



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 31445 OF 2015 (S-RES)

BETWEEN:

1. SRI HARISH B T
S/O LATE THIPPESWAMY,
AGED ABOUT 30 YEARS,
R/AT BUDIHAL VILLAGE,
NITTUR POST, HARIHARA TALUK
DAVANAGERE DISTRICT

...PETITIONER

(BY SRI. P N NANJA REDDY ., ADVOCATE)

AND:

1. THE LIFE INSURANCE CORPORATION OF INDIA
REPRESENTED BY ITS SENIOR DIVISIONAL
MANAGER,
DIVISIONAL OFFICE,
JEEVANPRAKASH, 100 FT ROAD
GOPALAGOWDA EXTENSION
SHIVAMOGGA-577 205

...RESPONDENT

(BY SRI. RAMACHANDRA.G.BHAT., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENT TO CONSIDER THE CASE OF THE PETITIONER FOR APPOINTMENT ON COMPASSIONATE GROUNDS TO ANY SUITABLE POST COMMENSURATE TO HIS QUALIFICATION, ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

1. This writ petition is directed against the order by which the claim of the petitioner for being appointed on compassionate ground has been rejected by the Life Insurance Corporation of India (**'the LIC'**, for short).

2. These facts are not in dispute:

(a) Sri.B.M.Thippeswamy—the father of the petitioner was dismissed from service on 12.08.1990 by the LIC. Thippeswamy consequently raised a dispute and the matter was referred to the Central Government Industrial Tribunal-cum-Labour Court, Bangalore (**'the Tribunal'**, for short). During the pendency of these proceedings before the Tribunal, Thippeswamy passed away on 23.10.1999.

(b) After the death of Thippeswamy, his legal representatives prosecuted the proceedings and on 01.10.2007, the Tribunal accepted the claim and set aside the order of dismissal. The LIC was directed to pay full backwages along with continuity of service and other



consequential benefits to the legal representatives of Thippeswamy from the date of his dismissal till 23.10.1999.

(c) Obviously, the award of reinstatement was not made since Thippeswamy passed away during the pendency of the proceedings before the Tribunal.

(d) The LIC, being aggrieved by the said award of the Tribunal, filed Writ Petition No.1446 of 2008 before this Court. This Court affirmed the findings of the Tribunal that the termination was illegal and held that the Tribunal was justified in setting aside the same.

(e) However, this Court took the view that the legal representatives of Thippeswamy were not entitled for 100% backwages and as against the award of 100% backwages by the Tribunal, this Court awarded 50% backwages and modified the award only to that extent. In all other respects, the award of the Tribunal was affirmed.



(f) Being dissatisfied with this partial success before the learned Single Judge, the LIC preferred a Writ Appeal No.1973 of 2009. The Division Bench of this Court, however, did not find any ground to entertain the writ appeal and consequently, by an order dated 18.09.2012, dismissed the appeal.

(g) On 12.07.2013 i.e., about 10 months from the date of the order passed by the Division Bench of this Court, the petitioner's mother—Smt.Rathnamma made a request to consider the appointment of the petitioner on compassionate ground. A representation was also submitted by three sisters of the petitioner requesting the LIC to consider the claim of the petitioner. The petitioner also made a representation seeking appointment on compassionate ground. Since these requests were not considered, the present writ petition was filed originally seeking issuance of a writ of mandamus to direct the LIC to consider the case of the petitioner for appointment on compassionate ground.



(h) This Court, by order dated 23.11.2020, *prima facie* found that there was no delay in seeking appointment on compassionate ground by the petitioner, since the dismissal of Thippeswamy from service was the subject matter of litigation till the year 2012. This Court, therefore, by an interim order dated 23.11.2020 directed the LIC to pass a speaking order on the petitioner's grievance relating to the appointment on compassionate ground and place it on record.

(i) Pursuant to the said order, the LIC proceeded to pass an order on 17.12.2020 rejecting the claim of the petitioner.

(j) By way of an amendment to the present writ petition, this rejection is called in question.

3. It is the case of the petitioner that he was entitled to be considered for appointment on compassionate ground, since there was, admittedly, a policy formulated by the LIC which provided for appointment on compassionate ground.



It was contended that since the LIC did not accept that the termination of Thippeswamy from service was illegal and since the LIC continued to litigate the dispute till 18.09.2012, i.e., the date on which the Division Bench dismissed the writ appeal filed by the LIC, it was obvious that the petitioner could not have made a claim for appointment on compassionate ground. It is also contended that since the LIC was questioning the order by which the dismissal of Thippeswamy was set aside, even if an application had been made by the petitioner, the same would not have been considered by the LIC because, unless the LIC accepted that Thippeswamy was entitled to be in service, the question of considering the claim of the petitioner for appointment on compassionate ground would not arise. Since it was not accepted by LIC that Thippeswamy was entitled to be in service and had died while in service, it is obvious that the LIC would never have entertained a claim made by the petitioner for appointment on compassionate ground.



4. On the other hand, the LIC contends that there is absolutely no justification for considering the claim of the petitioner for appointment on compassionate ground 14 years after Thippeswamy died. It was contended that Thippeswamy died on 23.10.1999 and that the order of dismissal was set aside on 01.10.2007 by the Tribunal and the petitioner did not stake a claim for appointment on compassionate ground till 2013. It is also contended that since the petitioner was able to eke out his livelihood from 2007 till 2013, it was clear that there was no financial distress to the family of deceased Thippeswamy which entitles the petitioner for an appointment on compassionate ground.

