

GAHC010204362022



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

Case No. : WP(C)/6662/2022

K.R. KARDONG
R/O- KAILASH NAGAR, SIB MANDIR PATH, OPP. NAMGHAR PATH, HOUSE
NO-46,
P.O- BAGHARBARI, PANJABARI, GUWAHATI, ASSAM

VERSUS

LIFE INSURANCE CORPORATION OF INDIA AND 4 ORS.
REP. BY ITS CHAIRMAN, CENTRAL OFFICE YOGAKSHEMA, JEEVAN BIMA
MARG, MUMBAI-400021

2:THE EXECUTIVE DIRECTOR (PERSONNEL)
LIFE INSURANCE CORPORATION OF INDIA

CENTRAL OFFICE YOGAKSHEMA
JEEVAN BIMA MARG
MUMBAI-400021

3:THE EXECUTIVE DIRECTOR (PERSONNEL)
LIFE INSURANCE CORPORATION OF INDIA

EASTERN ZONAL OFFICE
C.R AVENUE
KOLKATA-72

4:THE REGIONAL MANAGER (OS)
LIFE INSURANCE CORPORATION OF INDIA

EASTERN ZONAL OFFICE
4- C.R AVENUE
KOLKATA-72

5:THE SENIOR DIVISIONAL MANAGER
LIFE INSURANCE CORPORATION OF INDIA

DIVISIONAL OFFICE
FANCY BAZAR

GUWAHATI-0

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : MR. S P CHOUDHURY (r-1 to 4)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 23-01-2024

Heard Mr. R.P. Sarma, learned Sr. counsel assisted by Mr. D. Doley, learned counsel for the writ petitioner. Also heard Mr. S.P. Choudhury, learned counsel representing the respondents.

2. Aggrieved by the order dated 23-06-2016 issued by the Executive Director (Personnel), Disciplinary Authority of the Life Insurance Corporation of India (LICI), i.e. the respondent No. 2, removing the petitioner from service, the instant writ petition has been filed. The writ petitioner herein was working as Assistant Administrative Officer (AAO) and posted at the Nongpoh Branch of the LICI when charge-sheet dated 09-06-2015 was served upon him with the following allegations:-

“THAT, during the period from 07/2009 to 07/2014, as in-charge of Cash Section of Nongpoh SO, you had made delayed lodgements of the daily cash in the Bank in as many as 121 instances as detailed in Annexure-I for which the Corporation had to suffer loss of interest to the tune of Rs. 14,894.00 calculated @ 12% p.a. Out of these 121 instances, in following 7 cases, you had not lodged cash

& cheques collected in the months of December, 2013 and January, 2014 in the Bank till detection of the fraud and had deposited the amounts only after a considerable period:

Sl.	Date of collection	Date of lodgement	Amount lodged as per pay-in-slip (Rs.)		Actual lodgement date	Remarks
			Cash	cheque		
1.	27.12.2013	28.12.2013		36,801.00	16.08.2014	Cheque collection of Rs. 36,801/- dated 27.12.2013 was deposited on 05.06.2014 by your personal account No. 140010100237352 of Axis Bank, Guwahati vide Cheque No. 273411. The said cheque was returned dishonoured by Bank due to "insufficient fund". Again on 16.08.2014, fresh payment was made by Cheque No. 273415 of Axis Bank from your personal Account.
2.	28.12.2013	31.12.2013	32,678.00	Nil	02.06.2014	Deposited in cash
3.	20.01.2014	21.01.2014	30,427.00	Nil	02.06.2014	
4.	21.01.2014	22.01.2014	43,810.00	Nil	02.06.2014	
5.	23.01.2014	24.01.2014	37,629.00	Nil	02.06.2014	
6.	24.01.2014	25.01.2014	Illegible	Illegible	Illegible	

7.	Illegible	Illegible	Illegible	Illegible	Illegible	

THAT, you, in order to camouflage the delayed lodgements as aforementioned kept in record some forged paying-in-slip counterfoils showing timely day to day lodgement by using a fake rubber stamp of Indian Bank, Nongpoh in record. You later vide letter dated 26.07.2014 admitted to have committed irregularities in lodgement of Cash & Cheque.

By your aforesaid acts, you have failed to maintain absolute integrity and devotion to duty, have displayed gross negligence in discharging your duties and hence acted in a manner prejudicial to good conduct and detrimental to the interest of the Corporation, thereby violating the provisions of Regulations 21 and 24 read with Regulation 39(1) of the Life Insurance Corporation of India (Staff) Regulation, 1960, for which any one or more of the penalties specified under Regulation 39(1)(a) to (g) of the aforesaid (Staff) Regulations, can be imposed upon you."

