

Mrs. Neera Mathur

Vs

Life Insurance Corporation of India and another

Civil Appeal No. 4488 of 1991

(K. Jagannatha Shetty, Yogeshwar Dayal JJ)

31.10.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.:-

1. Leave granted.

2. When we are moving forward to achieve the constitutional guarantee of equal rights for women the Life Insurance Corporation of India seems to be not moving beyond the status quo. The case on hand illustrates this typical attitude of the Corporation.

3. The petitioner applied for the post of Assistant in the Life Insurance Corporation of India ("the Corporation"). She was called for written test and also for interview. She was successful in both the tests. She was asked to fill a declaration form which she did and submitted to the Corporation on 25 May 1989. On the same day, she was also examined by a lady doctor and found medically fit for the job. The Doctor who examined the petitioner was in the approved panel of the Corporation.

4. The petitioner was directed to undergo a short-term training programme. After successful completion of the training she was given an appointment letter dated 25 September 1989. She was appointed as Assistant in the Corporation. She was put on probation for a period of 6 months. She was entitled to be confirmed in the service subject to satisfactory work report.

5. The petitioner took leave from 9 December 1989 till 8 March 1990. In fact, she applied for maternity leave on 27 December 1989 followed by medical certificate dated 6 January 1990. She was admitted to the Nursing Home of Dr. Hira Lal on 10 January 1990. She delivered a full-term baby on 11 January 1990. She was discharged from Nursing Home on 19 January 1990.

6. On 13 February 1990, the petitioner was discharged from the service. It was during the period of her probation. It would appear from the order of discharge that no ground was assigned in it and it seems to be a discharge simpliciter. The petitioner moved the High Court under Article 226 of the Constitution challenging that order on the ground that it was not a discharge simpliciter but based on some discrepancy in the declaration made by her before joining the service. The Corporation in the counter resisted the case stating that the petitioner's work was not satisfactory and as such under the terms of the appointment she was discharged without notice and without assigning any reason. The High Court refused to interfere with the termination. The High Court observed that the Petitioner's work during the period of probation was found to be not satisfactory.

7. The petitioner has now appealed to this Court. When the appeal was listed for preliminary

hearing this Court issued notice for final disposal and made an order as follows:

"The facts of the case compel us to issue an interim mandamus directing the respondents to put the petitioner back to service and we accordingly issue a direction to the respondent to reinstate the petitioner within 15 days from the date of receipt of this order."

8. The Corporation upon service has filed the counter seeking to justify the termination of the petitioner's services. It has been stated that the Corporation discharged the service of the petitioner while she was still a probationer. At the time of discontinuing her services as a probationer, no reasons were given and it was an order of discharge simpliciter. No stigma was imputed to the petitioner. The petitioner was on leave from 9 December 1989 till 8 March 1990. The petitioner had deliberately withheld to mention the fact of being in the family way at the time of filling up the declaration from before medical examination for fitness. The petitioner concealed the fact of her being in the family way. This was revealed later when she informed the Corporation that she had given birth to a daughter.

9. The Corporation also made reference to the terms of the declaration as filled in by the petitioner on 25 May 1989:

"6. To be filled in by female candidates only in the presence of the Medical Examiner:

(a) Are you married - Yes.

(b) If so, please state

(i) Your Husband's name in full & occupation - Mr. Pradeep Mathur, Law Officer, Central Pollution Control Board, Nehru Place, New Delhi.

(ii) State the number of children, if any and their present ages: One daughter: 1 year and 6 months.

(iii) Have the menstrual periods always been regular and painless, and are they so now? Yes.

(iv) How many conceptions have taken place? How many have gone full-term? One.

(v) State the date of last menstruation: 29th April, 1989.

(vi) Are you pregnant now? ... No.

(vii) State the date of last delivery : 14th November, 1987.

(viii) Have you had any abortion or miscarriage? ... No.

10. It was further alleged in the counteraffidavit that the declaration given by the petitioner was false to the knowledge of the petitioner inasmuch as, as per her own averment she had delivered a full-term baby on 11 January 1990. The petitioner to her own knowledge, could not have had a menstruation cycle on 29 April 1989 as stated by her in the declaration on 25 May 1989. Dr. S. K.

Gupta, MD, of Dr. Hira Lal Child & Maternity Home, where the petitioner was admitted for delivery has certified that the petitioner has LMP on 3 April 1989. A copy of the certificate of Dr. Hira Lal has also been produced as Annexure to the counter-affidavit. It was asserted that the petitioner had deliberately given in her declaration to the Corporation wrong date of menstruation as 29 April 1989 and she had given her correct date of LMP as 3 April 1989 to Dr. S. K ' Gupta. If she had mentioned the correct date of her menstruation in her declaration her appointment would have been deferred as per Rules. It was also contended that the decision to discharge the petitioner from the service of the Corporation was on 2 grounds : (1) because of a false declaration given by her at the very initial stage of her service; and (2) her work during the period of probation was not satisfactory.

11. Reference was also made to the Instruction 16 issued by the Corporation as to the medical examination for recruitment of Class 111 and Class IV staff. Clause 16 of the Instructions reads as under:

"16. Medical Examination:

No person shall be appointed to the services of the Corporation unless he/ she has been certified to be of sound constitution and medically fit for discharging his/ her duties. The certificates in the form given in Annexure IX should be from a doctor, duly authorised for the purpose by the Appointing Authority. If at the time of medical examination, any lady applicant is found to be pregnant, her appointment to the Corporation shall be considered three months after the delivery. This would be subject to a further medical examination at the candidate's cost and subject to the ranking list continuing to be valid. "

12. We have examined the matter carefully. We have nothing on record to indicate that the petitioner's work during the period of probation was not satisfactory. Indeed, the reason for termination seems to be different. It was the declaration given by her at the stage of entering the service. It is said that she gave a false declaration regarding the last menstruation period with a view to suppress her pregnancy.

13. It seems to us that the petitioner cannot be blamed in this case. She was medically examined by the Doctor who was in the panel approved by the Corporation. She was found medically fit to join the post. The real mischief though unintended is about the nature of the declaration required from a lady candidate. The particulars to be furnished under columns (iii) to (viii) in the declaration are indeed embarrassing if not humiliating. The modesty and self-respect may perhaps preclude the disclosure of such personal problems like whether her menstrual period is regular or painless, the number of conceptions taken place; how many have gone full term etc. The Corporation would do well to delete such columns in the declaration. If the purpose of the declaration is to deny the maternity leave and benefits to a lady candidate who is pregnant at the time of entering the service (the legality of which we express no opinion since not challenged), the Corporation could subject her to medical examination including the pregnancy test.

14. In the circumstances the interim order already issued is made absolute. We however, direct that the appellant is not entitled to the salary from the date of discharge till her reinstatement. With this direction the appeal stands disposed of but no order as to costs.

Order accordingly.

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