

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19.01.2016
Pronounced on: 29.01.2016

+ **LPA 429/2014, C.M. NO.9929/2014**

INDIAN OIL CORPORATION LTD.AND ORS.....Appellant

Through: Sh. V.N. Koura and Sh. Sumit Singh Benipal,
Advocates.

Versus

BIMLA DEVI

.....Respondent

Through: Sh. Biswajeet Bhattacharyya, Sr. Advocate
with Sh. Ravi Shankar Kumar and Sh. Vijay Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellant hereafter called "IOCL" is aggrieved by the order of the learned Single Judge in WP (C) 7824/2012 dated 08.05.2014 by which it was directed to consider the respondent's request for employment of her daughter in terms of its Superannuation Benefit Fund Scheme [hereafter "the Scheme"].

Brief Facts

2. IOCL is a Government Company which released a Superannuation Benefit Fund Scheme from 1987 to 1996. The Scheme required participating employees to make a nominal contribution of ₹ 100/- p.a. to procure policies from Life Insurance Corporation of India. These policies provided for pension as well as other statutory benefits of Provident Fund, Gratuity and

family pension on the IOCL employee's retirement/ superannuation, resignation or death/ permanent disablement. In terms of the Scheme, if an employee died whilst in service, her/his spouse was entitled to draw a pension of 40% of the deceased's salary (irrespective of the number of years of pensionable service of the employee) for her/his life. Additionally, the scheme also provided that the spouse of a deceased employee could nominate a qualified and eligible dependant son/ daughter for employment in IOCL subject to its discretion. Relevant portion of the scheme is as under

“SCHEME FOR REHABILITATION OF THE FAMILY OF THE EMPLOYEE DYING OR SUFFERING PERMANENT TOTAL DISABLEMENT WHILE IN SERVICE

In the case of death or permanent total disablement of an employee while in service, the female spouse (or dependent male spouse, as the case may be) may opt, within 6 months of the death of the employee, for any one of the following three options (designated R-1, R-2 and R-3) for the rehabilitation of the family. Option once exercised shall be final and no change thereafter shall be permissible.

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R-3 For employment of otherwise eligible, suitable and dependent son/daughter (which shall also include son/daughter legally adopted prior to the death of the employee), the following provisions shall apply: ”

3. The Respondent's husband, late Shri N.K. Sharma was an employee of IOCL for more than 30 years and had contributed towards the scheme. He died while in service on 22.11.2005 at the age of 58 years, two years before the retirement age, i.e 60 years. Upon his death, in terms of the scheme, the respondent became entitled to pension in addition to Provident Fund,

Gratuity, family pension and other benefits. Those would otherwise have been available to her husband at the time of his retirement in the ordinary course, in terms of the Rules. The respondent, in exercise of options under the scheme, nominated her married daughter or in the alternative her son-in-law for employment in IOCL; her claim was that her daughter was dependent upon her as her son-in-law was unemployed.

4. IOCL rejected the nomination made by the respondent through three letters dated 27.02.2006, 26.05.2006 and 21.11.2006. It urged that the nomination was rejected on the grounds that:

- a) during his lifetime the deceased had never declared his daughter as a dependant member under the returns filed by him with the appellant and
- b) after marriage the daughter was dependant on her husband and not on the widow.

5. IOCL's rejection of her request for her daughter's employment resulted in her approaching this Court under Article 226 of the Constitution of India. She argued, *inter alia*, that the terms of the Scheme left no room for doubt that the dependant son or daughter of a participant employee, upon her or his demise was entitled to be considered for suitable employment in IOCL. It was argued that the condition of the daughter being unmarried was inserted in the Scheme after the application was made, i.e after the date of death of N.K. Sharma and therefore had to be ignored. To consider the respondent's daughter's claim, IOCL had to see the terms of the Scheme as on the date of death of the employee. IOCL quite naturally opposed this assertion. It also argued, in addition that the two sons (other than the married

daughter for whom the respondent had applied) were over aged and could not be considered at the material time. IOCL also urged that the respondent writ petitioner was recipient of substantial monetary benefit, towards terminal dues of the late Shri Sharma; besides, in terms of the Scheme she was entitled to draw and in fact was drawing, a monthly pension which was by no means paltry. Though the rejection letters did not say so, in the reply filed in opposition to the writ petition, IOCL argued that the respondent's sons had obtained gainful employment; one was teaching in a University and the other was a Scientist. In these circumstances, the respondent could not claim compassionate employment in terms of the Scheme.

