

Lic vs Asha Ramchandra Ambekar on 28 February, 1994

Equivalent citations: 1994 AIR 2148, 1994 SCC (2) 718, AIR 1994 SUPREME COURT 2148, 1994 (2) SCC 718, 1994 AIR SCW 1947, (1994) 2 SCR 163 (SC), 1994 (2) SCR 163, (1994) 2 JT 183 (SC), 1994 (1) UJ (SC) 592, 1994 (2) JT 183, 1994 SCC (L&S) 737, (1994) 2 MAD LW 10, (1994) 1 CURLR 638, (1994) 1 LAB LN 569, (1994) 23 ALL LR 447, (1994) 27 ATC 174, (1994) 2 LABLJ 173, (1994) WRITLR 492, (1995) 4 SCT 298, (1994) 68 FACLR 791, (1994) 2 SCJ 122, (1994) 2 SERVL 1

Author: S. Mohan

Bench: S. Mohan

PETITIONER:

LIC

Vs.

RESPONDENT:

ASHA RAMCHANDRA AMBEKAR

DATE OF JUDGMENT 28/02/1994

BENCH:

MOHAN, S. (J)

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MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

CITATION:

1994 AIR 2148

1994 SCC (2) 718

JT 1994 (2) 183

1994 SCALE (1) 748

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- Leave granted.

2. 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 Corporation 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 November 27, 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.

3. 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

(i)...

(ii)...

(iii) The relaxation shall be admissible only where none of the members of the family

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widow, son or unmarried daughter - is gainfully employed."

4. A Circular No. 2D/636/ASP/87 was issued by the Central Office of the Corporation on January 20, 1987. Clause 4 of the amended circular is as under :

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

5. One Shri Ramachandra Ambekar was employed as higher grade Assistant in the Sanda Branch under the Nasik Divisional Officer of the appellant Corporation. He expired suddenly on September 11, 1987. Upon his demise, the first respondent, his widow submitted an application seeking employment on compassionate grounds with the appellant Corporation. On December 12, 1987, the Corporation rejected the abovesaid request on the ground that she had exceeded the upper age limit of 45 years. Therefore, her request could not be complied with.

6. Subsequent thereto, the second respondent made various representations on May 8, 1989, July 1, 1989, June 18, 1990 and June 21, 1991 seeking employment on compassionate grounds. By letter dated October 21, 1991, the appellant Corporation relying on circulars dated October 6, 1987 and

January 21, 1987 rejected the request. Thereupon Writ Petition No. 3157 of 1993 came to be filed by second respondent to direct the appellant Corporation to appoint him on compassionate grounds. By the impugned judgment dated October 19, 1993 of the High Court, the appellant Corporation was directed to appoint second respondent on compassionate grounds within four weeks of the date of the order. Hence, the present appeal.

7. 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 compassionate grounds. These regulations which have been framed with good intent and purpose cannot be bypassed. The regulations do not contemplate appointment on compassionate grounds when one of the members of the deceased family is gainfully employed.

8. Where the Corporation has acted bona fide and declined to appoint the second 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.

9. Learned counsel for the respondents would urge that the High Court has correctly appreciated the matter and held that appointment on compassionate ground is need based. As far as first respondent is concerned, she withdrew her application because she was age barred. Where the High Court took into consideration the second respondent who was in the prime of his life and youth and directed appointment on compassionate grounds which is in accord with the rules of the Government, no exception could be taken to the judgment.

10. 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 sympathetic consideration. No doubt Shakespeare 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;"

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "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.

11. At this juncture we may usefully refer to *Martin Burn Ltd. v. Corporation of Calcutta*. 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 endeavor to find out whether a particular case in which sympathetic 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 regulations and instructions which we have 1 AIR 1966 SC 529, 535: (1966) 1 SCR 543 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 gainfully employed. Clause 4 of the circular dated January 20, 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.

12. Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. In *Brij Mohan Parihar v. M.P.S.R.T. Corpn.*² it is stated as under:

"The provisions of the Motor Vehicles Act and in particular Sections 42 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 bus as nominee of the Corporation on the route in respect 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 nominee."

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

14. In this very case, on the demise of Ramchandra Ambekar, the first respondent staked her claim but she was age barred. Therefore, the second respondent when he put forth his entitlement, the appellant Corporation passed an order dated October 21, 1991 in answer to the second respondent's request for appointment on compassionate grounds as follows:

"Life Insurance Corporation of India, Nasik Divisional Office, 'Jeevan Prakash' Golf Club Ground, Old Agra Road, Post Box No. II o, Nasik - 422 002 Dated : 21st October, 1991 Ref:

Shri Nitin Ramchandra Ambekar, s/o Smt A.R. Ambekar, Jamner Road, Municipal Colony, at & Post-Bhusawal, Distt. Jalgaon. 2 (1987) 1 SCC 13: AIR 1987 SC 29 Dear Sir, Re : Your appeal for suitable employment on compassionate grounds We had received your appeal dated June 21, 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."

15. To say, as a court below has done, that the second 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.

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

17. Thus, apart from the direction as to appointment on compassionate grounds being against statutory provisions, such direction does not take 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 second respondent. To straightaway direct the appointment would only put the appellant Corporation in piquant situation. 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 October 19, 1993 unsupportable. For these reasons, the civil appeal will stand allowed. There shall be no order as to costs.