

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

Date of decision: 26th March, 2012

+ **W.P.(C) No.5896/2008**

% **R.K. SHARMA** **....Petitioner**

Through: Mr. G.S. Chaturvedi, Adv.

Versus

**LIFE INSURANCE CORPORATION
OF INDIA & ORS.**

.... Respondents

Through: Mr. Kamal Mehta, Adv. for LIC.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The petitioner was employed with the respondent Life Insurance Corporation of India (LIC) as a Development Officer. He was on 22.02.1996 dismissed from service. The departmental appeal preferred by him was also dismissed on 11.01.1997. The petitioner preferred W.P.(C) No.345/1997 impugning the said order of his dismissal. The said writ petition was disposed of vide order dated 07.02.2002; considering that the petitioner had served the LIC from 1963 without any blemish and was due to superannuate on 31.01.1997 and further considering that the misconduct of which he had been found guilty was of technical violation of rules and the procedure and no loss had been suffered by the LIC therefrom, this Court found the punishment of removal to be too harsh and substituted it

with that of compulsory retirement. It was further directed that the petitioner will be entitled to retiral benefits as due to him as per rules.

2. The respondent LIC preferred LPA No.260/2002 thereagainst which was dismissed on 05.07.2004. The Division Bench noticed that the petitioner in the past had been given Commendation Certificates and had also generated business of over ₹3/- crores for the LIC.

3. The petitioner thereafter claimed retiral benefits, as on compulsory retirement, from the respondent LIC. The respondent LIC stated that its rules do not permit payment of retiral benefits as claimed on compulsory retirement.

4. It was then that the present petition challenging the *vires*, of Clause 3 (2)(iv) of the Life Insurance Corporation of India Development Officers (Revision of Terms and Conditions of Service) Instructions, 1996 and of Rule 23 of Life Insurance Corporation of India (Employees) Pension Rules, 1995, insofar as they disentitle an employee to get pension even in those cases where punishment of compulsory retirement was inflicted was filed.

5. We had heard the counsels on 12.12.2011. It was the argument of the counsel for the petitioner that even when an employee is compulsorily retired by way of punishment, it remains retirement only and there cannot be forfeiture of his past service, pension and payment of other terminal dues. However, we find that as per Rule 33 of the Pension Rules (*supra*), an employee who is dismissed or removed or compulsorily retired or terminated from service forfeits his pension; at the same time, proviso to this Rule provides that even in such cases Competent Authority may

sanction 'compassionate allowance' not exceeding two-third of the pension which would have been admissible to him on the basis of qualifying service rendered upto the date of imposition of punishment, if the Competent Authority is of the view that the case is deserving of special consideration. In the circumstances, we had on 12.12.2011 enquired from the counsel for the LIC as to whether the case of the petitioner had been considered under the proviso to the said Rule 33. The answer was in the negative. The counsel for the petitioner stated on that day that if the respondent LIC gives benefit of the said proviso to Rule 33 to the petitioner, the petitioner would not press the challenge to the *vires* of the Rules (supra). We had in the circumstances, vide order dated 12.12.2011 in this writ petition directed the petitioner to make a representation to the respondent LIC claiming such compassionate allowance and directed the respondent LIC to take a decision thereon.

6. Representation was so made by the petitioner and the counsel for the respondent LIC has today in Court handed over a copy of the speaking order dated 21.03.2012 of the respondent LIC on the same. The respondent LIC has rejected the claim of the petitioner for compassionate allowance under the proviso to Rule 33 (supra) on the ground that since the petitioner, within the prescribed time, had not exercised the option for pension, he was in any case not entitled to pension and thus is not entitled to compassionate allowance in lieu of pension also. It is stated in the said order that the existing employees of respondent LIC were given the option for pension as per the Notification dated 28.06.1995; that the said option was to be exercised within 120 days from the date of the said Notification; that the

petitioner did not exercise the said option and only on 28.05.1997 submitted the option letter for the pension and which was not permissible. It is also stated in the said speaking order dt. 21.03.2012 that the petitioner on 31.03.1998 has already been paid employer's contribution to provident fund.

7. The counsel for the petitioner has today before us sought to argue that the petitioner is eligible for pension and hence to compassionate allowance. It is further stated that the receipt by the petitioner on 31.03.1998 of the employer's contribution to provident fund would not come in the way of the petitioner claiming pension inasmuch as the petitioner can always refund the same to the respondent LIC.

8. We are afraid, the aforesaid controversy i.e. whether the petitioner is eligible for pension or not is not the subject matter of the present petition. No decision on the said aspect can thus be given in this petition. The counsel for the petitioner has also not been able to dispute that without the petitioner being eligible for pension, he is not entitled to the benefit of proviso to Rule 33 (supra) of the Pension rules i.e. of compassionate allowance in lieu of pension.

