
(b) the respondents, however, are not debarred from re-considering the matter in the light of the principles fully detailed above; and

(c) on the question of suspension, it shall be open to the Government to decide the matter afresh.

(21) In view of peculiar circumstances of the case, there shall be no order as to costs.

S.C.K.

(FULL BENCH)

Before : S. S. Sodhi, R. S. Mongia & N. K. Sodhi, JJ.

DARSHAN SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 4268 of 1987

24th February, 1992.

Constitution of India, 1950—Art. 226—Punjab Recruitment of Ex-serviceman Rules, 1982—Rl. 4, proviso—Benefit of job reservation for dependants of ex-serviceman—Rl. 4 granting such concession to 'one dependant child of ex-serviceman'—Interpretation of—Expression 'ex-serviceman' includes both living and dead—Benefit extends to dependants of all ex-servicemen.

Held, that there can be no manner of doubt that if seen in its true and proper context, the purpose and rationale for the proviso to rule 4 of the Rules was to extend the benefit of reservation to the dependants of all ex-servicemen, whether deceased or living. The words used in the proviso are "dependant children of Ex-servicemen", in other words, the proviso does not contain words expressly excluding dependant-children of deceased-ex-servicemen. Absurdity in the language of statute cannot be imputed to the Legislature.

(Paras 8 & 9)

Held further, that we cannot, therefore, accept as correct the view expressed in *Dr. Gajinder Kumar Diwan's case* that the benefit of reservation for dependants of Ex-servicemen is confined only to dependants of living Ex-servicemen. The benefit of reservation under the Rules extends to dependants of all Ex-servicemen whether

living or deceased. Keeping in view, however, the fact that the judgment in the above case has held the field for many years, the view now expressed shall operate prospectively only, that is, with effect from the date of this judgment.

(Paras 10 & 11)

DR. GAJINDER DIWAN V. STATE OF PUNJAB & OTHERS,
(C.W.P. No. 3450 of 1984 decided on September 7, 1984).

(OVERRULED)

PETITION under Articles 226 of the Constitution of India praying that the petitioner may kindly be granted the following reliefs:—

- (i) *Issue a writ of mandamus directing the respondents to issue the petitioner a certificate of dependent of Ex-serviceman enabling him to avail the facilities of being a dependent of Ex-serviceman;*
- (ii) *issue any other appropriate writ, order or direction which this Hon'ble Court may found suitable;*
- (iii) *service of the advance notices on the respondents and filing of certified copies of the Annexures 'P-1' and 'P-2' also be dispensed with;*
- (iv) *this petition be allowed with costs;*

AND

This petition may kindly be dispensed at the earlier possible as the petitioner needs the required certificate urgently to be shown at the time of interviews, he is to be called for in near future.

(The Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal & Hon'ble Mr. Justice I. S. Tiwana on 2nd November, 1987, referred the above noted case to a Larger Bench for deciding important question of law involved in this case.

The Full Bench consisting of Hon'ble Mr. Justice S. S. Sodhi, Hon'ble Mr. Justice R. S. Mongia & Hon'ble Mr. Justice N. K. Sodhi decided the case finally on 24th February, 1992).

R. S. Dhankar, Advocate, for the petitioner.

H. S. Riar, Addl. A.G. Punjab, for the respondents.

JUDGMENT

S. S. Sodhi, J.

The issue in controversy here concerns the benefit of reservation in posts for dependents of Ex-serviceman. To be specific, whether it also extends to dependents of deceased Ex-serviceman ?

(2) The relevant rule and the proviso thereunder governing the matter being Rule-4 of the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter referred to as 'the Rules'). This Rule-4 reads as under:—

“—(1) Subject to the provisions of Rule-3, fifteen *per cent* of the vacancies to be filled in by the direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-Serviceman” :

Provided, that where an Ex-Serviceman is not available for recruitment against reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependant child of an Ex-Serviceman, who has neither been recruited against a reserved vacancy nor is eligible to be recruited against such vacancy under these rules.”

(3) The precise point raised here arose before a Division Bench of this Court in *Dr. Gajinder Kumar Diwan v. State of Punjab and others* (1), where, it was held that the benefit of reservation for dependants of Ex-Servicemen, was available only to a child of a living Ex-Serviceman. The reasoning in support being, “The Legislature in its wisdom has afforded the benefit not to any child of the Ex-Serviceman but a dependant child. The child of an Ex-serviceman who had died cannot be termed as a dependant child of such an ex-serviceman. Further more, the phraseology used in the latter part of the proviso ‘who has neither been recruited against a reserved vacancy nor is eligible to be recruited against such vacancy’ is also indicative of the fact that the intention of the Legislature was to confer a concession under the said proviso only to living Ex-Serviceman and not to the one who had died. The emphasis appears to be more on granting the relief to an Ex-Serviceman during his life time. Faced with this situation, the learned counsel submitted an alternative argument that the non-granting of the concession to the children of deceased Ex-Serviceman tantamounts to discrimination and is, thus, violative of the Constitution of India. We, however, do not find any such discrimination. It is indeed for the Legislature to grant a certain benefit or concession to a limited group or a class of persons under a certain policy provided there is a reasonable classification for this purpose. As already observed, the object of

(1) C.W.P. No. 3450 of 1984 decided on September 7, 1984.

enacting the proviso appears to be to confer a certain relief to the Ex-Serviceman himself by providing succour to his dependent family members and thus, reduce his financial burden."

