
(1991) 11 AP CK 0042
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6693 of 1991

A. Seshagiri

APPELLANT

Vs

Life Insurance Company of India

RESPONDENT

Date of Decision : 12-11-1991

Acts Referred:

Citation : (1992) 1 ALT 314 : (1992) 2 LLJ 326

Hon'ble Judges : Bhaskar Rao, J

Bench : Single Bench

Judgement

1. This writ petition is filed for issuance of a writ of mandamus directing the respondent to consider the case of the petitioner for appointment in any suitable post on compassionate grounds in the respondent Organisation as per the policy decision.

2. The petitioner is the son of A. V. Krishna Murthy (the deceased). The deceased late Krishnamurthy joined in service in Life Insurance Corporation of India (LIC) in the year 1958. While he was working in LIC, he died on May 8, 1989 due to prolonged illness leaving behind him his widow, three sons, and three daughters. Out of three daughters, only one daughter was married. The petitioner and his elder (second) brother are unemployed. After the death of the deceased, the mother of the petitioner filed a representation on July 10, 1989 to the respondent to consider the case of the petitioner for appointment on compassionate grounds. But the respondent rejected the request on the ground that the petitioner's eldest brother, A. Baburao was employed in the LIC. The said Baburao joined in service in LIC on February 6, 1984 prior to the death of the deceased. His services were regularised in the year 1989. It is further stated that the said Baburao abandoned the family and is living separately and is not helping the petitioner's family. He severed all the connections with father's family. The petitioner's another brother was securing employment on casual basis. Hence this writ petition is filed with the above prayer.

3. In the counter-affidavit filed by the respondent it is stated that the

recruitment to posts of Class III and IV Staff in TIC is governed by LIC Recruitment (Class III and Class IV Staff) Regulations, 1979 issued under the relevant provisions of LIC Act (hereinafter referred to as Regulations). The said procedure is followed whenever appointments are made. The said Regulations provide relaxation in certain contingencies. The relevant Regulation is 22 which reads thus :

"22. Relaxation in favour of near relatives of an employee who dies while in service

(i) There shall be relaxations in age and educational qualifications in favour of near relatives of an employee who dies while in service as prescribed in Annexure III hereto.

(ii) Such relaxation shall be admissible only in favour of widow, son or unmarried daughter of an employee who dies while in service.

(iii) The relaxations shall be admissible only where none of the members of the family-widow, son or unmarried daughter is gainfully employed."

4. Even though the deceased died while in service, the petitioner is not entitled to be appointed on compassionate grounds as the petitioner's eldest brother is gainfully employed in LIC. The said Baburao was appointed as Asst. under the Award of the National Industrial Tribunal. He was appointed as Trainee Asst. on May 30, 1989 and was put on probation on September 1, 1989 and was confirmed in the cadre on December 1, 1989. The contention of the petitioner that his brother Baburao is living separately and not helping the family etc. are not relevant considerations to consider him for appointment on compassionate grounds as envisaged by the Recruitment Procedure. There are no merits in the writ petition and the same is liable to be dismissed with costs.

5. The point for consideration is : Whether the petitioner is entitled for appointment on compassionate grounds ?

6. The petitioner is the son of the deceased who died in service of LIC. As per Regulation 22, if no family member of the deceased is in gainful employment then only his widow, son or unmarried daughter are entitled for consideration for appointment. The petitioner's contention is that his eldest brother Baburao was employed on February 6, 1984 and worked for 100 days as per the Award of the National Industrial Tribunal, he was appointed as Asst. and continued in service of LIC. Therefore he was appointed earlier to the demise of the deceased. The questions for consideration are :

(1) Whether on the date of death of the deceased, whether any member of his family was in gainful employment or not ?

(2) If his widow or son is in gainful employment on the date of demise of the deceased, whether the person continues to be the member of the family of the deceased or not ?

