

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.12.2004

CORAM

THE HONOURABLE MR.JUSTICE V. KANAGARAJ

WRIT PETITION No.20541 of 1998

Life Insurance Corporation  
of India, Schedule Castes and  
Scheduled Tribes Employees  
Welfare Association, rep. by  
its General Secretary. .... Petitioner

Vs.

1. Life Insurance Corporation of India,  
rep. by its Chairman,  
Central Office,  
Yogakshema,  
Mumbai-400 021.
2. The Senior Divisional Manager,  
Life Insurance Corporation of India,  
L.I.C. Building,  
Anna Salai, Chennai-2.
3. The Executive Director (Personnel),  
Central Office,  
Yogakshema,  
Mumbai-400 021.

... Respondents

\* \* \*

Petition filed under Article 226 of the Constitution of  
India praying to issue a Writ of Certiorari as stated  
therein.

\* \* \*

For Petitioner : Mr. K. Shanmugakani

For Respondents : Mr. M. Jagadeesan (For R-2)  
No Appearance (For R-1 & R-3)

\* \* \*  
O R D E R

The Life Insurance Corporation Scheduled Caste and Scheduled Tribes Employees Welfare Association represented by its General Secretary has sought to issue a writ of certiorari to call for the records in Circular No.3850/ASP/98 Dept. Personnel/ER/A dated 22.6.1998 on the file of the third respondent herein and quash the same. By the said Circular, the relaxation given to the Scheduled Caste and Scheduled Tribe employees in the minimum qualifying service for promotion to the cadre of Higher Grade Assistants as three years has been withdrawn. The further grievance of the petitioner association is that the respondents have not considered the candidates belonging to Scheduled Castes and Scheduled Tribes who have put in three years of service and hence the writ petition.

2. The pleadings of the petitioner association is that the petitioner is a registered Association established for the welfare and protection of the interests of Scheduled Castes and Scheduled Tribes employed in the Life Insurance Corporation of India. The Life Insurance Corporation, being a statutory corporation established under the Life Insurance Corporation of India Act, 1956 and being a part of 'State' as defined under Article 12 of the Constitution of India, is under a Constitutional obligation to provide for reservation for the Scheduled Caste and Scheduled Tribe employees both at the recruitment level as well as by way of promotion. It is submitted that from the post of Assistants/Typists, there is a next cadre, viz. Higher Grade Assistant and the qualification prescribed for the post of Higher Grade Assistant/Typist is provided in the Instructions for implementation of the Life Insurance Corporation of India Class-III and Class-IV Employees Promotion Rules, 1987 as follows :

Higher Grade Assistants	Section Heads Stenographers Assistants and all other employees in the scale of Section Heads or Assistants	(a) Section Heads or (b) 5 years service in the scale of Assistants and a pass in the Departmental test or on acquiring the prescribed qualifications or (c) 10 years service in the scale of Assistants.
Higher Grade Assistants (Stenographers)	Stenographers	5 years service as Stenographers

It is provided in the Rules that for the purpose of promotion, what is required is five years service in the scale of Assistants and a pass in the Departmental test or acquiring prescribed technical qualification or ten years service in the scale of Assistants or Section Heads and the selection procedure prescribed is written examination followed by oral interview; that Assistants/Typists who have passed the departmental test in the past will not be required to pass the departmental test again for promotion to the said cadre and that means, once an Assistant has passed the departmental test for the post of Higher Grade Assistant, he is eligible to be included in the panel for the post of Higher Grade Assistants; that as per Class-IV of the instructions for promotion to Higher Grade Assistants, the preparation of the panel is to be done as provided below:

"6.(i) there shall be prepared a panel of all eligible employees in the order of total marks obtained on the basis of criteria of selection specified in Rule No.5.

(ii) out of the panel prepared in accordance with sub-rule (1), all the candidates in the order of merit equal to 5 times the number of vacancies

may be called for interview by the Promotion Committee."

Under Rule 5 of the Promotion Rules, the conditions of eligibility and criteria for selection is provided as follows :

"(i) The categories of employees eligible for promotion to various cadres, their conditions of eligibility for promotion and criteria for their selection shall be as specified in the Schedule.

(ii) Notwithstanding anything contained in sub-rule (i), the Chairman may direct that an employee who has excelled in any field of sports or athletics at the national or international level or has received any national or international award in any cultural, literary or scientific activity, may be promoted to the next higher cadres."

