee on medical invalidation is in financial distress or not. The 1st respondent, having considered the financial status of the petitioner's father and the retirement benefits he received under various heads, rightly rejected the claim for compassionate appointment to the petitioner. Therefore, the learned single Judge concluded that the order passed by the 1st respondent is in accordance with the guidelines issued by the Government of India and dismissed the writ petition.

14. The petitioner sought for a direction against the respondents to appoint him in any suitable post. Such relief cannot be granted by the Courts in view of the settled law laid down by the Apex Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, wherein it was held that the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds, but can merely direct to consider the claim for such an appointment.

15. Thus, in view of the aforesaid discussion, we are of the considered view that petitioner's father, who retired on medical invalidation, was not in financial distress, needing immediate financial help by providing employment to any one of his eligible family members. Therefore, the writ appeal is dismissed.

In consequence, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. There shall be no order as to costs.