

(1999) 06 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12529 of 1992

A. Seshagiri

APPELLANT

Vs

Senior Divisional Manager, Life Insurance Corpn. Division
Office, Machilipatnam

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Life Insurance Corporation Recruitment (of Class III and Class IV Staff) Instructions,
1993 — Regulation 21(iii)

Citation : (1999) 4 ALD 88 : (1999) 4 ALT 152 : (1999) 2 APLJ 209

Hon'ble Judges : R. Ramanujam, J

Bench : Single Bench

Advocate : Mr. P.R. Pradas, for the Appellant; Mr. J.V. Suryanarayana Rao, for the Respondent

Judgement

1. Challenging the validity of the action of the respondent in rejecting his application for appointment on compassionate grounds, the petitioner filed this writ petition.

2. The facts of the case, in brief, are : The petitioner's father-late Sri Akkalla Venkata Krishna Murthy was working as Assistant Administrative Officer in the Life Insurance Corporation of India (for short "the Corporation") at Gudiwada. He died in harness, on 8-5-1989, leaving his wife, three sons and three daughters. The petitioner is the 3rd son. It appears that the mother of the petitioner gave a representation on 10-7-1989 and followed by another on 24-4-1990, requesting the respondent to consider the case of the petitioner for appointment on compassionate grounds in any post. Those representations were rejected by the respondent-Senior Divisional Manager, on the ground that the elder brother of the petitioner-Sri A. Babu Rao is in the employment of the Corporation. Against that order, the petitioner herein filed Writ Petition No.6693 of 1991 praying for a direction to consider his case for appointment in any suitable post on compassionate grounds. That writ petition was disposed of on 12-11-1991 with a

direction :

"to consider the case of the petitioner afresh, in view of whether Babu Rao, the eldest brother of the petitioner, is in gainful employment on the date of death 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 Babu Rao 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."

3. Against the said order the respondent filed Writ Appeal No. 1460 of 1991 and the same was dismissed on 19-2-1997 at the admission stage on the ground that the direction issued by the learned single Judge was already carried out. Meanwhile, on 18-2-1992 the respondent issued order rejecting the request of the petitioner, once again, for appointment on compassionate grounds. It is in this order that is questioned in this petition.

4. The learned Counsel for the petitioner contends that : (a) pursuant to the directions issued by this Court in WP No.6693 of 1991 the respondent ought to have conducted an oral enquiry after giving notice, at the place of the petitioner's family residence to verify whether his elder brother-Babu Rao is living with the family or not; (b) Since no such enquiry was conducted, the impugned order is vitiated; and (c) the respondent has not considered the representations of the petitioner's mother that her elder son-Babu Rao was already separated.

5. Appearing for the respondent the learned senior Counsel Sri J.V. Suryanarayana Rao contends that : (a) the impugned order suffers from no infirmity; (b) in a case of this nature no oral enquiry need be conducted; and (c) the documents on record disclose that not only the petitioner's eldest brother-Babu Rao but also the other brother-Surya Narayana were gainfully employed on the date of the death of the petitioner's father and, hence, the petitioner is not entitled to claim compassionate appointment.

6. Before considering the rival contentions, I feel it appropriate, first, to refer to the legal position regarding compassionate appointment which is by now fairly well crystallised.

7. One of the fundamental principles of law of this country which is enshrined in Articles 14 and 16 of the Constitution is that recruitment to public offices shall be made on merit, save to the extent of reservations recognised by the Constitution, after inviting applications from all the eligible candidates. However, a small exception to this general rule has gained recognition over the years. That is : providing employment to a member of the family of an employee died in harness, where the family is in dire financial straits.

8. The Central Government, State Governments and almost all Public Sector Undertakings in the country, including the Life Insurance Corporation of India, framed Rules providing for such appointment which is popularly called as

compassionate appointment.

9. It must be emphasized here that the object of providing compassionate appointment is not to create another mode of recruitment on the ground of descent, but is only to enable the family to tide over the sudden financial crisis. The death of an employee in harness does not, automatically, entitle his family to claim employment to one of its family members as a matter of course. The concerned Government or the authority has to first examine the financial condition of the family and only when it is satisfied that if employment is not provided the family will not be able to meet the crisis, a job has to be offered to one of the members of the family. See the decisions of the Supreme Court in :

- (1) Umesh Kumar Nagpal Vs. State of Haryana and Others, ,
- (2) Auditor General of India and others Vs. G. Ananta Rajeswara Rao, and
- (3) Jagdish Prasad Vs. State of Bihar and Another, .

