

IN THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT
BANGALORE

DATED: THIS THE 20th DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE Mr.NARAYANA, JUDICIAL MEMBER

AND

THE HON'BLE Mrs.G. LATHA KRISHNA RAO ADMINISTRATIVE
MEMBER

APPLICATION NUMBER 4522 OF 2017

1. Sri. H.C. Sridhara Murthy,
Aged about 62 years,
S/o late Sri.H.C. Channaganganna,
Retired Superintendent,
Government District Ayush Hospital,
Mandya-571 401.

Deleted vide
Court Order
dt.17.06.2020

2. Sri. B.S. Chethan,
Aged about 22 years,
S/o Sri. H.C. Sridhara Murthy
Both residing at No.13 'C' Cross,
(Near Bhajane Mane),
Dasarahalli, Magadi Road,
Bengaluru-560 079.

...APPLICANT

(By Sri.R. Naveenkumar, Advocate for Applicant)

VERSUS

1. The State of Karnataka,
By its Principal Secretary,
Department of Health & Family
Welfare, Vikasa Soudha,
Bengaluru-560 001.

2. The Director,
Directorate of Ayurveda, Yoga
and Naturopathy, Unani, Siddha
and Homeopathy (AYUSH),
Dhanvanthri Road, Bengaluru-560 009.

3. The District Ayush Officer,
Government District Ayush Hospital,
Mandya-571 401.

4. The State of Karnataka,
By its Principal Secretary,
Department of Personnel and
Administrative Reforms,
Vidhana Soudha,
Bengaluru-560 001.

...RESPONDENTS

(By Sri. D.C.Parameshwaraiah, Govt. Pleader for
respondents)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, with a prayer to quash letter dated 30.12.2013 at Annexure-A14 and dated 05.08.2016 at Annexure-A18 on the file of 1st respondent and direct the 1st respondent to accord administrative approval to the 2nd respondent to appoint the 2nd applicant on compassionate grounds to the post of Second Division Assistant or to an equivalent post in Group-C on medical grounds with a further direction to respondent to appoint the applicant on compassionate grounds to the post of SDA.

This Application coming on for Hearing, having been reserved for pronouncement of Orders, **Mr.Narayana, Hon'ble Judicial Member**, made the following:

ORDER

The 2nd applicant has challenged the order dated 05.08.2016 vide Annexure-A18 and order dated 30.12.2013 vide Annexure-A14, rejecting his application for appointment on compassionate grounds in place of 1st applicant who was permitted to retire voluntarily on medical grounds.

2. We have heard the arguments of Sri. R.Naveen Kumar, learned Counsel appearing on behalf of the applicant and Sri. D.C. Parameshwaraiah, learned Government Pleader for respondents.

3. Learned Counsel for the applicants contended that the first applicant – deceased Sri. H.C. Sridhara Murthy was appointed in the department of Ayush. As on the date of his retirement, he was working as Superintendent in the Office of District Ayush Officer, Government District Ayush Hospital, Mandya. While he was working in the said capacity, the 1st applicant fell ill and it resulted in 100% blindness and he was unable to discharge his duties. It is further contended that the 3rd respondent vide his order dated 22.11.2012 (Annexure-A1) forwarded representation of the 1st applicant along with medical certificate to the Directorate of Health & Family Welfare Services along with his recommendation to the Government. The Government, in turn accepted the representation of the applicant along with medical certificate and accorded permission for retirement of the deceased 1st applicant with effect from 31.01.2013 afternoon as per Rule 285(1)(b) of Karnataka Civil Services Rules (for short 'KCSR'). At the time of retirement, the deceased 1st applicant was aged about 59

years. After retirement, the 2nd applicant, being the son of the deceased government servant, submitted his representation to the 2nd and 4th respondents to appoint him as government servant on compassionate grounds. It is further contended that the 2nd and 4th respondents have not accepted the representation. Per contra, they have issued impugned order as per Annexure-A14 dated 30.12.2013 and Annexure-A18 dated 05.08.2016 on the grounds that there was no provision under KCSR or under the Karnataka Civil Services (Appointment on Compassionate Grounds)(Sixth Amentment) Rules, 2011, (for short '2011 Rules') to appoint the 2nd applicant as government servant on compassionate ground. Being aggrieved by the said two impugned orders, the 2nd applicant is before this Tribunal challenging the rejection of his representation for appointment on compassionate ground as illegal and arbitrary.

