(2011) 10 P&H CK 0123

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 18110 of 2009

Jai Narain Jakhar		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: Oct. 19, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Hindu Succession Act, 1956 - Section 6

Citation: (2012) 2 ILR (P&H) 26 : (2013) 2 SCT 358

Hon'ble Judges: M.M. Kumar, Acting C.J.; Rajiv Narain Raina, J

Bench: Division Bench

Advocate: Vivek Khatri, for the Appellant; Kulvir Narwal, Addl. AG, Haryana, for the Respondent

Judgement

M.M. Kumar, ACG C.J.

This petition filed under Article 226 of the Constitution seeks quashing of the policy dated 11.10.2001 (P-1), framed by the respondent State of Haryana for issuance of dependent certificate to Ex-servicemen/ their dependents for employment by the Zila Sainik Boards. The petitioner has also challenged order dated 27.10.2009 (P-3) rejecting his application for issuance of dependent certificate to his married daughter. Still further a direction has been sought directing the respondents to issue dependent certificate to the petitioner for his daughter. Brief facts of the case are that on 11.10.2001, the Secretary, Rajya Sainik Board, Haryana-respondent No. 2 issued policy/guidelines for issuance of dependent certificate to the Ex-serviceman and their wards for the purpose of employment in various departments of the Government (P-1). As per clause (f) of the policy/guidelines (P-1), a married dependent son of Exservicemen who does not have independent source of livelihood is eligible for dependent certificate but a married daughter of an Exservicemen is not eligible for such dependent certificate.

2. On 20.10.2009, the petitioner filed an application with the Secretary, Zila Sainik Board, Hisar-respondent No. 3 for issuance of dependent certificate for her married daughter. It was specifically stated in the application that his daughter Ms Vijayanti. Jakhar nee Vijayanti Suhag is unemployed on the date of submission of the application. It was further stated by the petitioner that he was never re-employed in State/Centre Government department after retirement from Navy. In support of the application an affidavit regarding un-employment of daughter of the petitioner was also submitted (P-2).

3. On 27.10.2009 (P-3), the Secretary-respondent No. 3 passed an order rejecting the application of the petitioner for issuance of dependent certificate on the ground that his daughter Vijayanti Jakhar is married and she is not entitled for dependent certificate in terms of policy/guidelines dated 11.10.2001 (P-1). Aggrieved with the order dated 27.10.2009, the petitioner has filed the instant petition.

4. In the written statement filed by respondent Nos. 1 to 3 the primary stand taken is that a married daughter would be dependent on her husband and not on her father, therefore, in the policy dated 11.10.2001 (P-1) a married daughter of the Exservicemen has not been held entitled to the dependent certificate and the application filed by the petitioner has been rightly rejected. According to the respondents there is no ambiguity in the stipulation provided by clause (f) of the policy dated 11.10.2001 (P-1).

5. Having heard learned counsel for the parties at length and perusing the paper book with their able assistance we are of the considered view that the instant petition deserves acceptance. When we examine the impugned clause (f) of the Policy dated 11.10.2001 (P-1), it is clear that the same extends the benefit of dependent certificate to a married dependent son of Ex-servicemen who does not have independent source of livelihood but it excludes a married daughter of an Ex-servicemen from such benefit. Clause (f) of the policy dated 11.10.2001 (P-1) reads as under:-

(f) Married dependent son of Ex-Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate. Married daughter of an Ex-servicemen is not eligible for dependent certificate.

(Italics by us)

6. The aforesaid provision in the policy is required to be examined on the anvil of Article 14 of the Constitution. The classical test of Article 14 concerning classification is well settled. It is trite to observe that Article 14 forbids class legislation but it does not forbid reasonable classification of persons, objects and transactions by the State for the purpose of achieving specific ends. However, the classification must not be arbitrary, artificial and evasive (See The State of West Bengal Vs. Anwar Ali Sarkar, It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.

Classification to be reasonable must fulfill the following two conditions-

(1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(2) The differentia must have a rational relation to the object sought to be achieved by the Act.

7. The differentia which is the basis of the classification and the object of the policy are two distinct things. What is necessary is that there must be a nexus between the basis of classification and the object of the policy which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

8. In the aforesaid clause (f) of the policy, married son of Ex-servicemen who does not have independent source of livelihood is considered eligible to be treated as dependent of an Exserviceman and entitle to such a certificate from a competent authority whereas a daughter has been excluded from the benefit. There is virtually no basis of classification once various factors of both son and daughter are the same. If common factor in both cases is unemployment and lack of independent source of income then it does not make any difference whether it is son or daughter. The common factors of being ''married and lack of independent source of livelihood'' are present in both the cases and which put both of them at the same pedestal. Therefore, it would offend Article 14 and amount to giving a discriminatory treatment to married daughter who is without an independent source of livelihood by depriving her a dependent certificate to secure a job because she is as good a child of her father as the married son without independent source of income. The argument to justify the differential treatment meted out to the married daughter on the ground that she is dependent on her husband, would not require any detailed consideration because even in the case of dependent married son no condition has been imposed that his wife must not be earning. The emphasis is seems to be on independent source of livelihood, a feature which would be present in the case of married daughter as well. Therefore, we have no hesitation in rejecting the aforesaid argument. Moreover by an amendment dated 5.6.2005, Section 6 of the Hindu Succession Act, 1956, has been amended and now the daughter of a coparcener have the same rights and liabilities in the coparcenary property as she would have had she been a son.

9. In view of the above, the instant petition is allowed. The offending part of clause (f) of the policy shown in italics is declared ultra vires of Article 14 of the Constitution and the clause (f) shall read as under:

(f) Married dependent son or married daughter of Ex- Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate

The respondents are directed to issue dependent certificate to the petitioner for his daughter, subject to fulfilling other conditions by her. The writ petition stands disposed of in the above terms.