
(1999) 05 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 33231 of 1992

Mukesh Kumar Sharma

APPELLANT

Vs

Senior Divisional Manager, L.I.C. of India, Agra and another

RESPONDENT

Date of Decision : 05-05-1999

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 38C

Citation : (1999) 3 AWC 2167 : (2000) 2 UPLBEC 62 : (1999) 2 UPLBEC 1128

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : S.C. Verma, for the Appellant; Manish Goel and R.P. Goyal, for the Respondent

Judgement

D.K. Seth, J.—The petitioner is claiming appointment under the Dying-in-Harness Rules as provided in the Life Insurance Corporation Recruitment (of Class III and Class IV Staff) Instruction, 1979 on the ground that his two brothers who are gainfully employed are not supporting the petitioner. It is alleged that the said two sons of the deceased were married before the death of the deceased and were living separately and were ceased to be members of the family. In such circumstances. Mr. Kamlesh Mishra holding brief of Mr. S. C. Verma submits that the writ petition should be allowed.

2. Mr. Manish Goel learned counsel for the respondents, on the other contends that the said Recruitment Instruction in paragraph 22 clause (ii) provides that such relaxation shall be admissible only in favour of the widow, son or unmarried daughter of an employee while In service. While clause (iii) provides that it would be admissible only when none of the members of the family, namely, widow or unmarried daughter is gainfully employed, In the present case, two sons of the deceased have been gainfully employed and one of them is in the Corporation itself. The case comes wholly outside the purview of the said paragraph 22. He relied on the decision in the case of Life Insurance Corporation of India v. Asha

Ramchandra Ambekar (Mrs.) and another (1994) 2 SCO 718, in support of his contention. He also points out from Annexure-14 to the writ petition that the son is living in the same house but he was not supporting the family. He contends that the son is living with the family.

3. According to him, it is a disputed question directed as to whether the sons are supporting the family or not. The statutory provisions or instructions are to be followed to the extent it is admissible in law, however, hard the case may be. In case of hardship on account of inability of anyone of the members of the family does not enable the petitioner to get appointment under the said recruitment rules. It is not possible for the Corporation to decide as to whether the gainfully employed member of the family is supporting the family or not. If such view is taken, in that event it will open a Pandora's Box. Therefore, the writ petition should be dismissed.

4. I have heard both the counsel at length.

5. Admittedly, two sons of the deceased are gainfully employed. Paragraph 22 clearly states that this provision is admissible to the members of the family as defined to widow, son or unmarried daughter. While daughter has been qualified with the expression "unmarried" and son has been omitted to be qualified. Marriage of a son does not make the son cease to be a member of the family whereas marriage of a daughter makes the daughter cease to be a member of the family. Further, it provides that such relaxation is admissible in a case where none of the members of the family namely, widow, son or unmarried daughter is gainfully employed. This is apparent from clauses (ii) and (iii) of paragraph 22 of the said instruction as quoted below :

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

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

6. A plain reading of the said paragraph shows that the son has not been qualified. Therefore, if he is married, the same could not make him cease to be a member of the family. Then again, it is also not clarified that such son if does not support the family, then this provision would be allowed to another son. If such an interpretation is given, it would be stretching the instruction contained in Clause (iii) too far. The interpretation of a particular provision has to be confined within the Intention of the instruction as conveyed to the language used in order to accept the interpretation sought to be made by Mr. Mishra would be stretching the same to an extent beyond the scope of interpretation. In other words, we will have to read something more which is not within the scope and ambit of the said provision. Unless something is added to the said provision to the extent that "such son who are not supporting the family would not be included in the family", which is impermissible. Therefore. It is very difficult to accept the proposition.

7. In the pleading, it has been pointed out that the son is living separately whereas from Annexure-14, it is apparent that the son is living in the same house but it is alleged that he is not supporting the family. Such a question is not open to be gone into by the Corporation. It seems that there are some substance in the argument of Mr. Goel to the extent if such an interpretation is accepted, in that event, it would really open a Pandora's Box and create uncontrollable hurdle. In such event, everyone will come with the story that the other members of the family are not supporting. It is not possible to decide the said question.

8. In the case of Life Insurance Corporation of India v. Asha Ramchandra Ambekar (supra) the Apex Court had observed as under :

At this juncture we may usefully refer to Martin Burn Ltd. Vs. The Corporation of Calcutta, At page 535 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 considerations 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 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 January 20, 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 be ordered.

We are totally unable to support this line of reasoning. For ought one know, there may be other cases waiting already for appointment on compassionate grounds, they may be even harder than that of the second respondent.

9. The above observation clinches the issue and is attracted in the facts and circumstances of this case. Though however, Mr. Mishra had sought to distinguish the same in the ground that in that case, it was not pleaded that the person who is gainfully employed was not supporting the members of the family, such a view could have been taken.

10. In my view, such distinction cannot be drawn in view of the expression used in the Instruction Itself which has to be interpreted according to the instruction as observed in the case cited by Mr. Goel. At the same time, there is no such clarification that a son who is not supporting the family is to be excluded from the scope and ambit of Clause (iii) of paragraph 22.

11. In such circumstances, I am unable to agree with the contention of Mr. Mishra. In that view of the matter, the writ petition cannot succeed.

12. The writ petition thus falls and is, accordingly, dismissed. However, there will be no order as to costs.