4. It is further contended by the learned Counsel for the applicant that 2011 Rules itself defines that a government servant retired on medical grounds means a government servant who on the ground of bodily or mental infirmity is permanently incapacitated while on duty for public service and retired on medical grounds as per the

provisions of the KCSR on or after 1st day of January, 2010, as certified by the Medical Board constituted by the Department of Health and Family Welfare at district and taluk level. It is further argued that the 1st applicant was incapacitated to discharge his duties while he was on duty. The medical certificate issued by the Medical Board, Mandya District Hospital, clearly speaks about the 100% blindness of the deceased 1st applicant. After considering the medical certificate and also the representation of the 1st applicant, the respondents have permitted the 1st applicant to retire voluntarily on medical grounds under the provisions of Rule 285(1)(b) of the KCSR. It is further argued that the 1st respondent in letter dated 11.02.2014 as per Annexure-A15 has permitted the 2nd respondent to appoint one Kumari. Meenakshi, whose father late Sri. Gurusiddaiah, a Group-D employee of Health Department, was permitted to retire on medical grounds. Her representation was accepted by the very same respondents and she was appointed on compassionate grounds. Denial of the same relief to the 2nd applicant amounts to discrimination and violative of Articles 14 and 16 of the Constitution of India. Learned Counsel further canvassed his arguments that the reasons assigned by the 1st respondent for denying appointment on

compassionate ground to the 2nd applicant, is contrary to 2011 Rules. The 2nd applicant, though he is qualified, issuance of impugned order in violation of Articles 14 and 16 of the Constitution of India and sought for allowing the application by relying various annexures.

5. Though this Tribunal has granted sufficient opportunity to the respondents to file reply statement, they have not filed any reply statement, but the learned Government Pleader Sri. D.C. Parameshwaraih argued the matter defending the action of the respondents and contended that all the annexures are in accordance with law and there is no infirmity and sought for dismissal of the application.

6. We have examined the entire records. The facts are not in dispute. On meticulous scrutiny of all the annexures, it is an admitted fact that the deceased applicant late Sri. Sridhar Murthy was working as Superintendent, Government District Ayush Hospital, Mandya who suffered from 100% visual disability and diagnosed as Retinitis Pigmentosa with Optic Atrophy as per the Medical Certificate at Annexure-A2. It is also not disputed that Mandya Institute of Medical Sciences Hospital issued a

certificate certifying the deceased 1st applicant, aged 59 years, with Retinitis Pigmentosa with Optic Atrophy. This certificate is also not denied by the respondents. As per Annexure-A5 dated 31.01.2013, the District Ayush Hospital, Mandya issued Official Memorandum to the applicant stating that he has been accorded permission to retire w.e.f. 31.01.2013 from government service. In other words, he has been permitted to retire voluntarily on medical grounds w.e.f. 31.01.2013. It is also an admitted fact that the 2nd applicant submitted his report seeking appointment on compassionate grounds having passed Secondary Education Examination in the year 2011. The 2nd and 3rd respondents recommended the name of 2nd applicant for appointment on compassionate grounds but the 2nd and 4th respondents have declined to accept the representation of 2nd applicant for appointing him as government servant on compassionate grounds only on the sole ground as mentioned in Annexure-A14, which is in Kannada and extracted as below:

“ಪ್ರಸ್ತುತ ಪ್ರಕರಣದಲ್ಲಿ ಶ್ರೀ ಹೆಚ್.ಸಿ. ಶ್ರೀಧರ ಮೂರ್ತಿ, ಅಧೀಕ್ಷಕರು, ಇವರಿಗೆ ವಯೋ ಸಹಜ ಖಾಯಿಲೆಗಳ ಕಾರಣಗಳಿಂದ ಅಸಮರ್ಥತೆ ಉಂಟಾಗಿದ್ದು, ಅವರ ಅಸಮರ್ಥತೆಯು ಸಾರ್ವಜನಿಕ ಸೇವೆಯ ಮೇಲೆ ಅದರಲ್ಲೂ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುವಾಗ ಸಂಭವಿಸುವ ಕಾರಣದಿಂದ ಉಂಟಾಗಿರುವ ಅಸಮರ್ಥತೆ ಆಗಿರುವುದಿಲ್ಲ. ಆದುದರಿಂದ, ಕರ್ನಾಟಕ ನಾಗರಿಕ ಸೇವಾ ನಿಯಮಾವಳಿಗಳ ನಿಯಮ 285(1)(ಬಿ)ರನ್ವಯ ಸ್ವ ಇಚ್ಛಾ ನಿವೃತ್ತಿ ಹೊಂದಿರುವ ಶ್ರೀ ಹೆಚ್.ಸಿ. ಶ್ರೀಧರ ಮೂರ್ತಿ, ಅಧೀಕ್ಷಕರು, (ನಿವೃತ್ತ) ಇವರ ಕುಟುಂಬದ ಸದಸ್ಯರು ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ ; ಸಿಅಸುಇ 78 ಸೇಅನೇ 2011 ದಿನಾಂಕ 13.10.2011ರ ಅಡಿಯಲ್ಲಿ ಅನುಕಂಪದ

