
(2005) 03 AHC CK 0236

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13032 of 2003

Ram Kesh Narayan and Dev Narayan

APPELLANT

Vs

District Manager, Food Corporation of India and Senior
Regional Manager, Food Corporation of India, Regional Office

RESPONDENT

Date of Decision : 29-03-2005

Acts Referred:

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 4

Citation : (2005) 5 AWC 5039 : (2005) 2 UPLBEC 1910

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : R.C. Gupta, for the Appellant; Arun Kumar Gupta and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri R.C. Gupta for the petitioners and Sri A.K. Gupta, learned counsel appearing for the respondents.

2. By means of this writ petition, the petitioner has prayed for quashing the order dated 19/21.12.2001 and that a writ of mandamus may be issued to respondent No. 2 to appoint petitioner No. 1 on the post of handling labour in place of his father who has been retired on medical ground before attaining the age of superannuation.

3. It is the case of the petitioner No. 1 that his father who is petitioner No. 2 was working as handling labour in the office of Food Storage Depot at Azamgarh. The Food Corporation of India had issued a circular dated 2.2.77 which was further amended by another circular dated 3.7.1996 (a true copy of the same Annexure-1 to the writ petition) which provided for recruitment procedure of appointment of kin of departmental workers who seek retirement on medical grounds on their own request in relaxation of the procedure of getting sponsored from Employment Exchange. Clause (i) of the circular provides that the worker

who seeks voluntary retirement on medical ground should apply within the age limit of 55 years for the purpose of availing the benefit of compassionate appointment. The said condition has been enumerated in the aforesaid circular. The general condition of the circular is that notwithstanding anything contained in the said circular, the compassionate ground appointment is not as matter of right but purely at the discretion of the competent authority taking into the circumstances. The appointing authority is the Senior Regional Manager as provided in the said circular.

4. It is stated by the petitioner that his father petitioner No. 2 made an application for retirement from service on medical ground and also requested for being given the benefits of compassionate ground appointment to his son (petitioner No. 1). It has been stated that the date of birth of petitioner No. 2 is 6.2.1944. The application for gaining the benefit of the circular was made on 26.4.1999. It is admitted that the said application was made by the petitioner No. 2 after he had crossed the age limit of 55 years.

5. However, the respondents did not reject the application of the petitioner No. 2 or the petitioner No. 1 for compassionate appointment outright on that the ground that the same has been made beyond the age of 55 years and that such appointment could not be considered in view of clause (i) of the circular. The respondent upon receipt of said application forwarded the same for necessary action. Whereafter the authority concerned got the petitioner No. 2 as also petitioner No. 1 medically examined. Upon said examination, the petitioner No. 2 was found to be medically unfit vide medical certificate dated 17.10.1999 which entitled him to seek retirement on medical ground. The petitioner No. 1 was found medically fit vide medical certificate dated 3.11.1999 which entitled him to be appointed on compassionate ground. Having conducted medical examination and necessary documentations having been completed by the petitioner the report dated 10.7.2001 was submitted by the committee constituted for the said purpose. This report recommended that petitioner No. 1 was found fit for Loader. The petitioner No. 2 was retired on medical ground having been found unfit on 29.7.2000. Since the appointment was not being given to the petitioner No. 1 he has filed the present writ petition for the relief as claimed therein.

6. Learned counsel for the petitioner has cited a decision of this court passed in writ petition No. 13034 of 2003 Shobhnath Yadav v. District Manager, Food Corporation of India and Ors., stating that the petitioner would be entitled to the benefit of the said decision as well in the decision in Writ Petition No. 43714 of 2001 of Raj Nath Yadav v. Senior Regional, FCI and Ors. In reply the learned counsel for the Corporation has cited the decision of Apex court as reported in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, The learned counsel submits that in view of aforesaid decision it has been held that since Regulation 4 of Life Insurance Corporation Regulation 1960 empowers the Chairman of the Corporation to issue such instructions or directions as may be necessary to give effect and carry out instructions of the

corporation in order to effective control over the Corporation. The Chairman may issue such instructions with the approval of Board. Such instructions issued would have statutory character. The learned counsel has contended that in the matter of compassionate appointment, the High Court cannot issue writ of mandamus and direct that appointment be made. According to the Corporation the only direction which can be issued is for consideration of the case and not for making appointment.