7. In the present day-Society, there is a great change in the concept of family and family members. The old concept of Hindu Joint Family is quickly vanishing. The conditions of modern living, the change in Socio-economic conditions in the Society have influenced the members of the family to depart from the old bondage between the joint family members. There is a sea of change in the attitude of members of the family regarding the moral and legal liability about the disabled family members. The Hindu Marriage Act made the divorce very easy. The wife can give divorce even after children are born to her and she can live separately by doing a job. Though she is the mother of the children, when once she is living separately from the husband and her children are living with their father and are being maintained by the father, then the mother is no more a member of that family. The major unmarried daughter can get a job and live separately. Though she is unmarried, she has got a right to adopt a boy or girl and live as a separate family. Therefore she cannot be treated as member of her parents' family, even though she is unmarried. Similarly the major sons, when once they are employed and married and are living separately from their parents, without sharing any liability of the parents, they are not treated as family members. Therefore, taking into consideration the facts and circumstances it is necessary to consider whether gainfully employed son and the unmarried daughter etc., are members of the family on the date when the employee died during service. The intention behind providing relaxation of the rule is patently to see that the family of the employee who died in harness, is not thrown into streets on the death of the employee and to enable the family members of the deceased to live on continuously with the previous economic back-ground. It is in vogue in Hindu families that sons are separated from the family, and live separately when they are employed. Therefore the questions in issue are the questions to be considered by the respondent before rejecting the application of the petitioner and it is for the petitioner to prove that his eldest brother baburao is separated from the Joint Family and is living separately and has no connection with his family. In those circumstances the question of consideration of relaxation under Regulation 22 arises. In support of his contentions, the learned counsel for the petitioner relied on the following decisions.

8. In Pushpa Bhalla and another v. Union of India & Ors. 1991)1) Admn. Tribunal Judgment 592 it was observed that the mere fact that the elder brother of the Second applicant (son) is employed somewhere else, should not stand in the way of his consideration for appointment to the post on compassionate grounds and directed the respondents therein to consider the case of the second applicant (son) for appointment on compassionate grounds .

9. In Sushma Gosain v. Union of India (1990-I-LLJ-169) it was held as under (p. 170) :

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in

appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

10. In *Ratni Devi v. The Secretary, Haryana State Electricity Board* 1987 (3) S.L.J. 186 it was held :

"that it is wholly irrelevant for the purpose of these instructions that some other member of the family of the deceased employee has also been able to seek employment somewhere else, that is, not with the Board. Therefore, the fact that the elder son of the deceased happens to be in employment of some Bank cannot deprive the petitioner of her claim to secure employment to her son under the Board in whose service her husband was employed before his death."

11. In *Brijithamma v. State of Kerala* (1990-II-LLJ-104), the Kerala High Court opined that the criteria for providing compassionate appointment must not be cryptic, Govt. must have a humanising outlook and held that "such humane provisions must be implemented in the spirit in which they are conceived and must not be left as antiques on the mantel piece. In applying procedural regulations, the letter of law should not be read to its bitter end." (p. 105)

12. The learned Counsel appearing for the respondent relied on the decision reported in *Miss. Rekha Kumari and Another Vs. Managing Director, A.P. Scheduled Castes Co-operative Finance Corporation and Another*, wherein a Division Bench of this Court strongly recommended to the State Govt. to relax the G.O. and consider the case of "NEAR RELATIVE" for appointment on compassionate grounds and contended that unless the G.O. is relaxed the case of the petitioner, cannot be considered as his eldest brother was in gainful employment on the date of the death of the deceased-employee. Similar view was taken by Neeladri Rao, J., in W.P. No. 17255 of 1986. But in both these two cases relied on by the learned counsel for the respondent, the question whether a person so gainfully employed continues as joint family member or not does not arise for consideration. Whether the person gainfully employed continues as a member of family or not is a question of fact purely within the jurisdiction of the respondent authority to consider on the evidence adduced by the concerned applicant.

13. In view of the above circumstances it is just and proper to direct the respondent L.I.C. to consider the case of the petitioner afresh, keeping in view whether Babu Rao, the eldest brother of the petitioner, is in gainful employment on the date of the deceased and continues to be the member of the family or not, within three months from the date of receipt of a copy of this judgment. In case the said Baburao is already separated earlier than the death of the deceased, the petitioner's case may be considered for relaxation of the Rule for

giving appointment with this direction the writ petition is disposed of. No order as to costs.