LIFE INSURANCE CORPORATION OF INDIA A

MRS. ASHA RAMCHANDRA AMBEDKAR AND ANR.

FEBRUARY 28, 1994

[M.N. VENKATACHALIAH CJ. AND S. MOHAN, JJ.] B

Service Law : Life Insurance Corporation of India (Staff) Regulations, 1960/Life Insurance Corporation (Recruitment of Class III and Class IV Staff) Instructions, 1979: Regulation 4/Clause 2 Sub-clause (iii)—Circulars issued thereunder—Appointment on compassionate grounds—Impermissible where any member of the family is employed—Validity of.

Constitution of India, 1950 Article 226—Writs—Writ of Mandamus—Jurisdiction—Exercise of—Appointment on compassionate grounds—Court could merely direct consideration of claim for appointment—Not straightway direct that appointment be made. D

The husband of first respondent was employed in the appellant Corporation. He expired suddenly. His widow submitted an application seeking employment on compassionate grounds and the appellant Corporation rejected the application on the ground that she had crossed the upper age limit of 45 years. E

Subsequantly, the second respondent, the son of the deceased made various representations seeking employment on compassionate grounds. Relying on its Circulars to the effect that where one member in the family was employed, no appointment could be made on compassionate ground, the Appellant-Corporation rejected his representations. F

The Respondents approached the High Court and it directed the appellant Corporation to appoint the Second respondent on compassionate grounds. Against this, the appellant-Corporation preferred the present appeal, contending that it could not be directed to act contrary to the Regulations and Instructions which governed appointment on compassionate grounds. G

Allowing the appeals, this Court

HELD : 1.1. Courts should endeavour to find out whether a par- H

A ticular case in which sympathetic considerations are to be weighed, falls within the scope of law. Disregardful of law, however hard the case may be, such appointments should never be ordered. [167-G]

1.2. In the instant case, there are Regulations and Instructions. The Court below has not even examined whether a case falls within the scope B of these statutory provisions. Sub- clause (iii) of clause 2 of the 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 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant-Corporation, being a Statutory Corporation, is bound by the C Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment ordered. [167-G-H, 168-A]

1.3. Apart from the direction as to appointment on compassionate grounds being against statutory provisions, such a direction does not take D note of the fact that there may be other cases already waiting for appointment on compassionate grounds may be harder than that of the second respondent. Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed E consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant-Corporation in piquant situation. The disobedience of the said direction would even entail contempt notwithstanding the fact that the appointment may not be warranted. [169-H; 170-A, B]

F *Martin Burn Ltd.* v. *The Corporation of Calcutta*, AIR (1966) SC 529 and *Brij Mohan* v. *M.P.S.R.T. Corpn.*, AIR (1987) 29, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1381 of 1994.

G From the Judgment and Order dated 19.10.93 of the Bombay High Court in W.P. No. 3157 of 1993.

Harish N. Salve, Mrs. Alpana Poddar and Kailash Vasdev for the Appellant

H A.M. Khanwilkar for the Respondents.

The Judgment of the Court was delivered by A

MOHAN, J. Leave granted.

The short facts leading to this civil appeal are as under :

Life Insurance Corporation of India (hereinafter referred to as 'the Corporation') is the appellant in the civil appeal. It was established under the Life Insurance Corporation Act, 1956 (hereinafter referred to as 'the Act'). Section 49 of the said Act empowers the Corporation to make regulations with prior approval of the Central Government. In exercise of these powers, the Corporation has framed the Life Insurance Corporation of India (Staff) Regulations, 1960 providing for terms and conditions of service of the staff of the Corporation. Regulation 4 of the said Regulations empowers the Chairman of the Coporation to issue such instructions or directions as may be necessary to give effect and carry out instructions of the Corporation in order to secure effective control over the staff employed by the Corporation. The Chairman of the Corporation with the approval of the Board on 27.11.1979 issued the Life Insurance Corporation Recruitment (of Class III and Class IV staff) Instructions, 1979. These instructions also contain provisions for the appointment of staff on compassionate ground upon demise of a member of the staff of the Corporation while in service. These instructions are statutory in character. Therefore, they have the force of law. B C D E

Clause 2, sub-clause (iii) of these Instructions reads, *inter alia*, as under :

> "2. Relaxation in favour of near relatives of an employee who dies while in service :- F
>
> (i).....
>
> (ii).....
>
> (iii) The relaxation shall be admissible only where none of the members of the family-widow, son or unmarried daughter is gainfully employed." G

A Circular No. 2D/636/ASP/87 was issued by the Central Office of the Corporation on 20.1.1987. Clause 4 of the amended Circular is as H

A under:

> "4 Where any member of the family is employed, no appointment may be made on compassionate grounds."

B One Shri Ramchandra Ambekar was employed as higher grade Assistant in the Sanda Branch under the Nasik Divisional Officer of the appellant Corporation. He expired suddenly on 11.8.1987. Upon his demise, the Ist respondent, his widow submitted an application seeking employment on compassionate grounds with the appellant Corporation. On 12.12.1987, the Corporation rejected the abovesaid request on the ground C that she had exceeded the upper age limit of 45 years. Therefore, her request could not be complied with.

