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Ct-08

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FMA 1457 of 2019
with
I.A No. CAN 1 of 2020(Old CAN No. 862 of 2020)

Life Insurance Corporation of India & Ors.
Vs.
Himachal Chakraborty & Ors.

Mr. Avishek Guha
Mr. Akansha Chopra
... For the Appellants

Mr. Anirban Mitra
... For the Respondents/
Writ Petitioners

1. The appeal is arising out of an order dated 9th August, 2019 passed by the learned Single Judge in a writ petition where the petitioners challenged the action of the appellants in declining to renew their service contract.

2. The writ petitioners were appointed as Financial Services Executives by the Life Insurance Corporation of India in the year 2008 after having qualified in a selection process of the Scheme of 2007. The service of the petitioners was contractual and renewable. It was renewed till 2016. The Corporation did not renew the service of the petitioners thereafter. No order of termination was passed against them. This act of the Corporation was challenged in the writ petition.

3. Learned Single Judge relied upon the judgment of Madurai Bench of Madras High Court dated 9th August, 2016 and 2nd September, 2016 in a batch of writ petitions, where the Bench directed the respondents to consider the petitioners' prayer granting relaxation of age.

4. The learned Single Judge on consideration of the materials available was of the view that even if it assumed the writ petition is allowed in favour of the petitioners, the petitioners shall come under the category of Financial Services Executives of the Corporation the benefit to appear in the selection of Apprentice Development Officers would amount to pre-judging the status of the petitioners. Learned Single Judge thereafter observed as follows:-

“The next hurdle is the upper age limit of 40 years that has been fixed for Financial Services Executives of the Corporation. All the petitioners have crossed the aforesaid age limit of 40 years.

In a similar matter, the Madurai Bench of the High Court at Madras has passed an order directing the Life Insurance Corporation of India to consider the prayer of the petitioners for relaxation of age. The court specifically took note of the fact that the qualified youths who got appointment in the Life Insurance Corporation will be forced to leave their jobs in the prime age of their lives. They would not be able to get any employment either in the State or Central

Services or even in the Public Sector Undertakings. They would create more burden to the society. The Life Insurance Corporation of India being the instrumentality of the State has a legal obligation under Article 41 of the Constitution of India to take care of their employees, who were appointed on contract basis by giving them relaxation of age.

Relying upon the aforesaid principle, the Life Insurance Corporation of India in the instant case may also consider the prayer of the petitioners for relaxation of their age for appearing in the said examination for recruitment of Apprentice Development Officer. As the examination is fixed on the 10/11th August, 2019, the respondent authorities are directed to permit the petitioners to appear in the said examination without creating any legal right in their favour.

The respondent no. 3 shall take a decision with regard to the prayer of the petitioners for relaxation of their age for appearing in the examination in question within a period of two weeks from date. The said respondent shall pass a reasoned order and communicate the same to the petitioners within a week thereafter.

If the said respondent is of the opinion that the upper age limit in respect of the candidates can be relaxed, then the authority will publish the result of the petitioners. In the event, the authority is of the opinion that no relaxation can be granted, then there is no requirement of publication of the result of the petitioners.” (emphasis supplied)

5. The writ petitioners were not allowed to

participate in the examination by the Corporation. On such allegation, the petitioners filed a contempt application.

6. The learned Single Judge in disposing the contempt application observed that *“the Life Insurance Company has considered the prayer of the petitioners for age relaxation and rejected the same by passing order on March 7, 2020. The petitioners are aggrieved by the same.*

The legality of the said order cannot be adjudicated by this Bench sitting in the contempt application.

In view of the above, the contempt application stands disposed of by granting leave to the petitioners to challenge the order dated March 7, 2020 before the appropriate forum, if so advised.

The order which the petitioners allege not to have been complied with is presently pending before the Hon’ble Division Bench in an appeal. The parties are at liberty to take appropriate steps before the Hon’ble Division Bench.”

7. It is admitted position that whatever may be the reason advanced by LIC the petitioners could not participate in the examination.

8. Learned counsel representing the appellants submits that the order of the Madurai Bench has been wrongly interpreted by the learned Single Judge. It is submitted that there was no specific direction by the Madurai Bench to give any employment.

9. The subsequent circular issued by LIC on 1st

March 2019 relaxing the age bar was not considered. Even if the benefit of the subsequent circular relaxing the age bar is extended in favour of the appellant still the appellant would not qualify.

10. In order to appreciate the said argument of the appellants the relevant paragraphs of the decision of Madurai Bench are given below:-

“8. All the petitioners were allowed to work for a period of 8 years and in the meanwhile they became overaged and they have also become ineligible to seek any employment either in the State or Central service, this Court, finding that their services have not been terminated on any extraneous reason, hereby directs the respondents herein to consider their candidatures for future employment as and when vacancies arise to any equivalent post by granting them relaxation of age only.

9. At this juncture, Mr. G. Prabhu Rajadurai, learned Counsel for the respondents would submit that instead of giving a direction to the respondents, liberty may be given to respondents to consider the case of the petitioners, since the respondents also placed this issue before the Executive Committee to consider for grant of age relaxation.

10. This Court hopes and trusts that the request of the petitioners for grant of age relaxation would be considered in their favour.

11. With the above observations all the Writ Petitioners are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.” (emphasis supplied)

11. The learned Counsel has also referred to the aforesaid paragraphs to contend that there has been no positive direction upon the LIC to give employment. However, it is not disputed that the present petitioners are similarly placed as that of the employees who approached before the Madurai Bench and consequent upon a decision being taken by the Executive Committee all the petitioners who were before the Madurai Bench have been absorbed and their service contract have been renewed.

12. L.I.C being an instrumentality of the State cannot act discriminatorily. It is trite law that persons similarly placed are to be treated alike and not differently. It was incumbent upon the appellants to grant age relaxation after the writ petitioners are successful in the examination. In fact, the learned Single Judge in the impugned order has only directed if the upper age limit in respect of the candidates can be relaxed and only thereafter the authority was directed to publish the result of the petitioners. L.I.C having failed to demonstrate any difference on facts regarding the candidates who

were before the Madurai Bench and the writ petitioners who are before us, we are of the view that the writ petitioners could not have been treated differently. The writ petitioners had also completed eight years like the petitioners in the Madurai Bench.

13. The learned Counsel for the Corporation had relied upon the circular dated 1st March, 2019 to show that the relaxation of the age bar was consequent upon the decision of the Madurai Bench. If we accept the submission then there is an acceptance of the judgment of the Madurai Bench. However, the circular of 1st March, 2019 was never brought to the notice of the learned Single Judge nor any application has been filed for introduction of additional evidence at the appellate stage. We are also not satisfy with the explanation offered in not conducting the examination in terms of the order the learned Single Judge. However, since the Corporation has passed the order rejecting the application without relaxation of the age we permit the writ petitioners to challenge the said order in accordance with law. All points left open. However, this order shall not prevent the Executive Committee of LIC to consider the prayer for age relaxation by the writ petitioners in the light of the observation of the Madurai Bench as we feel that they have become

over age and they would not be able to get any employment either in the State or Central Government or even in the Public Sector Undertaking. Since the petitioners have served the corporation for all these years unblemished some equitable consideration is required. It is in such facts and circumstances we made the aforesaid observation. The appeal and the application being FMA 1457 of 2019 and CAN 862 of 2020 are disposed of with the aforesaid direction. The order of the learned Single Judge stand modified to the aforesaid extent.

14. However, there shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