10. Whenever the Rules made by the Governments or authorities transgress the above noted object and seek to provide employment to a son/daughter/relative of the deceased even in cases where there is an earning member in the family, Courts have declared the Rules to that extent as unconstitutional. See the decision of the Supreme Court in Auditor General of India v. G. Ananta Rajeswara Rao (supra).

11. It must also be emphasized here that Courts cannot direct appointment on compassionate grounds de hors the provisions of the statutory regulations. Whenever High Courts have transgressed this rule and issued directions, the Supreme Court has interfered and reversed such orders. See the decision of the Supreme Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, .

12. A Division Bench of this Court consisting of Hon"ble Sri P.S. Mishra, Chief Justice and Hon"ble Sri M.H.S. Ansari, J., surveyed the entire case law on this topic and culled out the following five guiding principles, in General Manager, District Central Co-operative Bank Ltd. Vs. S. Vasudeva Reddy, :

"(a) Appointment on compassionate ground is an exception to the general rule of equality enshrined in Articles 14 and 16 of the Constitution of India. That too, only, in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means.

(b) The employment on compassionate ground can be made only to Classes III and IV posts notwithstanding the higher qualifications of the dependent or the post held by the deceased employee.

(c) The consideration for employment in post on compassionate ground is not a vested right which can be exercised at any time or offered after whatever lapse of time.

(d) Compassionate employment has necessarily to be made in accordance with rules or executive instructions issued by the Government or Public Authority concerned.

(e) And above all, such appointment should 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. Denial of appointment of dependant on compassionate ground on account of any ban imposed for fresh appoints would be arbitrary."

13. In the light of the aforementioned legal position, I will now consider the contentions of the petitioner. The first contention is that the impugned order is vitiated as no enquiry was conducted at the petitioners residence to ascertain the facts. This contention is wholly untenable. As already noted, consideration for employment on compassionate grounds is not a vested right. Hence, there is no question of giving prior notice and holding an enquiry at the family residence of the petitioner. Further, this Court also did not direct in WP 6693 of 1991 that oral enquiry at the petitioner's residence should be conducted to ascertain the fact whether the petitioner's elder brother was separated from the family or not. I am of the view that in a case of this nature where sufficient documentary evidence is available on the file, consideration should be on the basis of such documents only. Conducting oral enquiry at the residence of the petitioner's family, that too, after giving notice, will certainly give scope to stage manage the evidence.

14. A perusal of the impugned order clearly shows that the respondents has carefully gone through the documents available on record and came to the conclusion that: the petitioner's first elder brother was gainfully employed at the time of death of the petitioner's father; he was a member of the family at the time of death of their father; he continues to be the member of the family even thereafter; and that his second elder brother "Sri A. Sitrya Narayana was also gainfully employed at the time of death of his father on 19-4-1989 and is presently employed in South Central Railway, VJjayawada.

15. The petitioner's Counsel could not and did not dispute the conclusion of the respondent that the second eldest brother of the petitioner-Sri Surya Narayana was in gainful employment at the time of his father's death and continues to be so even thereafter.

16. The further contention of the petitioner's Counsel that the statement made in the representations filed by the petitioner's mother on 10-7-1989 and 24-4-1991 to the effect that her elder son-Babu Rao has already separated from the family is not considered by the respondent, is also unsustainable. The impugned order clearly states that the elder brother of the petitioner (Babu Rao) continues to be the member of the family.

17. Even if it is assumed that the petitioner's first elder brother-Babu Rao was

separated from the family, no relief can be given to the petitioner. Undisputedly the petitioner's second elder brother Sri A. Surya Narayana was also in gainful employment at the time of death of their father and continues to be so even thereafter. As already noted, the settled principle of law is that when one of the members of the family is in gainful employment, appointment on compassionate grounds cannot be given. In fact Regulation 21(iii) of the LIC of India Recruitment (of Class III and Class IV Staff) Instructions, 1993 clearly enjoins that "the relaxation shall be admissible only where none of the members of the family - spouse, son or unmarried daughter - is gainfully employed." Dealing with similar provisions in the earlier regulations of the Corporation, the Supreme Court in LIC of India v. Asha Ramachandra Ambekar, (supra), categorically held that Courts cannot direct appointment contrary to such instructions.

18. For the aforementioned reasons, the writ petition fails and it is accordingly dismissed. No costs.