

B.Gopakumar Vs. Chairman

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SooperKanoon Citation : sooperkanoon.com/1159749

Court : Kerala

Decided On : Aug-01-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : B.Gopakumar

Respondent : Chairman

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR FRIDAY, THE 1ST DAY OF AUGUST 2014 10TH SRAVANA, 1936 WP(C).No. 1246 of 2014 (E) ----- PETITIONER: ----- B.GOPAKUMAR (DEVELOPMENT OFFICER LIC - TERMINATED) SALARY ROLL NO.560277 RESIDING AT T.C. 49/495, 'PRANAVAM', KONCHIRAVILA P.O.MANACAUD, THIRUVANANTHAPURAM. BY ADVS.SRI.N.DHARMADAN (SR.) SMT.D.P.RENU RESPONDENT(S): ----- 1. CHAIRMAN LIFE INSURANCE CORPORATION OF INDIA, 'YOGAKSHEMA' CENTRAL OFFICE, FORT, MUMBAI - 400 001.

2. ZONAL MANAGER L.I.C SOUTH ZONAL OFFICE, P.B.NO.2420, 153 ANNA SALAI, CHENNAI - 600 002.

3. SENIOR DIVISIONAL MANAGER DIVISIONAL OFFICE, L.I.C OF INDIA, THRISSUR -680 004. R1 & 2 BY ADV. SRI.S.EASWARAN THIS WRIT PETITION

(CIVIL) HAVING BEEN FINALLY HEARD ON 01-08-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 1246 of 2014 (E)

----- APPENDIX PETITIONER(S)' EXHIBITS: -----

EXT.P-1: TRUE COPY OF CONSENT LETTER DT.8.6.2011 BY PETITIONER

EXT.P-2: TRUE COPY OF LETTER DT.20.7.2011 BY 3D RESPONDENT

EXT.P-3: TRUE COPY OF APPEAL DT.30.7.2011 BY PETITIONER BEFORE THE 2D

RESPONDENT

EXT.P-4: TRUE COPY OF LETTER DT.9.8.2011 BY THE LIC

EXT.P-5: TRUE COPY OF LETTER DT.5.10.2013 BY 3D RESPONDENT

EXT.P-6: TRUE COPY OF APPEAL DT.18.11.2013 BY THE PETITIONER

EXT.P-7: TRUE COPY OF

ORDER

DT.6.12.2013 BY LIC

EXT.P-8: TRUE COPY OF DISCHARGE CERTIFICATE OF

THE PETITIONER'S MOTHER DATED 13.7.2011

RESPONDENT(S)' EXHIBITS: ----- EXHIBIT R1(A): TRUE COPY OF THE TERMINATION

ORDER

DATED 33.2011 ISSUED BY THE DIVISIONAL MANAGER.

EXHIBIT R1(B): TRUE COPY OF THE LIC OF INDIA (REAPPOINTMENT OF DEVELOPMENT

OFFICERS) RULES, 1990

EXHIBIT R1(C): TRUE COPY OF THE PROCEEDINGS OF THE INTERVIEW COMMITTEE HELD ON 8.7.2011

EXHIBIT R1(D): TRUE COPY OF THE FINDINGS OF THE INTERVIEW COMMITTEE

EXHIBIT R1(E): TRUE COPY OF THE LETTER DATED 15.01.2014 ISSUED TO THE

PETITIONER. // TRUE COPY // P.A TO JUDGE A.K.JAYASANKARAN NAMBIAR,

J.

..... W.P.(C).No.1246 of 2014

..... Dated this the 1st day of August, 2014

JUDGMENT

The petitioner joined the services of the respondent Corporation as an Apprentice Development Officer in 1988. He was confirmed in the said post with effect from 15.06.1990. While continuing in the employment of the respondent Corporation the petitioner obtained an LLB qualification in 1986 and pursuant thereto he was

appointed as a Development Officer. In the year 2004, he was promoted as an Assistant Branch Manager, but subsequently, on his own volition, he chose to relinquish that post and continue to work as a Development Officer with effect from 2005. By an order dated 04.03.2011, the petitioner's services as a Development Officer were terminated on account of the fact that he was not able to maintain the "cost ratio" and attain the targets of business as contemplated under Rule 6 and 7 of the LIC of India Development Officers (Revision of certain terms of conditions of service) Rules, 2009. The said order of termination is not under challenge in this writ petition.