5. It is also urged that under the Scheme formulated by the LIC, it was permissible to relax a belated claim only for a maximum period of one year from the date of death of an employee, but in the instant case, since the claim for appointment on compassionate ground was made nearly 12 years after this deadline, it was clear that there is



absolutely no justification for condoning the delay and appointing the petitioner on compassionate ground.

6. In light of the above, the only question that arises for consideration in this writ petition is:

" Whether the claim of the petitioner for being appointed on compassionate ground, in the facts and circumstances of this case, can be refused on the ground that it was belated ? "

7. As already noticed above, Thippeswamy passed away in 1999, when the dispute raised by him regarding his wrongful termination was still pending adjudication before the Tribunal. The dispute raised by Thippeswamy was ultimately allowed, eight years after he passed away, i.e., in the year 2007 and the Tribunal held that the order of dismissal was illegal. It is also to be stated here that since the termination was held to be illegal, the legal representatives of Thippeswamy were awarded not only 100% backwages, but the Tribunal also passed a specific



order holding that Thippeswamy would also be entitled for continuity of service and all other consequential benefits, which would enure to the benefit of the legal representatives of Thippeswamy. It is, therefore, clear that by the grant of continuity of service, Thippeswamy is deemed to have been in employment till he passed away on 23.10.1999. Since, Thippeswamy passed away while in this deemed service, it also follows that his legal representatives would be entitled to stake a claim for appointment on compassionate ground, on the basis of the Scheme formulated by the LIC.

8. However, in this case, the decision of the Tribunal holding that the termination was illegal and that, Thippeswamy was entitled to continuity of service and all other consequential benefits, was not accepted by the LIC and it chose to litigate the matter by filing a writ petition in the year 2008. This writ petition was dismissed in the year 2009. Immediately thereafter, the LIC also preferred a writ appeal, which was ultimately dismissed in 2012.



9. Thus, from October 2007 till September 2012, the LIC was disputing the decision of the Tribunal which had held that the termination was unlawful and Thippeswamy was entitled to continuity of service and all other consequential benefits.

10. It is obvious that during this period, the petitioner could not have made an application seeking appointment on compassionate ground and even if he had staked a claim for being appointed on compassionate ground, it is obvious that the LIC would not even have considered it, since it had not accepted that its order of termination was wrong.

11. In light of the litigation pursued by the LIC from 2007 to 2012, it is obvious that the petitioner could not have staked a claim for being appointed on compassionate ground. The petitioner, within about ten months from the date of dismissal of the Writ Appeal, has immediately staked a claim for being appointed on compassionate ground.



12. In my view, this claim made by the petitioner, within one year of dismissal of the writ appeal, would be in conformity with the time limit set forth in the Recruitment (of Class III and Class IV staff) Instructions, 1993. Rule 21 thereof provides for relaxation in favour of near relatives of an employee who dies while in service. The said Rule provides for offering an appointment to either the spouse, son or unmarried daughter of the employee and the relaxation would be admissible only if a request is received from a relative who satisfies the conditions of minimum educational qualifications, age, etc., as prescribed, within a period of one year from the date of death of the employee.

13. This period to acquire the requisite educational qualifications could also be extended, by virtue of the proviso to Clause (v) of Rule 21, by a period of five years in case of a widow, by a period of two years in respect of a major son or an unmarried daughter and lastly, by a period of three years from the date of death when all the



children are minors. It is, therefore, clear that the appointment offer could be made within one year from the date of death of an employee and time could also be granted to acquire educational qualifications.

14. However, in this case, since the employee died while he was agitating his claim for reinstatement and this dispute raised by the deceased employee, was alive till 2012, it is obvious that the claim for appointment on compassionate ground would come into operation only when this litigation with regard to wrongful termination was finally decided, which, in this case was on 18.09.2012.

15. Thus, the right to seek appointment on compassionate ground, in this case, opened up only on 18.09.2012, when this Court dismissed the writ appeal filed by the LIC. It is also clear from this that the petitioner had one year's time from 18.09.2012 to make an application.



16. Admittedly, in this case, the petitioner has made an application within a period of one year from 18.09.2012. Consequently, the claim of the petitioner could not have been rejected by the LIC on the ground that it was belated.

17. It has to be borne in mind that the Regulations framed were in contemplation of the fact that the claim for appointment on compassionate ground would be made in the normal course, where the employee was in service. If, however, an employee was forced to be out of service and it was subsequently found that the decision of the LIC to terminate his services was illegal, it was obvious that the right to claim appointment on compassionate ground would arise, for the first time, only when the decision of termination the services of the deceased employee was held to be illegal, finally, by a Court of law.

18. In my view, the Rules would have to be interpreted keeping in mind that the Rules are made to ensure that the family of the deceased employee had an opportunity to



secure an employment so as to continue the same lifestyle that the family was accustomed to by the employment of the deceased.

19. Unfortunately, in this case, that right was impeded by the litigation pursued by the LIC and the LIC cannot utilize this litigation that they had pursued, to non-suit the petitioner.

20. The impugned order is, therefore, **quashed** and the respondent is directed to consider the case of the petitioner by relaxing the age limit for appointment on compassionate ground on the premise that his application was made within the prescribed time limit of one year.

21. If necessary, the age limits prescribed for granting compassionate appointment shall also be reduced keeping in mind that the LIC had been pursuing the course of litigation from 2007, till now.

22. This exercise of considering the case of the petitioner for appointment on compassionate ground, shall be



undertaken and completed within a period of three months from the date of receipt of copy of this order.

23. The writ petition is accordingly ***allowed***.

Sd/-
JUDGE

RK
CT: SN
List No.: 1 SI No.: 43