

Rajasthan High Court

Dr Rajveer Sharma vs State Of Raj And Ors on 13 January, 2021

Bench: Sanjeev Prakash Sharma

(1 of 5)

[CW-134/2018]

HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 134/2018

Dr. Rajveer Sharma S/o Shri Rangopal Sharma, Resident Of  
Rajendra Nagar Colony, Near Jharwali Mata, Badi Road, Dholpur  
Rajasthan

----Petitioner

Versus

1. State Of Rajasthan Through Principal Secretary, Ayurveda  
And Indian Medical Department, Government Secretariat,  
Jaipur.
2. Joint Secretary, Ayurveda Department, Secretariat, Jaipur.
3. Director, Directorate, Ayurveda Department, Ashok Marg,  
Savitri Chauraha, Ajmer.
4. Additional Director, Directorate, Ayurveda Department,  
Ashok Marg, Savitri Chauraha, Ajmer.
5. District Ayurveda Officer, Dholpur.

----Respondents

For Petitioner(s) : Mr. Tanveer Ahamad  
For Respondent(s) : Mr. Hari Kishan Saini, Dy.GC

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA JUDGMENT 13/01/2021 REPORTABLE

1. A short point involved in the present petition is whether the third child born to the petitioner on account of failure of the ligation operation can be said to come within the ambit of memorandum dated 01.06.2017 to deny the ACP to the petitioner for three years.

2. The petitioner submits that his wife had undergone ligation operation on 18.09.2011 however the said operation was (2 of 5) [CW-134/2018] unsuccessful and she gave birth to a girl child on 16.01.2013. The petitioner already has two male children born on 21 st August, 2000 and 10th September 2001 and thus he has three children, out of which one child was born after 1.6.2002. In view thereof, the State Authorities denied the petitioner to grant ACP.

3. Learned counsel submits that the petitioner submitted documentary proof to the authorities to show that the third child cannot be said to have been born with deliberate intentions and was born on account of failure of operation which cannot be treated to come within the ambit of the Memorandum dated 1.6.2017. The respondents did not accept the certificate issued in favour of the

petitioner and passed an order treating it to be doubtful, ambiguous and suspicious resulting in filing the present petition before this court.

4. Learned counsel submits that upon issuance of letter dated 13.7.2017, the petitioner submitted a certificate issued from a Doctor who had conducted the concerned Tubal Ligation operation on applying and also produced relevant proof of registration relating to the admission of petitioner for the concerned operation. The same has not been considered. Learned counsel submits that the petitioner's case cannot be said to be one where a third child is born out of willingness of the parents. Even otherwise, learned counsel submits that a third child was born after a period of 12 years of the earlier child and in such circumstances, the submission of the petitioner cannot be doubted.

5. Per contra, learned counsel appearing for the State submits that the original certificate which was issued did not bear any registration number or date and therefore, it could not have been (3 of 5) [CW-134/2018] taken to be correct and the authorities rightly doubted the veracity of the said document.

6. I have considered the submissions.

7. Perusal of the certificate shows that the petitioner's wife had undergone a ligation operation on 18.9.2011 but the certificate does not mention date or signatures although there are signatures of several doctors on the said certificate. Again on 28.8.2017, the concerned operating doctor has also certified of having conducted operation of the petitioner's wife and the registration of the petitioner's wife also shows that she was admitted and operated on 18.9.2011 and discharged on 19.9.2011.

8. In these circumstances, it cannot be said that the certificate is ambiguous or suspicious and the authorities ought to have taken a pragmatic view and considering that, now the case ought to have been examined.

9. The Memorandum dated 1.6.2017 reads as under:-

"The existing item (iii) of sub-para (7) of para 2 of finance Department Memorandum of even number dated 31.12.2009 as amended vide Memorandum of even number dated 06.10.2015 shall be substituted by the following, namely:-

"The appointing authority shall also obtain an affidavit from the employee with reference to having only two children on or after 01.06.2002 prior to granting ACP. An employee who has more than 2 children or after 01.06.2002 shall not be granted next ACP for 3 years from the date on which his/her ACP becomes due and it would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of previous financial (4 of 5) [CW-134/2018] upgradation. The employee having more than 2 children shall not be deemed to have been disqualified, so long as the number of children he/she has on

01.06.2002 does not increase."

This order shall come into force with immediate effect."

10. From perusal of the above, it is apparent that an employee who has more than two children on or after 1.6.2002 shall not be granted next ACP for three years from the date on which his/ her ACP becomes due and it would have consequential effect on the subsequent financial upgradation. The import of the aforesaid page is that any employee who gave birth to child after 1.6.2002 and already has two children prior thereto would be denied ACP. The circular does not take into consideration the circumstances which may have arisen in the birth of a third child.

11. In the present case, the child was born on account of the failure of the ligation operation. Getting an operation done shows the intention of the couple not to have a third child. However, on account of failure, if a child is born, they cannot be penalized for the same. These are exceptions to the rule and have to be taken into consideration. These exceptions need not be explicitly mentioned in the rule. However, these are certain things which are inherent in the rule. Further, the very purpose of the rule is to deter Government servants from having a third child. However, if a third child is born, without there being any deliberate intent, the circular would not come in way to deprive the concerned individual of the benefits which are available under the service rules.

(5 of 5) [CW-134/2018]

12. Thus, in the opinion of this court, any child born after 1.6.2002 to a couple already having two children cannot be denied ACP by applying the memorandum by a blanket order. The circumstances need to be examined and exceptions to be taken into consideration. One of the such exceptions is the present one. In view of the above, this court does not accept the contention of the respondents.

13. The writ petition is accordingly allowed and it is directed to the respondents to grant ACP to the petitioner on completion of 20 years of service from the date it became due without applying the circular dated 1.6.2017 and arrears of salary shall also be released accordingly. No costs.

(SANJEEV PRAKASH SHARMA),J SAURABH YADAV /670/106 Powered by TCPDF (www.tcpdf.org)