2. It would appear that pursuant to the termination order served on him, the petitioner preferred Ext.P1 application dated 08.06.2011 for reappointment to a post in Class III under the W.P.(C).No.1246 of 2014 2 services of the respondent Corporation. This application was made in accordance with the provisions of the Life Insurance Corporation of India (Re-appointment of terminated Development Officers) Rules, 1990. As per the said Rules, a Development Officer whose services have been terminated and who has completed not less than 7 years of service as a Development Officer but has not completed 55 years of age as on the date of termination of his service would be eligible for reappointment either as an Assistant or as a Record Clerk provided he satisfied the conditions under the said Rules. The Rules also prescribe the manner in which the eligibility and suitability of the candidate in question is to be assessed by the respondent Corporation while considering the candidate's application for reappointment. It is the petitioner's case in the present writ petition that while he had sought a reappointment to a Class III post, which included both the post of Assistant as also Record Clerk, the respondent Corporation took the view that it was not possible to reappoint the petitioner as an Assistant as he was not found suitable. The communication in this regard issued to the petitioner is produced as Ext.P2 dated 20.07.2011. The petitioner is seen to have filed an appeal before the 2nd respondent and also a representation before the 1st respondent, both of which did not yield any favourable response. It W.P.(C).No.1246 of 2014 3 is against the said action of the respondents that the petitioner has chosen to approach this Court through this writ petition.

3. A counter affidavit has been filed on behalf of the respondent Corporation. It is the contention of the Corporation that the petitioner was not found suitable in the assessment that was conducted pursuant to his application for reappointment. Ext.R1(c) is produced, evidencing the proceedings of the interview conducted in respect of the petitioner, for the purposes of demonstrating that the petitioner could not answer many of the questions put to him at the time of interview and that it was in those circumstances that he was found not suitable for the post of Assistant. The findings of the Committee constituted for assessing the petitioner for reappointment as Assistant is produced as Ext.R1 (d). It is apparent from the documents produced from the respondent Corporation that the Committee constituted for the purposes of assessing the suitability of the petitioner had not considered his claim for the post of Record Clerk which, admittedly, is also a Class III post in respect of which the petitioner had preferred Ext.P1 application. At any rate, it is the specific stand of the respondent Corporation that insofar as the petitioner was found not suitable for the post of Assistant, it was not for this W.P.(C).No.1246 of 2014 4 Court to intervene in proceedings under Article 226 of Constitution of India to second guess the wisdom of the Selection Committee with regard to its decision on the suitability of the petitioner for reappointment to the post of Assistant.

4. I have heard learned Senior counsel Sri.N.Dharmadan appearing on behalf of the petitioner as also the learned counsel Sri.S.Easwaran appearing on behalf of the respondent Corporation.

5. The learned Senior counsel would emphatically contend that the petitioner was a person who worked for a large number of years under the services of the respondent Corporation. While in service he had also received many accolades from his superior officers at the Corporation. In fact, it was in recognition of his merit that he had been appointed as Development Officer of the Corporation. The termination of his services in 2011 was brought about only on account of the non-attainment by him of certain specified targets with regard to the business to be achieved for the respondent Corporation. While the said order of termination has not been specifically impugned in the writ petition, the learned Senior counsel would point out that the manner in which his services were terminated is to be

taken into account for the W.P.(C).No.1246 of 2014 5 purposes of appreciating the change in the nature of relationship between the respondent Corporation and the petitioner. On the issue of rejection of the petitioner's requests for re-appointment to a Class III post under the respondent Corporation, it is contended that the questions that were put to the petitioner in the interview held to assess his candidature for reappointment, were such that they went against the grain of the explanation to Rule 3(3) of the 1990 Rules referred to above. It is pointed out that while the Selection Committee ought to have confined its questions to only such questions as were required to ascertain the familiarity of the petitioner with the nature of the work appurtenant to the post which he was seeking reappointment, the Selection Committee in this case went far beyond the scope of the rules and put questions as were designed to ensure his failure in the interview. Lastly, it is also contended that at any rate, the petitioner who was once a Development Officer with the respondent Corporation is now only seeking a reappointment to a lower post and hence, considering his meritorious service in the past, the respondent Corporation ought to have taken a sympathetic view while considering his case for re- appointment.

