

(1994) 04 MAD CK 0049
In the Madras High Court

G. Ramarajan

APPELLANT

Vs

Neyveli Lignite Corporation Limited and Another

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

Citation : (1994) 2 MLJ 176

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—The above writ petition has been filed for a writ of mandamus directing the respondents to appoint the petitioner in a suitable post

on compassionate grounds, in the service of the respondent.

2. The petitioner claims that his father late P. Chakravarthy was employed as a sainik/security branch in the respondent-Corporation, that he was

appointed in the year 1969 and that he died in harness on 14.2.1982 and his C.P.F. No. was 17053 and his badge number was 17. The petitioner

also claims that at the time of his father's death he was thirteen years old, that he has successfully completed the Higher Secondary Examination

and that is now doing the B.Com, course first year by correspondence and has a driving license and a conductor's licence. He has also registered

himself in the employment exchange in the year 1985 and his registration No. is 17300/88. He states further that he applied for a job in the

respondent Corporation on compassionate grounds and that he was called for an interview by a memo dated 17.12.1987 for the post of Industrial

Worker Grade II Trainee and the interview was held on 24.12.1987. The petitioner states that inspite of his having appeared for the interview, he

did not have any orders for employment and hence he has to come before this

Court.

3. This Court ordered notice of motion on 2.3.1992. The respondents have been served and they have filed a counter-affidavit. In the said

counter-affidavit, it is submitted that the petitioner has no legal right to seek employment under the Corporation by invoking the extraordinary

jurisdiction of this Court. It is also stated that the petitioner has suppressed certain vital facts, that the writ petition would have been discussed at

the stage of the admission had he disclosed the facts and that the writ petition has to be summarily dismissed on this ground alone. It is further

contended in the counter-affidavit that the father of the petitioner was in employment of the Corporation as Sainik, that he joined the Corporation

on 5.8.1965 and served till 1.10.1976, that during the said period he was said to have been awarded various punishments on 14 occasions and

most of them were imposed for unauthorised absence from service and ultimately he was removed from the services of the Corporation with effect

from 2.10.1976 for unauthorised absence without leave. Thereupon due to repeated representations and taking a compassionate and sympathetic

view, the petitioner's father was said to have been reappointed with effect from 23.2.1979, as a fresh candidate hoping that he would improve.

But again his services came to be terminated for the second time for his unauthorised absence from duty, with effect from 16.5.1979 and the father

of the petitioner died on 14.2.1982, almost three years after his name and had been removed from the rolls of the Corporation and therefore the

petitioner's father could not be considered as having died in harness, since he was not in service on the dated of his death.

4. It is admitted that the Corporation has framed a scheme purely on compassionate and sympathetic grounds to provide employment to indigent

dependents of employee who die in harness while in service. But it is contended that such scheme is applicable only to the wards of the employee

who died while they are in the service of the Corporation and the same is not applicable, to the persons like the petitioner, whose father was ex-

employee and died after he ceased to be in the services of the Corporation on account of the termination from the rolls.

5. As far the plea raised in the affidavit that the petitioner was called for interview, which he had attended, it is stated that he found to be not

eligible for consideration under the scheme and therefore the petitioner was not actually interviewed and his applications came to be rejected and he was informed accordingly. The locus standi of the petitioner is also mentioned on the ground that the petitioner's father was not an employee on the date of his death.

6. Mr. V. Prakash, the learned Counsel appearing for the petitioner, with his usual perseverance, submitted that the stand taken by the respondents that the petitioner cannot claim himself to be the dependent of an employee who died in harness, is not tenable and that the so called order of termination without following any procedure and opportunity must be considered to be a void order, non est in law and consequently the petitioner is entitled to project his claims ignoring the order of termination or removal of the father of the petitioner from the services. It is also the submission of the learned Counsel that there is vital and certain difference between a challenge made to an order for claiming certain rights and a plea of defence raised as a shield based on the invalidity or the void nature of the order, when such an order is sought to be put against a claim and in this view there should be no difficulty for the petitioner claiming himself to be the dependent of an employee of the Corporation, who died in harness, to entitle him to the benefit of compassionate appointment.

7. Mr. M.K. Sharma, the learned Counsel appearing for the respondents reiterated the stand taken in the counter-affidavit, to which a detailed reference has been made earlier. The learned Counsel for the petitioner placed reliance upon the decision reported in *Dharam Vir Singh v. Delhi Administration* (1994) 26 A T Cas 322 and in *Dr. Ramesh Chandra Tyagi v. Union of India* J.T. (1994) 1 S.C. 530, as against the decision in *Life Insurance Corporation of India v. Mrs. Asha Ramachandra Ambedkar* J.T. (1994) 2 S.C. 183, relied upon by the learned Counsel for the respondents.

