

SUPREME COURT OF INDIA

V. M. Satyanarayana

Vs.

The Superintending Engineer, AMRP Circle

C.A.No.4993 of 2008

(R V Raveendran and Lokeshwar Singh Panta JJ.)

12.08.2008

JUDGMENT

R.V.Raveendran, J.

1. Leave granted. Heard the learned counsel for both sides.
2. The appellant's father who was working as a Senior Assistant in the Government of Andhra Pradesh, made an application on 3.2.2001 seeking permission to retire on medical invalidation as he was suffering from total blindness due to hypertension. On 22.3.2001, the Medical Board issued a certificate for medical invalidation. When the application was under process, the appellant, as dependant son, made an application-cum- representation to provide him appointment under the compassionate appointment on medical invalidation scheme (contained in GO dated 9.6.1998 read with earlier GOs of the state government). The said scheme provided for compassionate appointment to a dependant son, daughter, spouse of a government servant who retired on medical invalidation.
3. On 30.6.2001, the Government of Andhra Pradesh accepted the application of appellant's father and permitted him to retire from service on medical invalidation with immediate effect. By order dated 10.5.2002, petitioner was appointed as Junior Assistant under the scheme for compassionate appointment contained in the GO dated 9.6.1998.
4. In the meanwhile, a Full Bench of the Andhra Pradesh High Court by its judgment dated 12.10.2001 in WP No.13489/2001 and connected cases (Government of Andhra Pradesh vs. D. Gopaiah) declared that there can be no appointment on compassionate grounds in cases other than death of employees in harness and that the scheme for compassionate appointment of a dependant of an employee on medical invalidation was unconstitutional. The State Government by GO dated 27.4.2002 gave effect to the said decision of the Andhra Pradesh High Court by dispensing with the scheme for compassionate appointment on the ground of medical invalidation. By a subsequent GO dated 17.7.1972, it was clarified that any appointment made on compassionate grounds subsequent to the Full Bench decision will have to be cancelled even if such appointment was in regard to a medical invalidation prior

to the decision of the Andhra Pradesh High Court. In view of it, the appellant's services were terminated by Office Order dated 1.9.2003.

5. The appellant challenged his termination in OA No.5902 of 2003 before the Andhra Pradesh Administrative Tribunal. The Tribunal dismissed the said application on 28.2.2006. The appellant challenged the order of the Tribunal in WP No.4983 of 2006. The High Court dismissed the said petition by order dated 17.3.2006 in view of the decision dated 12.10.2001 of the Full Bench in the case of D. Gopaiah (supra) The said order is challenged in this appeal by special leave.

6. We have today rendered a separate judgment in V. Sivamurthy vs. State of Andhra Pradesh (CA No.4210 of 2003 decided on 12.8.2008) wherein we have set aside the judgment dated 12.10.2001 of the Full Bench of Andhra Pradesh High Court in D. Gopaiah. We have also held that the scheme for compassionate appointment of dependants of government servants on medical invalidation as per GOs dated 30.7.1980, 4.7.1985 and 9.6.1998 is valid. It therefore follows that the termination of services of the appellant by order dated 1.9.2003 (in pursuance of the Full Bench decision dated 12.10.2001) cannot stand and requires to be set aside.

7. The appeal is therefore allowed. The judgment of the Tribunal dated 28.2.2006 and judgment of the High Court dated 8.3.2006 are set aside. The OA filed by the appellant before the Tribunal is allowed and the termination of the appellant's service by letter dated 1.9.2003 is set aside. As a consequence, the appellant shall be reinstated in service. On the facts and circumstances, though the appellant will be entitled to continuity of service and notional increments, he will not be entitled to any salary for the period he has not worked.