

GAHC010092432019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/254/2023

RUPALI BHATTACHARJEE

D/O LT. SUSHIL KUMAR PURKAYASTHA
R/O ALPANA ENCLAVE
RUKMINI NAGAR NEAR LAKSHMI MANDIR
GUWAHATI-781006
ASSAM

VERSUS

THE LIFE INSURANCE CORPORATION OF INDIA AND 3 ORS.
WITH ITS ZONAL OFFICE AT 4 C.R. AVENUE HINDUSTAN BUILDING
KOLKATA-72
WEST BENGAL REP. BY THE ZONAL MANAGER.

2:THE SENIOR DIVISIONAL MANAGER
LIC OF INDIA
GUWAHATI DIVISIONAL OFFICE
S.S.ROAD
FANCY BAZAR
GUWAHATI-781001

3:THE MANAGER
P AND IR DEPTT. LIC
GUWAHATI DIVISIONAL OFFICE
JEEVAN PRAKASH BUILDING
S.S.ROAD
FANCY BAZAR
GUWAHATI-781001

4:THE BRANCH MANAGER
LIC DISPUR BRANCH OFFICE
SAIKIA COMMERCIAL COMPLEX
SREENAGAR
DISPUR
GUWAHATI-6

ASSAM

Advocate for : MR A C BORBORA

Advocate for : MR. S NATH appearing for THE LIFE INSURANCE CORPORATION OF INDIA
AND 3 ORS.

In WP(C)/2822/2019

RUPALI BHATTACHARJEE

D/O LT. SUSHIL KUMAR PURKAYASTHA, R/O ALPANA ENCLAVE, RUKMINI
NAGAR NEAR LAKSHMI MANDIR, GUWAHATI-781006, ASSAM

VERSUS

THE LIFE INSURANCE CORPORATION OF INDIA AND 3 ORS.
WITH ITS ZONAL OFFICE AT 4 C.R. AVENUE HINDUSTAN BUILDING,
KOLKATA-72, WEST BENGAL REP. BY THE ZONAL MANGER

2:THE SENIOR DIVISIONAL MANAGER

LIC OF INDIA

GUWAHATI DIVISIONAL OFFICE

S.S.ROAD

FANCY BAZAR

GUWAHATI-781001

3:THE MANAGER

P AND IR DEPTT. LIC

GUWAHATI DIVISIONAL OFFICE

JEEVAN PRAKASH BUILDING

S.S.ROAD

FANCY BAZAR

GUWAHATI-781001

4:THE BRANCH MANAGER

LIC DISPUR BRANCH OFFICE

SAIKIA COMMERCIAL COMPLEX

SREENAGAR

DISPUR

GUWAHATI-6

ASSA

Advocate for the Petitioner : MR A C BORBORA

Advocate for the Respondent : MR. S. NATH

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 09/05/2023

Heard Mr. A.C. Borbora, learned senior counsel assisted by Ms. M. Dey, learned counsel for the writ petitioner. Also heard Mr. S. Nath, learned counsel representing the opposite party (LICI).

The applicant herein, is an employee of the Life Insurance Corporation of India (LICI) and is presently posted at Dispur Branch of the LICI as Higher Grade Assistant. The husband of the applicant is also an employee of the LICI. The applicant and her husband are proposing to purchase a residential flat at Guwahati by obtaining Housing Finance Loan (HFL) from the LICI and accordingly, they had made a joint application for HFL. It appears that the husband of the applicant has already received the "No Objection Certificate" from the LICI. However, taking the plea of pendency of WP(C) 2822/2019 before this Court, the application for "NOC" made by the applicant has been declined. Aggrieved thereby, the applicant has approached this Court by filing the instant IA arising out of WP(C) 2822/2019 seeking appropriate direction from this Court upon the authorities.

