(1999) 2 UPLBEC 1238

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 34415 of 1999

Mukul Kumar		APPELLANT
	Vs	
Senior Divisional Manager, Life Insurance Corporation of India		RESPONDENT

Date of Decision: March 17, 1999

Acts Referred:
Life Insurance Corporation (Staff) Regulations, 1960 â€" Regulation 8, 8(1), 8(2)

Citation: (1999) 2 UPLBEC 1238

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: G.R. Jain, for the Appellant; R.P. Goel, Manish Goyal and S.C., for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.
The petitioners was allowed to appear in a selection test held on 23-4-1989 conducted by the respondents upon relaxation

of Recruitment Rules pursuant to a settlement between its workmen and the respondents in terms of an order passed by the Apex Court as stated

in the writ petition. In the writ petition, the petitioner alleges that he was successful in the test and had qualified for appointment but in the rejoinder

affidavit the petitioner had admitted that he did not qualify in the test held on 23-4-1989. On the other hand, in the rejoinder affidavit it was claimed

that the petitioner was given another opportunity, in which he had appeared and succeeded in the written test, as a result thereof, he was called on

to appear in the typing test. In the rejoinder-affidavit it is pleaded that the petitioner hopes that he had been successful in the typing test and

therefore should be given appointment. On this background, Mr. G.R. Jain, learned Counsel for the petitioner contended that the respondents in

their counter-affidavit did not disclose these facts and on account of non-disclosure of such facts, the respondents had played fraud on the Court

and therefore they are bound to appoint the petitioner. He further contends that the respondents have not come up with clean hands and had not

placed all cards on the table, therefore, adverse presumption should be drawn against them to support the petitioners claim. The petitioner is

eligible and entitled to be appointed by reason of the settlement in terms of the order of the Apex Court.

2. Mr. Manish Goyal, learned Counsel for the respondents contends that the petitioner was originally appointed in terms of Regulation 8(1) of Life

Insurance Corporation of India (Staff) Regulations, 1960, therefore, by reason of Regulation 8(2) of the said Regulations the petitioner could not

claim any right to appointment or preference for recruitment to any post. However, by reason of the settlement as directed by the Apex Court,

relaxing the Relevant Rules for recruitment, such persons alike the petitioner were given an opportunity for being selected. The petitioner having

admitted in the rejoinder affidavit that he had been unsuccessful in the test held on 23-4-1989, he cannot claim any right on the basis of such test.

However, thereafter the respondents had given a second opportunity to the petitioner in which he was successful in the written test and was called

on for appearing in the typing test. Mr. Goyal relied on Annexure R.A-3 to the rejoinder affidavit to point out that it was only successful candidates

in the typing test, who were to be called on for interview. There was no obligation on the part of the respondents to intimate unsuccessful

candidates about result of the test. According to him, the petitioner in the rejoinder affidavit in paragraph 7(1) had himself expressed that he hopes

that he had passed the test. There is no specific assertion that he was successful in the typing test. No one can claim any right on the basis of his

hope, and therefore, the assertion of the respondent that the petitioner was unsuccessful in the typing test and hence was not called for interview,

stands fortified. Mr. Goyal had also relied on two decisions cited at the bar, to which reference would be made at the appropriate stage, in support

of his contentions. On these grounds, Mr. Goyal submits that the petitioner is not entitled to any relief and the writ petition is liable to be dismissed.

3. I have heard both Mr. Jain and Mr. Goyal at length.

4. Regulation 8 of the 1960 Regulations, provides as follows :

8. (1) Notwithstanding anything contained in these regulations, a Managing Director, Executive Director (Personnel), a Zonal Manager or a

Divisional Manager my employ staff in Class III and IV on a temporary basis subject to such general or special directions as may be issued by the

Chairman from time to time.

(2) No person appointed under sub-regulation (1) shall only by reason of such appointment be entitled to absorption in the service of the

Corporation or claim preference for recruitment to any post.

5. A plain reading of the above quoted Regulation shows that notwithstanding anything contained in the Regulations, temporary appointment could

be made, pursuant to general or special directions issued by the Chairman, by the authorities mentioned therein. However, by reason of Regulation

8(2), no person appointed under Regulation 8(1) become entitled for absorption in the service or could claim preference for recruitment to any

post. Thus, by reason of Regulation 8 the petitioner could not have claimed any absolute right. The contention of Mr. Goyal to this effect, appears

to be sound. But as soon the Corporation enters into a settlement and when such settlement is sought to be enforced and the mater travels to the

Court and the Court passes certain orders, in that event, this Regulation 8 becomes subject to the orders so passed by the Court to the extent such

orders provide for. In the present case, it was by way of exception pursuant to a settlement as indicated above that opportunity was given by

relaxing the Rules to select such persons alongwith the petitioner through a process of selection once on 23-4-1989 and again sometime in