3. It appears that the petitioner had submitted his reply but not being satisfied with the same, a departmental proceeding was initiated wherein vide Enquiry Report dated 06-02-2016, the charges brought against the petitioner were found to have been established. Based on the Enquiry Report dated 06-02-2016, a show-cause notice dated 31-03-2016 was also issued to the petitioner calling upon him, to show-cause as to why, penalty of removal from service, which shall not be disqualification from future employment, should not be imposed upon him. Thereafter, the impugned order dated 23-06-2016 was issued imposing the major penalty of removal from service upon the petitioner. The operative part of the impugned order dated 23-06-2016 is reproduced here-in-below for ready reference:

"NOW, THEREFORE, I, the Disciplinary Authority order that the penalty of "Removal from service which shall not be a disqualification for future employment" be and is hereby imposed on Shri K.R. Kardong in terms of Regulation 39(1)(f) of

the Life Insurance Corporation of India (Staff) Regulations, 1960."

4. The petitioner had preferred an appeal before the appellate authority against the order dated 23-06-2016 but the appeal was also rejected by the order dated 23-12-2016. It is the case of the writ petitioner that although he has preferred a review application before the competent authority, yet, the same has not been considered till date. As such, the writ petitioner has been compelled to approach this Court by filing the instant writ petition.

5. Mr. Sarma, learned Sr. counsel for the writ petitioner has submitted that the facts involved in this case are not in dispute but the penalty of removal from service imposed upon the petitioner, viewed in the light of the allegations levelled against him, is highly disproportionate and therefore, calls for review. Mr. Sarma has, however, submitted in his usual fairness that at present his client is aged about 66 years and therefore, the question of reinstatement of the petitioner back in service may not arise.

6. Mr. S.P. Choudhury, learned counsel for the respondents, on the other hand, has invited the attention of this Court to the prayer portion of the writ petition to submit that the retirement age of an employee of the LIC being 60 years, none of the reliefs prayed for by the petitioner can be granted to him at this stage. Hence, Mr. Choudhury has prayed for dismissal of the writ petition.

7. I have considered the submissions made at the Bar and have also gone through the materials available on record. Since the writ petition is being pursued on a limited point of seeking modification of the order of penalty and considering the stand taken by

the respondents, considering the objection raised by the respondents' counsel, it would be necessary to refer to the four primary reliefs prayed for by the petitioner in the writ petition, which are as follows:-

“(a) As to why a Writ in the Nature of Certiorari shall not be issued to quash the entire impugned departmental proceedings the Enquiry Report, if any, and the impugned Order dated 23/06/2016; and or

(b) As to why a Writ in the Nature of Mandamus shall not be issued to direct the Respondent Authorities to re-instate the petitioner in Service with all consequential benefits retrospectively; and/ or;

(c) A writ in the nature of Mandamus directing the respondent authorities to release the amount due to the petitioner against the earned leave not availed by him during his period of suspension and/ or;

(d) As to why any other appropriate Writ, order(s) or direction should not be issued to grant complete relief to the petitioner.”

8. Although the petitioner has prayed for setting aside the disciplinary proceeding, the Enquiry Report as well as the impugned order dated 23-06-2016, no valid ground has been urged by him in support of such contention. The allegation brought against the writ petitioner was of financial irregularities indulged by him. Viewed from that angle, the writ petitioner could not substantiate, based on cogent materials, that the penalty imposed upon him was shockingly disproportionate as compared to the gravity of the misconduct. As such, this Court is of the opinion that there is no scope for this Court to interfere with the departmental proceeding as well as the order of penalty dated 23-06-2016.

9. Insofar as the prayer for reinstatement of the petitioner is concerned, since he has already surpassed the age of superannuation and in view of the findings recorded in the foregoing paragraph, the question of reinstatement of the petitioner would also not arise at this stage. Therefore, the said relief is also declined.

10. Coming to the third prayer in the writ petition, which is for release of amount due and payable to the petitioner on account of earned leave etc., it is to be noted herein that by the order of penalty dated 23-06-2016, only removal from service of the petitioner had been ordered, without disqualification for future employment. There is no order forfeiting the retirement benefits and other consequential service benefits, payable to the petitioner due to the long years of service, i.e. more than 31 years of service, rendered by him. If that be so, the respondents cannot deprive the petitioner of all such consequential service benefits/ retirement benefits, including leave encashment benefit etc., as may be admissible under the Rules, even if the order of penalty dated 23-06-2016 remains unaltered. The learned counsel for the respondents also could not deny the said proposition.

11. Having regard to the peculiar facts and circumstances of the case, although this Court is of the opinion that this is not a fit case where the order of penalty of removal from service deserves to be interfered with, yet, this Court is also of the view that the writ petitioner cannot be deprived of the basic service benefits, which he may be otherwise entitle to, under the law, merely because he has been removed from service. Therefore, this writ petition is being disposed of by granting 04 weeks time to the petitioner, with effect from today, to submit a proper application before the respondent No. 2 herein praying for release of all such consequential service benefits/ retirement benefits, which the petitioner claims to be entitled to under the law, as a former employee of the LIC.

12. If such an application is submitted within 04 weeks from today along with a certified copy of this order, the same be looked into and acted upon, as per law.

Appropriate steps, as may be required under the Rules, be initiated within a further period of 08 weeks thereafter, so as to redress the grievances of the petitioner on the above count.

With the above observation, this writ petition stands disposed of.

There would be no order as to cost.

JUDGE

GS

Comparing Assistant