

(2017) 04 BOM CK 0041
In the Bombay High Court
Case No : 10928 of 2016

Union of India

APPELLANT

Vs

Laxman Shambu Kulam

RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

Citation : (2017) 04 BOM CK 0041

Hon'ble Judges : V.K. Tahilramani, M.S. Karnik

Bench : DIVISON BENCH

Advocate : T.J. Pandian, Vicky A. Nagrani

Judgement

1. Rule. By consent Rule is made returnable forthwith and the matter is heard finally.

2. Heard learned Counsel for the Petitioners and learned Counsel for the Respondent. The Petitioners in this Petition were the original Respondents before the Tribunal and the Respondent was the Applicant before the Tribunal.

3. This Writ Petition is preferred against the order dated 26th February, 2016 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in O.A. No.677 of 2015 whereby the O.A. came to be allowed. The Respondent had preferred the said O.A. seeking direction to the Petitioners to hold that as on 11th January, 2013 i.e. the date of his last application he fulfills all the conditions under Liberalized Active Retirement Scheme for Guaranteed Employment (LARSGESS scheme) and thus he is eligible to be considered under the said scheme i.e. he be given voluntary retirement and his son be given employment under the said scheme. The O.A came to be allowed.

4. The Respondent worked as Khalasi Helper under the Petitioner No.2. He had joined the permanent post of Khalasi on 14th September, 1987 and had completed more than 20 years of qualifying services. The Railway Board by order dated 11th September, 2010 decided to extend the benefit of LARSGESS Scheme to safety categories of staff with a Grade Pay of Rs.1800/p. m. In the order dated

11th September, 2010 the qualifying service was reduced from 33 years to 20 years and eligibility age group from 55 -57 years to 50-57 years for seeking retirement under the Scheme in the case of Safety categories with Grade Pay of Rs.1800/-. Admittedly at that time the Respondent was covered by the scheme.

5. On 5th August, 2011 the Respondent submitted application for consideration of appointment to his son under the LARSGESS Scheme. Since he did not receive any reply from the Petitioners, he submitted a second application on 5th August, 2012. The Respondent claimed that although he qualified on all norms for consideration, he did not get any reply from the Petitioners. He, therefore, submitted a third application on 11th January, 2013 for consideration of the appointment of his son under the LARSGESS Scheme. Admittedly the Respondent's son was sent for medical examination vide letter dated 27th January, 2014 and he accordingly underwent medical examination and was declared fit. After the Respondent's son was declared fit, the Respondent was awaiting appointment order in relation of his son. However, instead a letter dated 28th August, 2014 was served on him informing him that his date of birth as per the office record is 9th February, 1956. There is no dispute on either side that the date of birth of the Respondent is 9th February, 1956. However, in the said letter there was no intimation regarding his application for employment of his son under the LARSGESS scheme. Since the Respondent did not hear anything from the Petitioners in relation to this he filed O.A. No. 677 of 2015 wherein it was prayed as under: "8a) This Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same hold and declare that as on 11.01.2013 ie., the date of his last application the applicant fulfills all the conditions of LARSGESS scheme and thus is eligible to be considered under LARSGESS Scheme with all consequential benefits".

b) Alternatively this Tribunal may further be pleased to direct the respondents to consider all the three applications submitted by the applicant and pass speaking order thereof.

c) Cost of the application be provided for.

d) Any other and further order as this Hon"ble Tribunal deems fit in the nature and circumstances of the case be passed".

6. The main contention of the Respondent was that there was inaction on the part of the Petitioners in not considering the case of the Respondent for appointment of his son under LARSGESS scheme. The contention of the Respondent was that the Petitioners ought to have passed a speaking order in case his application was rejected. However, the Petitioners had simply maintained silence after sending his son for medical examination in January, 2014 and despite the fact that his son passed the medical exam.