3. It is further submitted that every year, the respondent Corporation prepares the panels for promotion to Higher Grade Assistants from the post of Assistants/Typists; that the candidates who have passed the departmental test are eligible to be included for the panel for promotion to be selected by the Promotion Committee on interview; that in the year 1998, the Corporation issued a notification on 9.12.1998 notifying promotion of 40 candidates to the Chennai Division-I and Zonal Office, Chennai including Zonal Training Centre, Chennai and Internal Audit Department, South Zone, Chennai; that as per the said notification, the panel of candidates to be interviewed before the Promotion Committee was prepared and call letters for the said interview were issued on 15.12.1998, but for reasons best known to them, the Corporation did not include the names of such of those Scheduled Caste and Scheduled Tribe employees who had passed the departmental tests earlier in the said panel.

4. It is further submitted that in the year 1990, the first respondent had issued an order relaxing the minimum qualifying service in respect of the Scheduled Caste and Scheduled Tribe employees for promotion to the cadre of Higher Grade Assistants from five years to three years; that however, since the said relaxation was arbitrarily done without any jurisdiction, it was withdrawn by the second



respondent by his order dated 22.6.1998; that based on the order dated 22.6.1998, the respondents had rejected the claims of those Scheduled Caste and Scheduled Tribe employees who have qualified with the three years qualifications and having passed the departmental test and did not call for interview such of those Scheduled Caste and Scheduled Tribe employees who have the three years service and have also passed the departmental tests; that the Circular dated 22.6.1998 is challenged in this writ petition.

5. It is also contended on behalf of the petitioner Association that the impugned order was passed by the Executive Director of the Corporation, whereas under Rule 8 of the Rules, only the Chairman has the jurisdiction and the authority to withdraw the relaxation granted by him and as such, the impugned order is without jurisdiction.

6. In the counter affidavit, the respondents would submit that the respondents have followed the instructions contained in the office Memo. dated 22.2.1997; that even though it is permissible to prescribe reasonably qualifying marks or valuation for SCs/STs consistent with the efficiency of the administration and the nature of duties attached to the office concerned in the matter of direct recruitment and the same is not permissible in the matter of promotion; that with regard to the relaxation of service, the Chairman has the power (with certain restrictions) by a special instruction to relax the rule in the case of employees belonging to the SC/ST employees; that as far as personnel and administrative matters are concerned, the Executive Director is also empowered on behalf of the Chairman to issue instructions; that the petitioners contention that 22 SC/ST candidates who have passed the departmental test in 1997 have not been selected for promotion is only as a result of the withdrawal of the concessions as per the impugned circular dated 22.6.1998 and not for any other reason. On such averments, the respondents would seek to dismiss the above writ petition.

7. During arguments, the learned counsel appearing on behalf of the petitioner association would cite item No.1 (v) of the impugned order relating to relaxation in the minimum qualifying service for promotion to the cadres of HGA (Admn.)

and AAO wherein it is stipulated:

"Instructions issued by the Chairman from time to time in exercise of the powers vested in him under Rule (8) of the Promotion Rules 87."

The learned counsel would also cite paragraph 4 of the impugned order dated 22.6.1998:

"According to the Govt. O.M.No.36012/23/96-Estt(Res.) Dated 22.2.1997 (Copy enclosed) conveying the above decision of the Govt. henceforth there shall be no separate standards of evaluation for candidates of SC/ST for promotion and assessment of all candidates for this purpose will be with reference to uniform standard. Any instruction which provides for lower qualifying marks/lesser standard of evaluation in the matter of promotion for candidates belonging to SC/ST may therefore have to be treated as having been modified to this extent."

In paragraph 5 of the impugned order, it is further averred as follows;

"In view of the Govt. orders, the Chairman has reviewed the position and has decided that all instruction issued by us which provide for lower qualifying marks/less standard of evaluation in the matter of promotion of candidates belonging to SC/ST mentioned in (1) above will stand withdrawn with immediate effect."

8. Citing the above relevant paragraphs from the impugned order passed by the Executive Director (Personnel) dated 22.6.1998, the learned counsel would submit that the

question involved is fixation of lower qualifying marks and lesser standard of evaluation for candidates of SC/ST for promotion and assessment of all the candidates for this purpose with reference to uniform standard.

9. The learned counsel would point out that this notification has taken away clause (ii) and (iv) in paragraph 1. The learned counsel would also point out that this circular has been issued in violation of Article 16 (4) (A) of the proviso to Article 335 of the Constitution of India and allegedly following the judgment of the Honourable Supreme Court reported in 1996 (8) Judgment Today (Supreme Court) page 643 (S.Vinod kumar and another Vs. Union of India and others 643). In the said judgment, the Honourable Apex Court, while clarifying its earlier judgment in *INDIRA SAWHNEY ETC. V. UNION OF INDIA AND OTHERS* reported in 1992 (6) SC 273 = 1992 Suppl.(3) SCC 215 has held:

"... so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, it is not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In other words, even if it is assumed for the sake of argument that reservation is permitted by Article 16(4) in the matter of promotions, a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotions, by virtue of Article 335. If so, there can be no question of such a provision or "concession", as it is called by the Tribunal, being saved by the declaration in Para 829 of the said judgment."