It appears that a disciplinary proceeding was initiated against the petitioner/applicant on the basis of show cause notice dated 20/11/2018, which culminated in imposition of minor penalty of "*reduction of one (1) state in the time scale of pay applicable to her cadre*" and also for "*recovery of a sum of Rs. 69,972/-*". The aforesaid order of penalty has been assailed in the writ petition being WP(C) 2822/2019 inter-alia, on the ground that the allegations brought against the applicant/writ petitioner could not be proved in the enquiry proceeding. It has also been alleged that the proceedings have been conducted in utter violation of the Principles of Natural Justice.

Taking note of the case projected in the connected writ petition, this Court had passed interim order dated 03/05/2019 suspending the operation of the orders impugned in the said proceeding. However, the writ petition is pending disposal before this Court. It is in such factual backdrop that the applicant has approached this Court by filing the instant IA.

The stand of the LICI authorities is available in the affidavit filed in IA(C) 254/2023 whereby, they have relied upon clauses 2(i) & (ii) of a Circular dated 03/11/2016 to contend that there is a policy decision of the authorities at the highest level not to entertain application for 'NOC' from such employees whose cases come within the ambit of aforesaid clauses. It is on such count, the

authorities have not issue the "NOC" to the applicant for HFL.

Mr. Borbora, learned senior counsel for the applicant, on the other hand, has argued that even if the order of penalty imposed upon the petitioner is upheld and the writ petition is eventually dismissed, even then, she would continue to remain an employee of the LICl and, therefore, she would have the right to avail the housing loan since such an application cannot be permanently declined by the authorities, more so, when the applicant has enough terminal benefits as security against the amount of housing loan sought by her. Mr. Borbora has further argued that clauses 2(i)(ii) would have no application in the facts of this case and, therefore, the stand of the respondents is wholly arbitrary.

I have considered the submissions advanced by learned counsel for both the sides.

Since the resistance offered by the LICl to the applicant for 'NOC' is almost entirely on the basis of clauses 2(i) & (ii) of the circular dated 03/11/2016, the said clauses are extracted herein below for ready reference :-

"2. Clause A 3 of the aforesaid circular stands modified as under :

Conditions for issuance of "NOC" and/or Identity Certificate (IC).

- (i) "No objection Certificate" shall be issued in cases where a Vigilance angle is pending against an employee or in cases involving vigilance angle where there is prima facie involvement in financial impropriety or someone has perpetrated a fraud on Corporation or committed acts involving moral turpitude or breaking the law of the land.*
- (ii) Adverse view should be taken in unconcluded Action Initiated cases, that is, where charge sheet has already been issued, contemplated cases and also suspension cases. Accordingly, NOC and/or IC should be denied in such cases."*

A careful reading of the aforesaid clauses indicate that the same would not have any bearing in the facts of the present case. There is no Vigilance case pending and/or initiated against the applicant nor is there any un-concluded action initiated against her. It is correct that there is an order of penalty imposed on the applicant but the correctness of the said order is sub-judice before this Court. A case pending before this Court cannot be termed as a vigilance enquiry or an un-concluded action initiated against the applicant. There is also no allegation of fraud against the applicant. The learned counsel for the respondents has also not been able to deny the said assertion of the

applicant's counsel. If that be so, this Court is of the unhesitant opinion that there is no justifiable ground for the respondents to deny the "NOC", merely on the basis of the circular dated 03/11/2016. There is no other ground available on record so as to justify the stand of the opposite parties in denying the 'NOC' sought by the applicant. Therefore, this Court is of the opinion that the applicant is entitled to the 'NOC' as applied for.

In view of the above, the prayer made in the IA is hereby allowed. The respondent nos. 1 to 3 are directed to consider the application submitted by the applicant seeking "NOC" for availing the Housing Loan, within a period of 3 (three) weeks from the date of receipt of a certified copy of this order and process the same in the light of the observations made herein above.

With the above observations, the IA stands disposed of.

JUDGE

sukhamay

Comparing Assistant