October, 1991. Thus, as and when the Rules have been relaxed and the petitioner''s case was being considered, in such a situation, it would not be

open to the respondents to take resort to Regulation 8 though however the scope would be confined to such settlement and proposal for

recruitment with regard to eligibility criteria. Here eligibility criteria has not been denied and disputed since such eligibility criteria was overlooked

by relaxing the Rules, therefore, the question remains confined only to he extent as to whether the respondents have denied appointment to the

petitioner despite his success in the selection test. It appears that the respondents did not disclose that the petitioner had succeeded in the written

test on the second occasion. At the same time, the petitioner has also claimed that he was successful in the first test. This fact would be apparent

from the pleadings. In as much as in paragraph 4 of the writ petition, the petitioner claims that he had qualified in the examination and became

eligible for regular employment. This paragraph 4 of the writ petition was denied in paragraph 6 of the counter-affidavit and in reply thereto the

petitioner in paragraph 7(a) of his rejoinder-affidavit had admitted that he had appeared but failed in the written test. Thus, the petitioner is also

equally guilty of making mis-statement which had subsequently been corrected in the rejoinder-affidavit. Thus, both the petitioner and respondents

having stood on same or equal footing, no one can claim any benefit against each other.

6. Now, it is to be found out as to whether the petitioner was successful in the second test. From Annexure R.A-2 to the rejoinder-affidavit, it

appears that a test was to be held on 29th September, 1991, in which the petitioner was invited to appear. The said test was in respect of written

test for the post of types on relaxed rules by way of one more chance with the stipulation that no further opportunity will be given to compete in

any recruitment test for the post of typist on relaxed rules. Annexure R.A-3 to the rejoinder-affidavit shows that the petitioner was required to

appear in the typing test on being successful in the written test to be held on 27-10-1991. In the said letter dated 4-10-1991 addressed to the

petitioner it was stipulated that the candidates who qualify in the above typing test, would be called for interview. This stipulation clearly indicates

that those who will succeed in the typing test, will be only called for interview and the others would not be which mans that unsuccessful candidates

in the typing test, may not be intimated at all. The stand taken by the respondents is that the petitioner did not qualify in the typing test and for that

reason he was not called for interview. The petitioner having not asserted on oath that he had succeeded in the typing, test and despite such

success he was not called on to appear in the interview, it is not possible to give any credit to the petitioner"s expression that he hopes that he had

qualified in the typing test. Unless it is so asserted specifically, no legal right can be claimed on the basis of such hypothesis that he might have

succeeded which is only a hope which is an abstract state of mind of the petitioner.

7. Thus, on the facts and circumstances of the case, it doe not appear that the petitioner has been able to make out a case that he was successful in

the typing test so as to claim appointment. Without such assertion it was not necessary even for the respondents to dispute any such assertion

which is only an expression of hope.

8. The decision in the case of Terminated Full Time Temporary L.I.C. Employees Welfare Association v. Senior Divisional Manager, L.I.C. of

India Ltd. 1993 (1) SLR 290 cited by Mr. Goyal, is a decision by the Full Bench of Madras High Court. In the said decision having considered

various other decisions of different Courts including that of the Apex Court, it was held that such employees who were similarly situated with that

of the petitioners having been appointed under Regulation 8(1) could not be entitled by reason of such appointment for absorption in service or

claim any preference in recruitment to any post. It was further observed in the said decision that in the case of Sant Ram Bhal v. State of Haryana

1991 (6) SLR 747 a Full Bench of Punjab and Haryana High Court had held that in the case of adhoc appointment, the appointee does not

acquire right to hold the post. Termination of service after expiry of the fixed period in neither arbitrary nor unreasonable. The decision by the Full

Bench of Punjab and Haryana High Court, had relied upon the decision in the case of State of U.P. v. Kaushal Kishore Shukla1991 (1) SLR 606.

9. The decision in t he case of M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh

and another, it was held that by a statutory fiction, the Regulations relating to the terms and conditions of the employees and agents of the

Corporation framed u/s 49(2)(bb) shall be deemed to be now the Rules framed u/s 48(2)(cc) of the Corporation Act, and such Rules shall have

overriding effect over the provisions contained in the Industrial Dispute Act, so far as the terms and conditions of the employment of such

employees who also conform to the requirement of the definition of "workman" under the Industrial Dispute Act, are concerned.

10. A plain reading of the two decisions shows that it supports the view that the petitioner cannot claim any right under Regulation 8(1) in view of

Regulation 8(2) to be entitled for absorption or claim any preference in the recruitment to any post. But the same does not take away right of the

petitioner to espouse his cause in the peculiar facts and circumstances of the case as has been held hereinbefore. In this case it was to be seen

whether by reason of such selection, the petitioner despite having been selected, was denied appointment. Even if the Regulations has overriding

effect over the provisions of the Industrial Dispute Act, even then question is to be looked into in the facts and circumstances peculiar to this case

since it is not a case where Mr. Jain and sought to invoke the provisions of the Industrial Dispute Act. On the other hand he had sought to rely on

the fact that despite having been successful, the petitioner was denied appointment. On the facts as has been found above, there is no material to

indicate that the petitioner was successful in the second test in the absence of any specific assertion by the petitioner or materials on record. The

second cited decision may not come to any help of Mr. Goyal.

11. For the reasons given above, this writ petition fails and is accordingly dismissed. There will be no order as to costs.