

Court No. - 5

Case :- WRIT - A No. - 31157 of 2017

Petitioner :- Arpit Gupta And 12 Others

Respondent :- Life Insurance Corporation Of India Thru. Its Chairman Andanr.

Counsel for Petitioner :- A.K.Srivastava,Anuj Srivastava,Devaang Savla,Ramesh Prasad Mishra,Sr. Advocate

Counsel for Respondent :- Manish Goyal (Senior Adv.),S.C.,Siddharth Singhal

Hon'ble Ajay Bhanot,J.

1. The petitioners are aggrieved by the impugned order dated 03.05.2017 passed by the respondent No. 2 by which their services as Probationary Development Officers have been terminated.

2. Shri Devaang Savla, learned counsel for the petitioners makes the following submissions:-

i) The order of termination is discriminatory as similarly situated Probationary Development Officers have been granted extension of services while denying the benefit to the petitioners.

ii) The order of termination does not reflect due consideration of the relevant factors regarding failure to complete minimum business targets. In brief it is a non speaking order.

iii) The case of the petitioners are covered by the judgment rendered by the Andhra Pradesh High Court in

D. Jeevan Lal vs. Life Insurance Corporation of India
reported at **(2010) 09 AP CK 00030**.

3. Shri Manish Goyal, learned Additional Advocate General assisted by Ms. Divya Chaurasia, learned counsel for the respondents resisting the writ petition submits as under:-

i) The petitioners were probationers. No rights had accrued to them during the period of probation.

ii) Though the termination of services of the petitioners were relatable to the conditions of the probation. This is a case of termination simplicitor.

iii) Respondents have placed reliance on the judgments of Supreme Court in **M. Venugopal vs. Divisional Manager, LIC of India** reported at **(1994) AIR SC 1343**, **Rajasthan High Court vs. Ved Priya and another** reported at **2021 (13) SCC 151** and **Rajesh Kumar Srivastava vs. State of Jharkhand** reported at **2011 (4) SCC 447**, **Parvesh Kumar Gupta vs. Life Insurance Company of India** reported at **2002 SCC Online Alld 1699**.

4. Heard learned counsel for the parties.

5. The petitioners were appointed as Probationary Development Officers by order dated 30.04.2016. Similar orders of appointment were issued to all petitioners. The appointment order discloses that the initial probation

period was of 12 months from the date of joining duty as a probationer. The probationary period was liable to be extended for another 12 months but could not exceed the period of 24 months. The appointment letter postulated service targets to be achieved during probation.

6. The relevant clauses 2 and 10 of the appointment letter are extracted herein under:-

"2. PROBATIONARY PERIOD:

You shall be on probation initially for a period of twelve months from the date of your joining duties as a probationer, but the Corporation may, in its sole discretion, extend your probationary period, provided that the total probationary period including the extended probationary period shall not exceed 24 months counted from the commencement of the probationary appointment. During the probationary period (which includes extended probationary period, if applicable) you shall be liable to be discharged from the services of the Corporation without any notice and without any cause being assigned.

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10. MINIMUM BUSINESS:

i) During the probationary period you shall secure through the agents recruited at your instance minimum completed life business of Rs. xxxxxx yielding a Scheduled First Year Premium Income of not less than Rs. 21.10 provided, however, that in case the pay and/or allowance admissible to you, under Clause 1 are increased during the period, the minimum business and the premium income which you should secure shall be increased proportionately.

ii) The minimum business set out in (i) shall be spread over not less than 300 Policies and shall be secured regularly through a network of dependable agencies.

iii) You will be required to recruit minimum of 15 agents out of which 15 agents should have become active agents should individually have put in during that period the minimum business required of them in an agency year according to Rule (9) of the LIC of India (Agents) Rules, 1972 and agents should become Productive agents i.e. one who has completed either at least 20 lives or 12 lives with Scheduled First Year. Premium Income of

Rs. 1,00,000 in the agency year.

iv) If your probationary period is extended, you shall secure during the extended period such business as may be intimated to you."

7. During the period of probation, the petitioners failed to achieve the minimum targets of business set for them in the order of appointment.

8. The probations' of the petitioners' were not extended and they were not confirmed as a result of the aforesaid violation of the terms of the appointment. The services of the petitioners were terminated by the impugned order. The impugned order is a termination simplicitor and is not stigmatic in nature. The order of extension of probation or the confirmation of probationer is not liable to discuss details of the performance of the petitioners.