7. The learned Counsel for the Petitioner submitted that the recruitment under the Liberalized Active Retirement Scheme for Guaranteed Employment (LARSGESS) is twice in a year i.e. commencing from 1st January and 1st July of

every year. As per the scheme, the employees are required to submit their application before 31st January and 31st July for the cycle commencing from 1st January and 1st July respectively. He pointed out that an employee applying under the scheme is required to fulfill all the eligibility condition on 1st January and 1st July for the respective cycles.

8. It is an admitted fact that no rejection letter has been served upon the Respondent. As far as the first and the second application are concerned they were preferred on 5th August, 2011 and 5th August, 2012 respectively i.e. after 31st July, hence they could not have been considered. As far as the third application is concerned which was preferred on 11th January, 2013, the learned Counsel for the Petitioner contended that the Respondent had submitted incomplete application without attesting the photograph of the Respondent as well as of his son, hence, it was not considered. However, it is an admitted fact that his application was returned with a direction to get the photographs attested and to resubmit the application. The Respondent resubmitted his application after affixing photograph of himself and his son on 12th March, 2013.

9. The issue involved in this Petition is whether the Respondent is eligible for Voluntary Retirement under LARSGESS and whether the application for employment to his son under LARSGESS can be considered by the Petitioners on the basis of the prevalent rules and points of law.

10. As stated earlier both the sides agree that the date of birth of the Respondent is 9th February, 1956, therefore, he was due to retire on 29th February 2016. The first application was submitted by the Respondent on 5th August, 2011 and the second application on 5th August, 2012. As stated earlier application should be made only between the period from 1st January to 31st January or from 1st July to 31st July. As the earlier two applications were submitted on 5th August, 2011 and 5th August, 2012, they could not have been taken into consideration. However, the third application was submitted on 11th January, 2013. It was within the time schedule fixed for submitting the application. Hence, it deserved to be considered. Admittedly the Respondent's son was sent for medical examination on 27th January, 2014, a certificate showing that he was medically fit was issued by the Medical department on 31st January, 2014 with a remark "Fit in Aye two and below". There is an entry showing that the application was returned to the Respondent for attesting the photographs on 8th February, 2013. This shows that the case of the Respondent was under active consideration and had not been rejected. Otherwise it would have not been stated that he should return his papers after compliance i.e. affixing photographs and attesting the same. This shows the Respondent's application was very much alive and had not been disposed of. The Respondent in fact was not informed about rejection of his application at any time.

11. The learned Counsel for the Petitioners submitted that when the Respondent preferred the O.A. he had only 3 months of service left, hence he was not eligible under the scheme as under the scheme the Applicant has to have 3 years of

service left at the time of preferring the application. The Respondent was eligible for consideration under the LARSGESS Scheme as he had completed 20 years of regular service. He had worked in one of the safety categories mentioned in the guidelines and on the date of his application ie., 11th January, 2013, he was below 57 years of age and his date of birth was admittedly 9th February 1956. Thus on 11th January, 2013 he had 3 years before he retired. In view of the fact that the third application of the Respondent was returned after 8th February, 2013 for nonattestation of the photographs the application would still be said to be alive. The son of the Respondent was also sent for medical examination and was found medically fit for appointment. The Respondent must have had a reasonable expectation that after success in the medical examination, his son will be offered a job by the Petitioners and he must have waited with that expectation before approaching the Tribunal for legal remedy. It is seen that when he preferred the application on 11th January, 2013 the Respondent still had 3 years for his superannuation. In view of the above facts we find no error in the order of the Tribunal whereby the O.A came to be allowed. Thus the Respondent and his ward had satisfied all requirements for consideration under the LARSGESS scheme.

15. In view of the above discussion we are of the opinion that no interference is called for in the order of the Tribunal. Hence, Rule is discharged. 16. At this stage the learned Counsel for the Petitioners requested that they may be granted 3 months time to comply with the order of the Tribunal. Time as prayed for is granted.