9. The counsel for the petitioner states that the petitioner will take separate proceedings agitating his claim for pension and the payment of compassionate allowance to the petitioner be made subject to the outcome of the said proceedings. We find merit in the said contention. As aforesaid, the representation of the petitioner in pursuance of the order dated 12.12.2011 for compassionate allowance has been rejected vide speaking

order dated 21.03.2012 only on the ground of the petitioner being not entitled to the same for the reason of being not eligible for pension. Axiomatically, in the event of the petitioner being found eligible for pension, the petitioner would be entitled to compassionate allowance of two-third of the pension to which he may be found admissible on the basis of qualifying service rendered upto the date of imposition of punishment. We direct accordingly.

10. The petitioner, besides the aforesaid has in the present writ petition also claimed direction for release to him of Privilege Leave Encashment, Broken Period Appraisal and Revision of Wages. We have heard the counsels on the said aspects.

Privilege Leave Encashment.

11. The counsel for the petitioner has invited attention to the Circular No. ZD/952/ASP/2000 dated 04.05.2000 of the respondent LIC on the subject “Settlement of terminal payments in respect of cases where disciplinary proceedings are contemplated – clarifications”. The same, under the heading “Encashment of un-availed PL” provides as under:

“The same can be withheld at the discretion of the competent authority. While taking the decision, the competent authority should inter alia keep in view the financial loss if any, suffered by the corporation and take appropriate decision”

12. The respondent LIC in its counter affidavit with respect to the Privilege Leave Encashment has stated that under Regulation 19(4) of the Life Insurance Corporation of India (Staff) Regulations, 1960 such

encashment is permissible only in the case of retirement and not in the case of compulsory retirement.

13. We have not been shown any rule, as in the case of pension, of forfeiture of Privilege Leave Encashment even in cases of compulsory retirement. In the absence thereof, retirement ought to include compulsory retirement also. Moreover, the purport of the orders in the earlier writ petition preferred by the petitioner challenging the order of his removal from service of converting the punishment to that of compulsory retirement was to entitle the petitioner to reitral benefits to which he was not entitled to had the punishment of removal from service been maintained. Inspite of this Court (learned Single Judge as well as the Division Bench) in those proceedings noticing the without-blemish career for 33 years of the petitioner and of the misconduct of which he had been found guilty of being technical in nature and having not caused any loss to the respondent LIC, the detailed challenge to the punishment proceedings was not gone into since the petitioner had already attained the age of superannuation and it was felt that converting the punishment from that of removal from service to that of compulsory retirement would lessen the harshness and rigour thereof. It was clearly in the contemplation of this Court then that upon the punishment being so changed, the petitioner would become entitled to retiral benefits. The said orders have attained finality. In that light of the matter, we are unable to now hold the petitioner not entitled to the Privilege Leave Encashment. We accordingly direct the respondent LIC to within six weeks hereof pay the amount due to the petitioner on the said count.

Broken Period Appraisal

14. The counsel for the petitioner has invited our attention to the Circular dated 17.09.1992 of the respondent LIC on the subject of “Appraisal of Development Officers for broken appraisal period”. The said Circular mentions that earlier, only those Development Officers who exit their cadre before completion of appraisal period on account of promotion or retirement or death but not otherwise were eligible for incentive, bonus and Additional Conveyance Allowance; however a decision had been taken to extend the benefit of broken period appraisal for the purpose of determining incentive, bonus and Additional Conveyance Allowance to those Development Officers also who exit by voluntarily resigning from the service of the Corporation.

15. The respondent LIC in its counter affidavit, qua the said claim has again pleaded that the same is not applicable to cases of compulsory retirement.

16. We, for the reasons as given above qua the Privilege Leave Encashment, hold the petitioner entitled to the amount due on the said count also and direct the respondent LIC to pay the same also within six weeks as aforesaid.

Revision of Wages

17. The counsel for the petitioner has invited our attention to the Life Insurance Corporation of India Development Officers (Revision of Terms and Conditions of Service) Instructions, 1996 (supra). It is argued that the

said Instructions deal with the revision effected in the pay scales in the year 1996 but with retrospective effect from 01.04.1993. The Instructions make Development Officers in service of the LIC on 18.07.1996 eligible to the said revision. However, the proviso to Clause 3(1) of the said Instructions is as under:

“Provided that the benefits there under may be allowed to Development Officers who retired from service or died on after 01.04.1993 as if they were governed by the Amended Alteration Rules.”

18. The defence of the respondent LIC in its counter affidavit qua the said claim is also the same i.e. that the petitioner is not entitled to the same having compulsorily retired which is different from retirement. We again, for the reasons stated under Privilege Leave Encashment, find the petitioner entitled to the said claim of Revision of Wages also and accordingly direct the respondent LIC to pay the amount due on the said account also within six weeks.

19. The petition is disposed of in above terms. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 26, 2012

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