7. In the case of Raj Nath Yadav. this court while considering the order rejecting the application of the petitioner therein for compassionate appointment in place of his father had held that the rejection was illegal in view of the fact that although the application for retirement was made within the age limit of 55 years but the formality of medical examination etc. was completed much after the petitioner had attained the age of 55 years. This court was of the view that the application under the circular dated 3.7.96 having been made before the attaining the age of 55 years the respondent could not have rejected the application for appointment of his son only on the ground that the order of retirement passed after formalities have been completed was after the incumbent has attained the age of 55 years. This court had held that delay in filing such application was not on account of fault of the petitioner but it was on account of delay caused by the respondent.

8. In the case of Shobh Nath (Supra) this court was considering the situation where the petitioner had obtained medical unfit Certificate after he had attained the age of 55 years. However, in this case also, this court found that when the initial application had been filed the said petitioner was well within 55 years of age and therefore, the said application could not have been rejected on technical ground.

9. A perusal of the order dated 19/21.12.2001 indicates that the petitioner No. 1's application for compassionate appointment has been rejected on the ground that the petitioner No. 2 had made his application of retirement on medical ground after he had attained the age of 55 years. There appears to be no other ground for rejection of the claim of petitioner No. 1. It is admitted between the parties that in pursuance of application dated 26.4.1999 the petitioner No. 2 has been retired by an order dated 29.7.2000 meaning thereby that application of petitioner No. 2 for retirement on medical ground has been allowed. It is not the case of the respondent that the petitioner No. 2 has been retired upon attaining the age of superannuation. A perusal of the application dated 26.4.99 made by petitioner No. 2 indicates that said application has been made for retirement on medical ground and appointment of his son on compassionate ground. It, therefore, transpires that respondent acted upon the said application solely on the ground that petitioner No. 2 was declared unfit for doing his job and therefore, he may be given the benefit of retirement on medical ground. Such benefit admittedly has been given to the petitioner No. 2.

10. The question which has been raised by the learned counsel for the petitioner

is that rejection of his application for compassionate appointment in place of his father could be arbitrary inasmuch as the circular dated 3.7.96 is a circular for giving relaxation. The circular has been issued to give benefit for compassionate appointment to the dependents of departmental workers on the conditions as enumerated therein. The learned counsel for the respondents has referred to condition (i) which relates to the condition that any application for voluntary retirement on medical ground must be made before attaining the age of 55 years. It is true that such instructions as have been issued after approval of Board of Director would have force of law and therefore, the non-compliance of condition No. (i) would be fatal to an employee who had applied for retirement on medical ground inasmuch as the benefit of the compassionate appointment to his kin would be denied. The learned counsel for the petitioner has challenged the order dated 19/21.12.2001 on the ground that circular does not have force of law and further power of relaxation has been given in the circular itself. This contention of the learned counsel for the petitioner can not be accepted. The circular which has been issued with the approval of Board would have force of law. The power of relaxation with respect to condition No. (i) has not been provided.

11. In view of aforesaid facts, this court would not be in position to quash the impugned order inasmuch as no ground has been made out in the writ petition, nor can a writ of mandamus be issued as prayed for. This writ petition is therefore, dismissed. There will be no order as to costs.

12. Learned counsel for the petitioner has stated that the rejection of his application is solely on the ground of delay of two months and twenty days and therefore, the respondents may reconsider his case in light of the purpose and reasons for which the circular has been issued. No such direction can be issued by this court since the impugned order has been upheld. However, in case the petitioner makes such application for reconsideration it will be open for the respondents to consider the same if they deem it fit to do so.