ಆಧಾರದ ಮೇಲೆ ನೌಕರಿ ಪಡೆಯಲು ಅರ್ಹರಾಗಿರುವುದಿಲ್ಲವೆಂದು ತಮಗೆ ತಿಳಿಸಲು ನಿರ್ದೇಶಿಸಲಾಗಿದ್ದೇನೆ”.

7. On the above ground, the deceased 1st applicant has been permitted to retire from service, but respondents have refused to appoint the 2nd applicant as government servant on compassionate grounds.

8. The State Government in DPAR issued Notification dated 13.10.2011 published as the Karnataka Civil Services (Appointment on Compassionate Ground)(6th Amendment) Rules, 2011 amending certain provisions of the 1996 Rules, which is extracted herewith:

"Amendment of Rule 1 : In rule 1 of Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 (hereinafter referred to as the said rules), in sub-rule (3), after the words 'deceased Government servant' the words 'or a Government servant retired on medical grounds' shall be inserted.

3. Insertion of new rule 3A : After Rule 3 of the said rules, the following shall be inserted, namely:

"3A: Appointment of dependents of Government servant retired on medical

grounds: (i) Without prejudice to the generality of these rules, dependents of the Government servant retired on medical grounds shall be eligible for appointment on compassionate grounds.

(2) All conditions of eligibility, conditions of appointment and the procedure of application and appointment except rule 9 as applicable to dependents of deceased Government servant under these rules shall mutatis mutandis apply to the dependents of the Government servant retired on medical grounds with effect from the date of his retirement on medical grounds.

Provided that all eligible dependents of Government servant retired on medical grounds on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds)(Sixth Amendment) Rules, 2011 may apply within one year from the date of commencement of the said rules.

Explanation : - for the purpose of these rules,

“(i) Government servant retired on medical grounds” means a Government servant who on the ground of bodily or mental infirmity is permanently incapacitated while on duty for public service and retired on medical

grounds as per the provisions of the Karnataka Civil Services Rules on or after the 1st day of January, 2010, as certified by the Medical Board constituted by the Department of Health and Family Welfare at District and Taluk level.

(ii) The words "while on duty" includes his journey to and from his place of residence to the place of work.

(iii) The words "Dependents" and "family members" defined in respect of deceased Government servant shall also be constituted as dependents of a Government servant retired on medical grounds.

(iv) In these rules, wherever the words "widow" or "widower" occurs in respect of deceased Government servant, it shall be constructed as "wife" or "husband" of the Government servant retired on medical grounds".

9. On a plain reading of above rules, it is crystal clear that a government servant retired on medical grounds that too by sustaining bodily injury or mental infirmity is permanently incapacitated while on duty for public service and retired on medical grounds as per the provisions of the KCSR, the son, daughter or family members of the deceased

as defined under the rules, are entitled for appointment on compassionate grounds. It is pertinent to note that as on the date of granting permission to the deceased 1st applicant to retire, the above said Rule was prevailing and was in existence. Even on the date of filing the application by the applicants, the above said rule was in existence. Therefore, issuance of the impugned order is contrary to law. It is also settled law that no executive order shall be issued to overlook the provisions of the rules or act without amending the rules in accordance with law.

