

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

Writ Petition No. 1562 of 1999

G Indian Inhabitant of Mumbai

residing at Mumbai 11 Petitioner

Vs

New India Assurance Company Ltd

a public limited company, having

its registered office at 87

Mahatma Gandhi Marg, Fort

Mumbai. 400001 Respondent

Mr. Anand Grover i/b Mr. Prakash Mahadik for Petitioner

Mr. V.Y Sanglikar for respondent

CORAM; A.P. SHAH & S.C. DHARMADHIKARI JJ.

DATED 16.1.2004

Per A.P. Shah J:

Rule. Respondents waive service. By consent rule is taken up for hearing forthwith.

1 This petition is filed by the Petitioner's widow whose husband was working with Respondent Company, died while in employment. The Petitioner had applied to the Respondent Company for employment on compassionate ground, which was rejected by the Respondent Company. On medical examination she was found HIV positive. The Petitioner has three minor children.

“No person can be deprived of his right to livelihood except according to procedure established by law. Obviously, such procedure established by law has to be just, fair and reasonable. In other words, such procedure also must pass rigour of Art 14. The rule providing that a person must medically fit before he is employed or to be continued while in employment is, obviously, with the object of ensuring that the person is capable of or continues to be capable of performing his normal job requirements and that he does not pose a threat or health hazard to the persons or property at the work place. The persons who are rendered incapable, due to ailment, to perform their normal job functions or who pose a risk to other persons at the work place say like due to having infected with some contagious disease which can be transmitted through the normal activities at the work place can be reasonably and justifiably denied employment or discontinued from the employment in as much as such classification has an intelligible differentia which has clear nexus with the object to be achieved, viz, to ensure the capacity of such persons to perform normal job functions as also to safeguard the interests of other persons at the work place. But the person who, though has some ailment, does not cease to be capable of performing the normal job functions and who does not pose any threat to the interests of other persons at the work place during his normal activities cannot be included in the aforesaid class. Such inclusion in the said class merely on the ground of having an ailment is, obviously, arbitrary and unreasonable.

So tested the impugned rule which denies employment to the HIV infected person merely on the ground of his HIV status irrespective of his ability to perform the job requirements and prospective of the fact that he does not pose any threat to others at the work place is clearly arbitrary and unreasonable and infringes the wholesome requirement of Art 14 as well as Art 21 of the Constitution of India. Accordingly, the circular in so far as it directs that if the employee is found to be HIV positive by ELISA test, his services will be terminated is unconstitutional, illegal and invalid.”

(emphasis supplied)

5 In the case of MX of Bombay Indian Inhabitant the court also observed that the State and public Corporations cannot take a ruthless and inhuman stand that they will not employ a person unless they are satisfied that the person will serve during the entire span of service from the employment till superannuation. The most important thing in respect of persons infected with HIV is the requirement of community support, economic support and non discrimination of such person. This is also necessary for prevention and control of this terrible disease. In another decision of the Division Bench in the case of V.P.G.S.P. Mandal vs State of Maharashtra, 2001 (4) Mah L J. 561 the employee of the petitioner society died of Aids. The widow of the employee was denied employment on compassionate ground suspecting her to be patient of Aids. The Court held that the approach of the petitioner society was illegal and the petitioner cannot be denied employment in law when she was entitled to employment on compassionate ground as her husband died while in service.

6. In Balbir Kaur and anr vs. Steel Authority of India Ltd and ors, (2000) 6 SCC 493, Banerjee J. , speaking for the Bench observed that the socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. Law courts cannot be mute spectators where relief is denied to the horrendous sufferings of an employee's family on account of death of the bread earner. Constitutional philosophy should be allowed to become a part of every man's life in this country and then only the constitution can reach everyone and the ideals of the Constitution-framers would be achieved since the people would be nearer the goal set by the Constitution.

7 There is no gain saying that right to earn livelihood is part of Art 21 of the Constitution. A person cannot be denied employment only on the ground that the person is HIV positive, but otherwise fit. In our opinion, HIV positive status cannot be a ground for rejection for employment as it would be discriminatory and violative of the principles laid down in Articles 14,16 and 21 of the Constitution.

8 In the result petition succeeds. The Respondent company is directed to appoint the Petitioner on compassionate ground in her present post were she is appointed for temporary period or any other suitable post within a period of four weeks from today and give her all consequential benefits.

Rule is made absolutely accordingly.