6. The learned Single Judge, in the impugned judgment was of the opinion that the IOCL's argument about inapplicability of the scheme to the respondent's daughter was untenable. It was held that a perusal of the provision showed that it did not exclude a dependent married son or daughter from the benefits of option R-3 *"provided the concerned person was otherwise eligible and suitable. This provision was apparently amended and the prefix "unmarried" was added to the words son / daughter. I have no hesitation in holding that the IOCL could not have amended the scheme unilaterally by way of an inter-office memo, dated 10.07.2007."* It was held that the inter office memo was not in place on the date of the death of Sh. N.K. Sharma, i.e on 22.11.2005. He had contributed to the scheme and his *"family is entitled to the benefits of the scheme in terms of its provisions subsisting at that point in time."* The learned Single Judge further noted that *"while employment by itself is not a right but a fair consideration, to gain employment, in terms of the provisions of the Scheme, is certainly a right,*

which IOCL, cannot deny to the petitioner's daughter. Therefore, the contention on behalf of the respondents that the scheme by itself does not give any right and/or entitlement to the petitioner, in my view, is misconceived and hence rejected." The learned Single Judge relied on the decision of this court in *Yudhvir Singh v Indian Oil Corporation Ltd. and Ors*¹, whereby the IOCL's argument was rejected. It was noted that the said judgment of the court, was not challenged.

7. As to the argument that the respondent's family did not need the employment and was not in want, the learned Single Judge rejected it, stating that

"Firstly, this is not an appointment as generally understood on compassionate grounds. This is an appointment which the petitioner's seeks for her daughter in terms of a scheme, which has specific provisions incorporated in that behalf. The respondent corporation is governed by the provisions of the scheme. The deceased has contributed, and thus, his family, is entitled to the rehabilitative measures contemplated under the scheme.

12.2 Secondly, the financial wherewithal of the family would have to be seen in the light of circumstances, which obtained at the relevant time. The counsel for the petitioner has drawn my attention to the averments made in the rejoinder and the documents appended thereto to demonstrate that the daughter and the son-in-law were staying with the petitioner because of lack of financial wherewithal and impecuniosity."

8. The impugned judgment therefore, directed IOCL to consider the respondent's request for employment of her daughter, Ms. Arti Kumari, in

¹ (W.P.(C) 125/2010, decided on 17-03-2010)

terms of option R-3, obtaining under the scheme, which was in force, on the date when Sh. N. K. Sharma expired i.e., 22.11.2005.

Arguments of parties

9. IOCL contends that the appointment of a deceased employee's dependant son or daughter was neither an entitlement nor was it a right to employment accruing upon the dependants. Such appointments were made in order to relieve the dependants of the sudden economic crisis which struck them due to the employee's death. IOCL exercises its discretion in making such appointments on grounds of compassion and they were never intended to create hereditary employment. It was contended that appointment of a dependant under the Scheme was not a matter of right as otherwise it would violate Right to Equality and employment of other citizens as envisioned under Articles 14 and 16 of the Constitution of India. In support of its contention IOCL placed reliance on *State of Karnataka & Ors v Uma Devi & Ors*².

10. It was also urged that dependant in the case of son and daughter was restricted to unmarried son and daughter. This clarification was made by office memo dated 10.07.2007 as follows:

“REFINERIES HQ

INDIAN OIL
MEMO

INTER OFFICE

File No.P/P/217 (CR) No.31/2007

Dated: 10.07.2007

From: “P”-REF. HQRS, NEW DELHI

² (2006) 4 SCC 1)

To: ED/GM-GBJHMP AOD PDRP

DGM-KOL MUM

SUB: Scheme for rehabilitation of the family of the Employee dying or suffering permanent total disablement while in service, annexed to SBF Scheme.

Under the above scheme in case of death or permanent total disablement of an employee while in service, the female spouse (or male spouse as the case may be) may opt, within six months of the death of the employee, for any one of the three options (designated R-1, R-2, R-3) for the rehabilitation of the family.

While under option R-1 and R-2, monthly superannuation benefit/salary last drawn by employee subject to stipulations is payable to the spouse. Option R-3 provides for employment of the eligible “dependent” and hence is not eligible “dependent” son/Daughter.