6. Per contra, the learned Standing counsel for the W.P.(C).No.1246 of 2014 6 respondent Corporation, would defend the actions of the Selection Committee and submit that the questions that were put to the petitioner in the interview were only such as were required to elicit answers from a candidate who had normally to function in the post of an Assistant. He points out that under the respondent Corporation an Assistant may be required to function in various counters and depending upon the nature of queries that can be asked to a person manning such counters, a candidate aspiring to be an Assistant had necessarily to have knowledge on a wide range of subjects. It was only such question that were put to the petitioner in the interview and, since the petitioner did not answer many of those questions, the Selection Committee found him unsuitable for re-appointment to the post of Assistant. He further contends that in the present writ petition, the termination of the services of the petitioner as a Development Officer is not called in question and hence the petitioner cannot be heard to place reliance on the alleged illegal or unfair manner by which his services as Development Officer were terminated. Lastly, he would point out that the retirement benefits applicable to the

petitioner have already been disbursed to him and that if any payment towards pension have not been made in this case it is purely on account of the provisions of the rules that govern the disbursement of pension to W.P.(C).No.1246 of 2014 7 employees of the respondent Corporation.

7. After hearing the rival submissions and considering the facts and circumstances of the case, I am of the view that the decision of the 2nd respondent Corporation as contained in Ext.P2 communication dated 20.07.2011 of the 3rd respondent, communicated to the petitioner cannot be legally assailed. This is a case where the 2nd respondent Corporation has considered the candidature of the petitioner for reappointment to the post of Assistant pursuant to the application preferred by him for such reappointment to a Class III post. The respondent Corporation has not found the petitioner to be ineligible under the 1990 Rules to seek reappointment. In fact, it has considered his application only because it found him eligible to prefer that application. The reappointment has been refused only after the interview proceedings found the petitioner as not suitable for the post. It is by now well settled through a series of decisions of Supreme Court including the decision of the Supreme Court in *Javid Rasool Bhat and Others v. State of Jammu and Kashmir and Others* [(1984) 2 SCC631, that the assessment of suitability of the candidate by a Selection Committee cannot be interfered with in judicial review proceedings under Article 226 of the Constitution, W.P.(C).No.1246 of 2014 8 unless it is found to be manifestly arbitrary. In this case, on a perusal of Ext.R1(c) proceedings of the interview of the petitioner, it cannot be said that the assessment of suitability of the petitioner for the post of Assistant was in any way vitiated on account of arbitrariness. It is for the employer to decide the suitability of a prospective employee. Unless the questions put by the employer to an employee are found to be so designed as to negate the principles of fairness, as also equality in employment opportunity, it is not for this Court to assess the wisdom of the employer as regards the manner of determining the suitability of a prospective employee. In that view of the matter, the decision of the respondent Corporation finding the petitioner unsuitable for the purposes of reappointment as an Assistant under the respondent Corporation cannot be found fault with.

8. I must hasten to add however, that while the decision already taken by the respondent Corporation with regard to the re- appointment of the petitioner as an Assistant under the respondent Corporation, cannot be found fault with, the fact remains that the 2nd respondent Corporation really did not have an occasion to consider the claim of the petitioner for reappointment to the post of Record Clerk. No doubt, as pointed out by the learned counsel W.P.(C).No.1246 of 2014 9 appearing on behalf of the respondent Corporation, the petitioner's candidature for the post of Record Clerk was not considered because he had shown a preference for the post of Assistant and hence the question of considering him for a lower post did not occur to the respondent Corporation at that point of time. I find however that insofar as the petitioner's application for reappointment was to a post in Class III and the Record Clerk is also a post in Class III and the petitioner has expressed his interest in being considered for the said post as well during the course of hearing, it would be in the interest of justice if the petitioner's claim for reappointment to the said post is also considered by the respondent Corporation. While disposing the writ petition therefore, I direct the 2nd respondent Corporation to consider the claim of the petitioner for re-appointment to the post of Record Clerk in accordance with the provisions of the 1990 Rules referred to above. The respondent Corporation shall do this within a period of two months from the date of receipt of a copy of the judgment. It is also submitted by Senior counsel on behalf of the petitioner that a representation preferred by him before the respondent Corporation seeking disbursal of pensionary benefits is pending consideration by the said Corporation and a direction may be issued to the Corporation to consider and pass orders on the same W.P.(C).No.1246 of 2014 10 expeditiously. This submission is taken note of and the respondent Corporation is directed to consider and pass appropriate orders on the said representation of the petitioner as well. The writ petition is disposed as above. A.K.JAYASANKARAN NAMBIAR JUDGE mns/