8. In *Dharam Vir Singh v. Delhi Administration* (1994) 26 A T Cas 322, the Central Administrative Tribunal, New Delhi, had an occasion to consider a peculiar situation where a member of the Delhi Police Service, who came to be dismissed, along with the other persons, happened to challenge the order taking advantage of the earlier order passed by the Tribunal in respect of a challenge made by two other persons. In that

context, the said Tribunal expressed the view that having regard to the earlier view taken by another Bench of the Tribunal, as also the view taken by the said Bench whose judgment has been reported above, that the order of punishment made against the petitioner and two others was without jurisdiction, the same must be considered to be void and non est and consequently an order which is void and non est need not be challenged soon after it has come into existence. The Tribunal also expressed the view that the validity of an order its existence can be questioned by a person if and when it is ought to be enforced against him.

9. The decision of the Supreme Court in *Dr Ramesh Chandra Tyagi Vs. Union of India (UOI) and Others*, , was one where the appellant before

the Apex Court was transferred to another institution from his then position and on his non complying with the transfer order, disciplinary action

was initiated and his services were terminated based on the transfer order. In that context, the Apex Court adverted to the question of the validity

of the earlier order of transfer itself, during the course of consideration of a challenge to the order of termination, and found that since the earlier

order of transfer was contrary to Rules and non est in the eye of law, an order of dismissed based for the noncompliance of the said order of

transfer should also fall automatically.

10. The decision relied upon by the learned Counsel for the respondents and reported in the Supreme Court wherein the question of appointment

on compassionate ground came up for consideration. The Apex Court, while laying down the guidelines for exercising the discretion rested with

this Court even on sympathetic consideration observed hereunder:

...of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we

would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benefication impelled by sympathetic

consideration. No doubt Shakespeare said in *Merchant of Venice*:

The quality of mercy is not strain'd;

It droppeth, as the gentle rain from heaven Upon the place beneath it is twice bless'd:

It blesseth him that gives, and him that takes;....

These words will not apply to all situations. Yielding to instinct will tend to ignore the oral logic of law. It should be remembered ""law is the embediment of all wisdom"". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be.

At this juncture we may usually refer to Martin Burn Ltd. Vs. The Corporation of Calcutta, , of the Report the following observations are found:

A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress

resulting from its operation. A statute must of course be given effect to whether a court likes the result or not....

The courts should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of

law. Disregardful of law, however, hard the case may be, it should never be done. In the very case, itself, there are Regulations and Instructions

which we have extracted above. The Court below has not even examined whether a case falls within the scope of those statutory provisions.

Clause 2 of Sub-clause (iii) of instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully

employed. Clause 4 of the circular dated 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a

statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put

aside and compassionate appointment ordered....

11. The decisions relied upon by the learned Counsel for the petitioner, in my view, merely reaffirm the well settled principle of law that a void

order is non est in the eye of law and it is always open of the person concerned to demonstrates the void nature of the order, at any point of time,

when such order is sought to be enforced against the person concerned by demonstrating that it is a nullity. There can be no two views on this well

settled preposition of law. The real question is as to the extent of its applicability to the case on hand. In my view, the facts of this case do not

present a ground for applying the ratio laid down in the decisions relied upon by the learned Counsel for the petitioner. The petitioner's father, as

could be seen from the xerox copies of the service register, pertaining to the

petitioner's father, was once removed for his unauthorised absence with effect from 2.10.1976 by an order dated 13.10.1976, that he was again taken as a fresh entrant with effect from 23.2.1979 and was again removed with effect from 16.5.1979 for unauthorised absence from duty by another proceedings dated 12.6.1979. As rightly contended by the respondent, the petitioner's father was alive nearly for three years thereafter and he has set chosen to challenge the same and if that be the position, in my view, it is not possible for the petitioner herein to challenge the order of removal of this point of time, even on the ground that so called order has a nullity, and even by way of defence and an answer to the claim of the Corporation when sought to be relied upon, in support of his stand. In my view, in the teeth of the indisputable fact that the father of the petitioner, during his lifetime, has not chosen to take any step to question the action of the respondent-Corporation in terminating the services of the father of the petitioner, the petitioner cannot claim any subsisting right which could be claimed to have survived the death of his father to make such a challenge after his death. Consequently, in a case where there is no subsisting right in the petitioner to question such an order, it matters very little, as to whether the challenge is by way of mounting an attack against an order to claim a right or by way of shield and an answer in defence. The claim of the petitioner, therefore that he is entitled for compassionate appointment as the defendant heir of a deceased employee, who died in harness cannot be sustained.

12. That apart, since the claims of the petitioner could not also, in my view, satisfy the provisions of the scheme formulated he being not the dependent of a person who died in service this Court cannot come to the rescue of the petitioner to grant any relief merely on administrations of sympathy only, particularly in the light of the caution administered by the Apex Court as shown in the judgment in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, . The writ petition, therefore fails and shall stand dismissed. No costs.