In this regard, it is clarified that a married son/daughter is not “dependent” and hence is not eligible for employment under option R-3.

This may be brought to the notice of the all concerned.

Sd/-
(A.K. CHOUDHARY)”

IOCL suggests that the respondent and her family were not in economic duress warranting compassionate appointment. The Respondent had received Provident Fund amounting to ₹ 5,13,177, along with gratuity of ₹ 3,50,000 and other monetary benefits. She was also entitled to pension of ₹ 5,690/- p.m. which was the same amount her husband would have received post his retirement. Under such circumstances the respondent was not

suffering economic hardship as she was maintaining the same economic position that she would have, had her husband retired/ superannuated.

11. IOCL relied on *National Institute of Technology Vs Niraj Kumar Singh*³ where the Supreme Court held that public appointments must be made in consonance with Article 16 of the Constitution and that a limited exception can be carved out; the exception being that compassionate appointment may be granted to the dependants of an employee who died in harness, with a view that the family of the employee is not left in a destitute state.

12. The respondent's Senior counsel, Mr. Biswajeet Bhattacharyya, contends that upon the death of her husband, she exercised the option of nominating her daughter for employment with the IOCL within the stipulated period as prescribed by the Scheme. It is argued that the respondent's daughter along with her unemployed son-in-law and two grandsons were dependant on late N.K. Sharma, both financially and otherwise; after his death, they were financially dependent on her. It was argued that IOCL repeatedly denied the respondent's applications seeking employment for her daughter without citing reasons or making any reference to the rules prescribed under the scheme to justify such rejection. According to the respondent's counsel, the IOCL followed evasive techniques and did not give clear replies as to the why her daughter was ineligible; though in one reply they justified the rejection on the ground that her daughter was married and hence was not a dependant. The respondent thereafter filed an

³ (2007) 2 SCC 486)

RTI application with the IOCL seeking information on number of candidates who were married and had been given employment under the Scheme.

13. Counsel submits that IOCL provided employment to large number of married men and it was acting in a biased manner against her daughter as she was a married woman. Counsel argued that the office memo clarifying that dependant son/ daughter meant unmarried son/ daughter can at best be an opinion and not an amendment to the rules and as such marriage did not make her daughter ineligible. It was further argued that the Scheme as it existed on the date when the respondent filed the nomination- in terms of which dependants included both married and unmarried- would be applicable. He contends that the subsequent clarification memo would not hold relevance in the present case.

Analysis and Conclusion

14. As stated earlier, IOCL is a public company whose employees' terms of employment are subject to Articles 14 and 16 of the Constitution of India. In case of compassionate appointments, the guiding factor has been the economic situation of the applicant and his/ her dependants.

15. Article 16 (2) bars discrimination in matters of public employment inter alia, on grounds of ancestry (descent: "*No citizen shall, on grounds only of religion, race, caste, sex, **descent**...be ineligible for or discriminated against in respect of any employment or office under the State*"). Compassionate appointments are recognized as an exception to this rule.⁴

⁴ The Supreme Court held in *Auditor General of India v G.A. Rajeshwara Rao* AIR 1994 SC 1521 that schemes for compassionate appointment *per se* would be violative of Article 16 (2) and could be sustained only if "*the appointments are confined to the*

The idea behind this exception is that a family which depends financially on an employee working with a State enterprise should not be left economically destitute on the death of such employee. This scheme is a social welfare measure aimed at ensuring that families that are needy and are in penury due to loss of income on account of death of the earning member are suitably rehabilitated.

16. As regards the first ground, i.e discrimination on the basis of gender based on IOCL's interpretation, this Court is of opinion that the view of the learned Single Judge is sound and justified. The IOCL could not have rejected the application merely because the deceased employee's daughter (or for that matter son) was married at the relevant time. This marital status based *differentia*, or bar to those dependents who were married (as against those dependents who were unmarried) is *per se* discriminatory as it is unintelligible. If marriage carries with it a presumption that either spouse is gainfully employed, practically a third of the population (i.e those living below the poverty line) should be "deemed" to be gainfully employed. If the intention is to exclude married, but dependent and unemployed children, it is plainly hostile; the hostility is not based on any discernible let alone justifiable reason. Such a *differentia* has no nexus with the object sought to be achieved, i.e to provide succour to a family reduced to distress and facing penury. In the facts of this case, the application of such a rule was wholly unjustified as it resulted in denial of opportunity of employment on the basis

son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable."

of the respondent's daughter's gender as well as marital status and would be contrary to Article 16 (2) of the Constitution of India.