9. However, nothing has been shown from the record which contradicts the recitals in the impugned order or renders themselves perverse. Failure to achieve the business targets assigned to the petitioners is also not disputed in the writ petition.

10. The claim of the petitioners that they have been discriminated against is not supported by pleadings and material particulars. A plea of discrimination has to be supported by material particulars showing that the candidates who have been favoured are similarly situated in the first instance. The pleadings are deficient in this regard and cherry picking is not established from the

records.

11. Petitioners have placed reliance on the judgment rendered in **D. Jeevan Lal (supra)** is misconceived. The judgment of Andhra Pradesh High Court in **D. Jeevan Lal (supra)** does not consider the terms of the probation which are in issue in the facts and circumstances of this case and hence is distinguishable on the facts of the case.

12. Moreover, the Court would like to observe that the respondent corporation is a business enterprise. The organisation has to insist on its business targets while maintaining standards of fairness. Both ends have been achieved in the instant case.

13. The Supreme Court in **Rajasthan High Court vs. Ved Priya and another** reported at **2021 (13) SCC 151** while delineating the differences between the rights of a confirmed employee and a probationer held as under:-

“18. Furthermore, there is a subtle, yet fundamental, difference between termination of a probationer and that of a confirmed employee. Although it is undisputed that the State cannot act arbitrarily in either case, yet there has to be a difference in judicial approach between the two. Whereas in the case of a confirmed employee the scope of judicial interference would be more expansive given the protection under Article 311 of the Constitution or the Service Rules but such may not be true in the case of probationers who are denuded of such protection(s) while working on trial basis.

19. Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority if found unsuitable. Its only in a very limited category of cases that such probationers can seek protection under

the principles of natural justice, say when they are 'removed' in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of 'stigmatic' removal only that a reasonable opportunity of hearing is sine qua non.

22. There is nothing on record in the present case to infer that the motivation behind the removal was any allegation. Instead, it was routine confirmation exercise. The evaluation of services rendered during the probationary period was made at the end of the first respondent's tenure, along with 92 others. Vigilance reports were called not just for the Respondent No. 1 petitioner, but also for at least ten other candidates. It is thus clear that the object was not to verify whether the allegations against the first respondent had been proved or not, but merely to ascertain whether there were sufficient reasons or a possible cloud on his suitability, given the higher standard of probity expected of a judge.

24. Even otherwise, it may not be true that just because there existed on record some allegations of extraneous considerations that the High Court was precluded from terminating the services of Respondent No.1 in a simplicitor manner while he was on probation. The unsatisfactory performance of a probationer and resultant dispensation of service at the end of the probation period, may not necessarily be impacted by the fact that meanwhile there were some complaints attributing specific misconduct, malfeasance or misbehavior to the probationer. If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simplicitor order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of over all performance during the period of probation, the theory of action being punitive in nature, will not be attracted. Onus would thus lie on the probationer to prove that the action taken against him was of punitive characteristics.

26. Since Respondent No.1 has failed to establish that the High Court intended or has actually punished him for any defined misconduct, it stands crystallized that the object of the High Court

on the administrative side was to verify the suitability and not enquire into the allegations against the first respondent. Independently also, we do not find that the foundation was the allegations but it was based upon a holistic assessment of the respondent's service record. Even taking an effects-based approach, we do not feel that the order of non confirmation or the preceding circumstances would prejudice the respondent, meriting a higher procedural requirement."

14. The Supreme Court in **Rajesh Kumar Srivastava vs. State of Jharkhand** reported at **2011 (4) SCC 447** examined the yardstick of confirmation of a probationer by holding thus:-

"10. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the appellant are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his

performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

12. The order of termination passed in the present case is a fall out of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such decision cannot be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination and therefore there is no infirmity in the impugned judgment and order passed by the High Court.”

15. The judgments rendered in Ved Priya (supra) and Rajesh Kumar Srivastava (supra) determine the rights of the petitioners and shall govern the fate of this case. The impugned termination orders are consistent with the aforesaid authorities in point.

16. There is no infirmity in the impugned order.

17. The writ petition is liable to be dismissed and is dismissed.

Order Date :- 18.4.2025

Jaswant