10. The following judgements of the Hon'ble Supreme Court as well as the judgements of Hon'ble High Court in **(i) M.V.DIXIT & ORS. Vs. STATE & ORS. [ILR 2004 KAR 3802]; (ii) PHULVANTH SINGH & ORS. Vs. DAYARAM & ORS. [(2015) 3 SCC 177]; (iii) ARJUN SINGH RATHOD & ORS. Vs. B.N.CHATURVEDI & ORS** are relevant in this case and recently, the coordinate Bench of this Tribunal dealt with the similar and identical matters in the case of **Sri. NARASIMHAMURTHY N. vs. STATE & ORS (A.No.5165 of 2016 disposed of on 06.03.2018)** and allowed the application and directed the respondent-State to consider the representation of the applicant for

appointment on compassionate grounds as per the Notification dated 13.10.2011. The said order has been challenged by the State before the Hon'ble High Court of Karnataka in W.P.No.45 of 2019 (S-KSAT). The Division Bench of the Hon'ble High Court decided the said case on 18.03.2020 by considering the objection statement of the Government and various judgements of the Hon'ble Supreme Court and dismissed the writ petition confirming the order of this Tribunal. The relevant paras read as follows:

"8. Thus, on conjoint reading of the aforesaid provisions, it is evident that the dependents of the government servant who have retired on medical grounds are entitled for recruitment on compassionate ground. Description (1) provides that a government servant retired on medical grounds while discharging the duty in public service and as per the certificate issued by the Health and Family Welfare Department, it has opined that the father of the respondent has become physically disabled and unable to perform his duties effectively in government service. Therefore, in our considered opinion, the Tribunal has rightly quashed the impugned endorsements dated 30.04.2015 and

26.06.2015 and directed petitioner No.2 to consider the application submitted by the respondent for appointment on compassionate ground as per rules.

9. The order passed by this Tribunal neither suffers from judicial infirmity nor any error apparent on the face of the record warranting interference in exercise of the supervisory jurisdiction under Articles 226 of Constitution of India.

It is needless to state that petitioner No.2 shall consider the application submitted by the respondent within a period of three months from the date of the receipt of the certified copy of the order passed today.

It is made clear that, this Court has not expressed any opinion with regard to the merits of the case.

Accordingly, the petition fails and is hereby dismissed”.

11. In addition, the Single Bench of this Tribunal, in identical matter, in the case of **Allanagouda Siddanagouda Kirasur vs. State & Ors (A.No.6596 of 2016 disposed of on 26.03.2019)**, allowed the

application and directed the Government for considering the case of the applicant therein for compassionate appointment. The said judgement was unchallenged by the Government. On a perusal of the above judgements and the Notification dated 25.10.2013, it is crystal clear that if any application is pending for appointment on compassionate grounds, Government should consider the case and pass appropriate orders. In the present case on hand, issuance of impugned order is in total violation of 2011 Rules.

12. In our opinion, the view taken by the respondents in rejecting the claim of the 2nd applicant is unsustainable in law. It is pertinent to note that the applicant strongly contended that the 1st respondent vide letter dated 11.02.2014 as per Annexure-A15 has permitted the 2nd respondent to appoint one Kumari Meenakshi, D/o Gurusiddaiah - a Group-D employee of the Health Department, as late Gurusiddaiah who was also retired from service voluntarily on the medical ground. When the respondents have accepted the claim of late Gurusiddaiah's daughter Kumari Meenakshi for appointment on compassionate grounds, rejection of the claim of the 2nd

respondent herein is violative of Articles 14 and 16 of the Constitution of India. It is totally discriminatory on the part of the respondents. It is the bounden duty of the State, as a model employer, to extend the similar benefit to the identically situated persons without any discrimination. On this ground also, the applicant is entitled for the relief sought in the application. Hence, it would meet the ends of justice if the application is allowed with directions to appoint the 2nd applicant on compassionate ground within a time frame.

13. Accepting the grounds urged in the application, we proceed to pass the following:

ORDER

(i) Application is allowed and the impugned order bearing No.Aa.Ku.Ka 161 PIM 2016 dated 05.08.2016 at Annexure-A18 and order bearing No.Aa.Ku.Ka 490 PIM 2013 dated 30.12.2013 at Annexure-A14, both on the file of 1st respondent, are hereby quashed.

(ii) The respondents, in particular 1st respondent is directed to accord administrative approval to the 2nd respondent

to appoint the 2nd applicant as government servant on compassionate grounds, if he is otherwise found eligible, in accordance with law, within four months from the date of receipt of a copy of this order.

Brj/-