17. The above observations and findings affirming the reasoning of the learned Single Judge, however are not dispositive of this case. In the present case, the respondent's husband died two years before he attained the age of superannuation. She was automatically entitled to pension as well as other benefits including Provident Fund and Gratuity. It is not disputed that she received ₹ 5,13,177 as Provident Fund, ₹ 3,50,000 in Gratuity and also received other monetary benefits. It has also been accepted by the respondent that two of her sons are PhDs who are well placed and drawing salaries which in the ordinary course can ensure a comfortable lifestyle. While economic status is a relative term, a general standard to determine whether a person will be in economic duress is to ascertain the degree of financial change that would occur if a certain monetary benefit is denied. In the instant case, the respondent's husband was approaching age of retirement when his unfortunate demise occurred. Thereafter, she began receiving all the monies which her husband would have received in the ordinary course of events. Under such circumstances it is hard to accept that there would be any drastic changes in her living conditions.

18. Appointments on compassionate grounds are predominantly based on economic or financial desperation of the needy and those in want for whom the loss of a public employee due to death results in poverty. The respondent has two sons both of whom are excelling professionally- one is a law teacher and another a Scientific Officer working with the Ministry of Atomic Energy. In these circumstances IOCL had to, as a responsible public agency,

justify its action in acceding a demand for employment of her daughter as a matter of right. In doing so, it exercised its discretion against the respondent and rejected her claim. Were it to do otherwise, IOCL would have been exposed to the charge of prejudicing other qualified citizens or turning away those in greater want.

19. The respondent had argued that other applicants were provided with compassionate appointments and in terms of the reply she received for the RTI application made by her, a number of appointments made by the IOCL were to married men. She alleged discriminatory practices against IOCL. The question here is the financial and not the marital status of these candidates before such appointments were made by IOCL; an aspect the RTI reply is silent on. Further, the Scheme clarifies that none of its provisions will be deemed to constitute any claim, right, or entitlement on the part of anybody.

20. The judgment cited by IOCL, and others as well amply demonstrate the prerequisites for grant of compassionate appointments. The very purpose of giving such benefits is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. This, however, cannot be another source of recruitment nor can it be treated as a right to get an appointment in government service. Indigence of dependants of deceased employee is the first precondition to bring a case under the scheme of compassionate appointments. Absence of indigence would turn compassionate appointment reservation in favour of dependants of employees who died while in service.

It would directly be in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution.

21. The respondent relied upon the learned Single Judge decision of this Court in *Yudhvir Singh* (supra) where the order of the IOCL refusing appointment of the petitioner (in that case) on compassionate grounds was reversed. In that issue the Court held that compassionate appointment had to be considered not as per Rules when the employee dies in harness but the rules which are applicable at the time when the compassionate appointment is sought. In this backdrop the respondent argues that when she nominated her daughter for compassionate appointment the rules did not differentiate between married and unmarried son/ daughter and therefore her married daughter was eligible and as such her appointment could not be refused. This Court observes that whilst that may be the correct view, nevertheless, it has been noticed earlier that in granting compassionate appointment a public enterprise exercises discretionary powers on a judicious weighing of all facts and surrounding circumstances. Besides, no right accrues on the applicant to such appointment. The dependant should be an indigent to be considered for appointment which is not the case here. If the respondent were in an indigent state and had been going through a sudden and severe financial crisis on the death of her husband, and her daughter was rejected employment for reason of being married, the order would be liable to be set aside on grounds of Articles 14 and 16.

22. The impugned judgment does not take into account the fact that appointments in public employment are to adhere strictly to the provisions of the Constitution spelt out under Articles 14 and 16. What required

consideration was that if such compassionate appointment was not made would the respondent face penury and suffer deep financial crisis. The impugned judgment in directing IOCL to consider the appointment of the respondent's daughter on compassionate grounds completely overlooked this aspect; it is liable to be set aside.

23. For the above reasons, the impugned judgment is set aside. The appeal is allowed; resultantly, the respondent's writ petition shall stand dismissed. There shall be no order as to costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 29, 2016