10. The learned counsel continuing his argument would submit that subsequently the Parliament enacted Article 335 by 82<sup>nd</sup> amendment dated 8.9.2000 and would cite the memorandum dated 3.10.2000 and would conclude his argument saying that the respondents are bound to act in accordance with the memorandum.

11. On the contrary, on the part of the learned counsel appearing for the respondents would cite paragraph 13 of the impugned order and would say that the reservation in promotion in favour of SC/ST candidates will continue. The learned counsel would further point out that the amendment to Article 335 comes into operation only on 8.9.2000 whereas the interview commenced on 15.12.1998 and citing para 14 of the writ petition, the learned counsel would say that it is in violation of the proviso to Article 335 of the Constitution. The learned counsel would end up his argument after the 82<sup>nd</sup> amendment to the Constitution having gone under water and would pray to dismiss the above writ petition.

12. In consideration of the facts pleaded having regard to the materials placed on record and upon hearing the learned counsel for both it could be assessed that the petitioner association seeking to quash the circular dated 22.6.1998 issued by the Executive Director (Personnel) thereby offering instructions or making provisions to the Life Insurance Corporation of India Clause III and Clause IV Employees Promotion Rules, 1987 thereby providing to the lower qualifying marks lesser standard of evaluation in favour of SC/ST candidates. According to the petitioner Association, the executive order is contrary to the statutory rules framed under the L.I.C. of India Act, 1956 and the Life Insurance Corporation of India, Clause III and Clause IV Employees Promotion Rules. It is the further contention of the petitioner Association that the said order is without jurisdiction and the same is contrary to the spirit of reservation policy and is designed in defeating the very constitutional obligation. The petitioner Association would further point out that the subject was considered by the High Court of Rajasthan which refused to strike down the relaxation made available under Section 8 of the said Promotion Rules. It would be further argued that the relaxation of the memorandum of qualifying service for the Scheduled Caste/Scheduled Tribe employees for promotion, the post of higher grade assistant is a constitutional right and it cannot be withdrawn by the respondents much less without an opportunity for the members of the petitioners association held and therefore the impugned order is also contrary to the principles of natural justice. The further contention of the



petitioner Association is that while it is the Chairman under Rule 8 of the Rules, who could exercise jurisdiction and authority to withdraw the relaxation granted by himself and as such the impugned order passed by the Executive Director (Personnel) of the Life Insurance Corporation of India is without jurisdiction and at this score also, the impugned order is liable to be quashed.

13. On a perusal of the materials placed on record, it comes to be known that subsequent to the filing of this writ petition, the Government has brought in 82nd Amendment to the Constitution of India thereby incorporating a proviso to Article 335 which reads as follows:

"Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union of a State."

14. In pursuance of the said enabling proviso of Article 335 of the Constitution, the Government has issued O.M.No.36012/23/96-Estt. (Res.) Vol.II, dated 3.10.2000, thereby restoring, with immediate effects, the relaxations/concessions in matters of promotion for candidates belonging to Scs/STs by way of lower qualifying marks, lesser standards of evaluation that existed prior to 22.7.1997. In other words, the effect of these instructions would be that the Department of Personnel and Training's O.M.No.36012/23/96-Estt. (Res), dated 22nd July, 1997 became inoperative from the date of issue of the said O.M. Since the impugned order dated 22.6.1998 was issued by the respondents following the orders of the Government of India in O.M.No.36012/23/96-Estt (Res.) dated 22.2.1997 which has become inoperative now, pursuant to the 82nd Amendment of the Constitution of India, nothing survives in the above writ petition and the same becomes liable only to be dismissed as infructuous.

In result, the above writ petition is dismissed as infructuous.

No costs.

gs/ks/Rao

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman,  
Life Insurance Corporation of India,  
Central Office,  
Yogakshema,  
Mumbai-400 021.
2. The Senior Divisional Manager,  
Life Insurance Corporation of India,  
L.I.C. Building,  
Anna Salai, Chennai-2.
3. The Executive Director (Personnel),  
Central Office,  
Yogakshema,  
Mumbai-400 021.

- + 1 CC to Mr. M. Jegadeesan, Advocate (SR NO 58215)  
+ 1 CC to Mr. K. Shanmugakani, Advocate (SR NO 58048)

WEB COPY

Order in W.P.  
No.20541 of 1998

Delivered on  
29.12.2004

klt (co)  
bp