(4) The view expressed in *Dr. Gajinder Kumar Diwan's case* (supra), did not, however, find favour with the Motion Bench before which the present case came up for preliminary hearing. When confronted with a similar question, in the context of a son of a deceased Ex-Serviceman, being denied, a certificate of being a dependent of an Ex-Serviceman, in order to enable him to avail of the benefits of reservation under the Rules, the Division Bench in *Dr. Gajinder Kumar Diwan's case* (supra) deserved reconsideration. It being observed in this behalf, —"a bare reading of the above proviso would show that the benefit is allowed to one dependent child of an Ex-serviceman. If the intention was as ruled by the Bench, a different phraseology would have been used and instead of words "one dependent child of an Ex-serviceman" the words "one child dependant of Ex-serviceman" would have been used. As the provision stands the requirement is that he should be a dependant child of an Ex-Serviceman whether the Ex-Serviceman is alive or dead. is no consideration to determine the eligibility of his child. If the child is dependant, which means is not an earning hand, he would be entitled to the benefit of the said provision. The latter words of the clause "who has been neither recruited against such vacancy under these rules." are also in no way negatory to the view which we propose to take. Even if an Ex-Serviceman is not alive, the disqualification would be applicable if he in his life-time has been recruited against a reserved vacancy. Moreover, there is no rational basis to make a discrimination between the child of a living Ex-Serviceman on the one hand and the child of a deceased Ex-Serviceman on the other.—" This is how this matter came to be referred to a Full Bench.

(5) It will be seen that the issue raised hinges upon the interpretation of the proviso to Rule-4. The contention of Mr. H. S. Riar, Additional Advocate-General, Punjab being that this proviso had to be construed by giving to the words used their ordinary and natural meaning. Read in this manner, it was contended, it could not, but be interpreted to restrict the benefit to dependants of only living Ex-Serviceman and not to those who had already died. The argument being that no one could be said to be dependant of a dead person.

(6) The primary rule of interpretation is no doubt to construe the language of a statute by giving the words used, their ordinary and

natural meaning, but it is equally well-settled that there is another aspect of it too, which has so aptly been expressed by Judge Learned Hand. "It is true that the words used even in their literal sense are the primary and ordinarily the most reliable source of interpreting the meaning of any writing be it a statute, contract or anything else. But it is one of the surest indices of a mature and developed jurisprudence not to make fortess out of the dictionary, but to remember that statutes always have some purpose or object to accomplish whose sympathetic and imaginative behaviour is the surest guide to their meaning."

(7) In a similar vein, there is the statement in Maxwell on the Interpretation of Statutes, Twelfth Edition, at page 228, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence" and further, "Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used".

(8) Seen in its true and proper context, there can be no manner of doubt that the purpose and rationale for the proviso to rule-4 of the Rules was to extend the benefit of reservation to the dependants of all Ex-Serviceman, whether deceased or living. It is pertinent to note, in this behalf, that the words used in the proviso are "dependant children of Ex-Servicemen". In other words, the proviso does not contain words expressly excluding dependant-children of deceased Ex-Servicemen.

(9) Patently, irrational and anamolous consequences could follow if the dependants of the deceased Ex-Servicemen were to be held to be excluded by the proviso to Rule-4 from the benefits available thereunder. It could for instance, mean that dependants of a posthumous Gallantry Award Winner would not be entitled to these benefits while those of Ex-Servicemen who happened to serve on some free-from-danger posts and were thus alive, would be entitled to them. Not only this, it would also mean that even in the case of a dependant of a living Ex-Serviceman, the moment his Ex-Serviceman parent dies the benefit available to him would cease. a happening which could occur any time between his applying for a post and

actually being appointed to it. We cannot, therefore but apply here the oft repeated rule of interpretation, namely, that absurdity cannot be imputed to the Legislature.

(10) With respect, we too cannot, therefore, accept as correct the view expressed in *Dr. Gajinder Kumar Diwan's case* (supra) that the benefit of reservation for dependants of Ex-Servicemen is confined only to dependants of living Ex-Servicemen. We are consequently hereby constrained to overrule this judgment and hold instead that the benefit of reservation under the Rules extends to dependants of all Ex-Servicemen whether living or deceased.

(11) Keeping in view the fact that the judgment in *Dr. Gajinder Kumar Diwan's case* (supra) has held the field for many years, we direct that the view now expressed, shall operate prospectively only, that is, with effect from the date of this judgment.

(12) In so far as the petitioner is concerned, it follows that he would clearly be entitled to the Certificate of dependency as sought by him. We consequently hereby allow his writ petition and direct the District Sainik Welfare Officer, Gurdaspur to issue him a Certificate of dependency under relevant Rules.

(13) This reference is thus answered accordingly and this writ petition is accepted with costs. Counsel fee Rs. 1,000.

J.S.T.

Before : Ashok Bhan, J.

SARUP CHAND,—Petitioner.

versus

M. K. PAPER AND BOARD MILLS PVT. LTD., KHARAR AND OTHERS,—Respondents.

Civil Revision No. 618 of 1990.

26th February, 1992.

Sick Industrial Companies (Special Provisions) Act (1 of 1985)—S. 22(1)—Company declared a sick company—Civil suit pending for recovery of specified amount against it—Whether such suit liable to be stayed.