Subsequent thereto, the 2nd respondent made various representations on 8.5.1989, 1.7.1989, 18.6.1990 and 21.6.1991 seeking amployment on compassionate grounds. By letter dated 21.10.1991, the appellant D Corporation relying on Circulars dated 6.10.1987 and 21.1.1987 rejected the request. Thereupon Writ Petition No. 3157 of 1993 came to be filed by 2nd respondent to direct the appellant Corporation to appoint him on compassionate grounds. By the impugned judgment dated 19.10.1993 of the High Court, the appellant Corporation was directed to appoint 2nd respondent E on compassionate grounds within four weeks of the date of the order. Hence, the present appeal.

Mr. Harish Salve, learned Senior Counsel for the appellant Corporation would urge that the appellant Corporation cannot be directed to act contrary to the Regulations and Instructions which govern appointment on F compassionate grounds. These Regulations which have been framed with good intent and purpose cannot be by passed. The Regulations do not contemplate appointment on compassionate grounds when one of the members of the deceased family is gainfully employed.

G Where the Corporation has acted *bona fide* and declined to appoint the 2nd respondent, that exercise of power cannot be interfered with. Shortly put, the Corporation cannot be directed by means of a *mandamus* to do something which is *per se* illegal.

Learned counsel for the respondents would urge that the High Court H has correctly appreciated the matter and held that appointment on com-

pasionate ground is need based. As far as Ist respondent is concerned, she withdrew her application because she was age barred. Where the High Court took into consideration the 2nd respondent who was in the prime of his life and youth and directed appointment on compasionate grounds which is in accord with the Rules of the Government, no exception could be taken to the judgment.

Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathatic consideration. No doubt Shakspeare said in Merchant of Venice:

> "The quality of mercy is not strain'd; It droppeth, as the gentle rain from heaven Upon the place beneath it is twice bless'd; It blesseth him that gives, and him that takes;."

The words will not apply to all situations. Yeilding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be.

At this juncture we may usefully refer to *Martin Burn Ltd.* v. *The Corporation of Calcutta,* AIR(1966)SC 529. 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 sympathatic 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 Ragulations 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

A gainfully employed. Clause 4 of the Circular dated 20.1.1987 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.

B Further it is well-settled in law that no *mandamus* will be issued directing to do a thing forbidden by law. In *Brij Mohan* v. *M.P.S.R.T. Corpn.*, AIR(1987)SC 29, it is stated as under :

> "The provisions of the Motor Vehicles Act and in particular Ss. 42
> C and 59 clearly debar all holders of permits including the State Road Transport Corporation from indulging in unauthorised trafficking in permits. Therefore, the agreement entered into by the petitioner, unemployed graduate, with the State Road Transport Corporation to ply his us as nominee of the Corporation on the route in respect
> D of which the permit was issued in favour of the Corporation for a period of five years, was clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner would not be entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its
> E nominee."

It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside.

F In this very case, on the demise of Ramchandra Ambedkar, the first respondent staked her claim but she was age barred. Therefore, the 2nd respondent when he put forth his entitlement, the appellant Corporation passed an order dated 21.10.1991 in answer to the 2nd respondent request for appointment on compassionate grounds as follows :

G

Life Insurance Corporation of India,
Nasik Divisional Office,
"Jeevan Prakash",
Golf Cloub Ground,
Old Agra Road, Post Box No. 110,
H Nasik - 422 002.

Dated : 21st October, '91.

Ref. :

Shri Nitin Ramchandra Ambekar,
C/o Smt. A.R. Ambekar,
Jamner Road, Municipal Colony,
at & Post-Bhusawal, Distt. Jalgaon.

Dear Sir,

Re : *Your appeal for suitable employment on compassionate grounds.*

We had received your appeal dated 21.6.1991. We had submitted it to the Competent Authority and we are sorry to inform you that the Competent Authority has shown inability to offer any employment to you.

Thanking you,

Yours faithfully,

Sd/-
Sr. Divisional Manager."

To say, as a court below has done, that the 2nd respondent is at the prime of his life and youth and is aged about 21 years and the dues that are paid by the Life Insurance Corporation to the family are the lawful dues that are earned by the deceased. Therefore, on facts, he would be entitled to appointment on compassionate grounds, is not the correct approach.

We are totally unable to support this line of reasoning. For aught one knows, there may be other cases waiting already for appointment on compassionate grounds, they may be even harder than that of the 2nd respondent.

Thus, apart from the directions as to appointment on compassionate grounds being against statutory provisions, such directions does not take

A note of this fact. Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant Corporation in piquant situation. B The disobedience of this direction will entail contempt notwithstanding the fact that the appointment may not be warranted. This is yet another ground which renders the impugned judgment dated 19.10.1993 unsupportable. For these reasons, the civil appeal will stand allowed. There shall be no order as to costs.

G.N. Appeals allowed.