

(1994) 02 DEL CK 0048

In the Delhi High Court

Case No : Civil Appeal No. 1381 of 1994

Life Insurance Corporation

APPELLANT

Vs

Asha Ambekar

RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 42, 59

Citation : (1994) RLR 211

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Judgement

M. Mohan, J.

(1) [ED. Facts : Husband of respdt. was employed in LIC. He expired suddenly on 11.8.87. Respdt. sought appointment on compassionate ground but was refused due to over-age. Then her son applied. Clause 4 of Circular of Lic of 20.1.87 which is "where any member of the family is employed, no appointment may be made on compassionate grounds" stood against him and his request was declined on 21.10.91. He filed W.P. High Court ordered his appointment. Lic appealed to Supreme Court.] After detailing above facts, judgment proceeds :

(2) 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 benediction impelled by sympathetic consideration. No doubt Shakespeare said in Merchant of Venice :

"THE quality of mercy is not stain d; It droppeth, as the gentle rain from heaven Upon the place beneath it is twice blessed ;It blessed him that gives, and him that takes;."

(3) These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment 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.

(4) At this juncture we may usefully refer to *Martin Burn Ltd. Vs. The Corporation of Calcutta*, , following observations :

"Are suit 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."

(5) The Courts should endeavor to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, had 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 these 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 L.I.C. Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered.

(6) Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. In *Brij Mohan Parihar Vs. M.P. State Road Transport Corporation and Others*, , it is stated.

"THE provisions of the Motor Vehicle Act and in particular Ss. 42 and 59 clearly debar all holders of permits including the State Road Transport Corporation from indulging in unauthorised trafficking in permits. Therefore, the agreement entered into by the petitioner, unemployed graduate, with the State Road Transport Corporation to ply his bus as nominee of the Corporation on the route in respect of which the permit was issued in favor of the Corporation for a period of five years, was clearly contrary to the Act and cannot, Therefore, be enforced. In the circumstances, the petitioner would not be entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee."

(7) It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside.

(8) In this very case. on the demise of Ramchandra Ambekar, the first respondent staked her claim but she was age barred Therefore, the second respondent when he put forth his entitlement, the appellant Corporation passed an order dated 21.10.1991 in answer to second respondent request for appointment on compassionate grounds as follows :

"WE had received your appeal dated 21.6.1991. We had submitted it to the

Competent Authority and we are sorry to inform you that the Competent Authority has shown inability to offer any employment to you."

(9) To say, as a court below has done, that the 2nd respondent is at the prime of his life and youth and is aged about 21 years and the dues that are paid by the L.I.C. to the family are the lawful dues that are earned by the deceased. Therefore, on facts, he would be entitled to appointment on compassionate grounds, is not the correct approach.

(10) We are totally unable to support this line of reasoning. For aught one knows, there may be other cases waiting already for appointment on compassionate grounds, they may be even harder than that of the 2nd respondent.

(11) Thus, apart from the directions as to appointment on compassionate grounds being against statutory provisions, such decision does not take note of this fact. Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant Corporation in piquant situation. The disobedience of this direction will entail contempt notwithstanding the fact that the appointment may not be warranted. This is yet another ground which renders the impugned judgment dated 19.10.93 unsupportable.