

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.15408, 15409 & 15875 of 2004

COMMON ORDER:

Since the causes of action, though independent, which compelled the petitioners to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, are similar and in view of the factual similarities, this Court deems it apt and appropriate to dispose of these writ petitions by way of this common order.

2. Filtering the unnecessary details, the facts which are relevant for the disposal of the present writ petitions, are as under:

3. The 3rd respondent herein issued show cause notices dated 13.6.2003, calling upon the petitioner in W.P.No.15408 of 2004 and 1st petitioner in W.P.Nos.15409 & 15875 of 2004 to show cause as to why their Agencies should not be terminated on the ground that they obstructed the functioning of the office. In response to the said show cause notices, petitioners submitted their explanations on 25.6.2003 and 26.6.2003 and thereafter, the 3rd respondent herein passed orders dated 27.10.2003 terminating the Agencies of the petitioners, stating that their explanations were not satisfactory and that they acted in a manner prejudicial to the interest of the Respondent-Corporation. The petitioners herein submitted appeals before the appellate authority-2nd respondent herein. The 3rd respondent passed orders dated 29.12.2003, as per the consent of the 2nd respondent, reinstating the petitioners as Agents without Club Membership. Assailing the said orders passed by the authorities to the extent of denying Club Membership, the present writ petitions came to be filed.

4. Responding to the rule nisi issued by this Court, a counter

affidavit filed by the respondents herein denying the averments made in the writ affidavits and in the direction of justifying the impugned action.

5. Heard Sri R.Sudheer, learned counsel for the petitioners and Sri B.P.Mohan, learned Standing Counsel for Respondent-Corporation, apart from perusing the material available on record.

6. It is contended by the learned counsel for the petitioners that the order of the appellate authority, declining restoration of petitioners' club membership without giving opportunity is contrary to Rule 23(1) of LIC (India) Agents Rules, 1972 and as per Rule 17(ii) of the Club Rules, in case of reinstatement of agency, restoration of Club Membership is normal and non-restoration is an exception owing to the peculiarity of the factual situation. It is further contended that such denial of restoring the club membership has civil consequences and deprives the agent of various financial and other benefits, as such, the same cannot be effected without affording the person affected opportunity of showing cause against such denial. It is further contended that the principles of natural justice have to be read in conjunction with the provisions of the Rules and the impugned action is also discriminatory since several other agents who also participated in the dharna have been let-off.

7. Per contra, it is strenuously contended by the learned Standing Counsel for the Respondent Corporation that the appellate authority is perfectly justified in declining to restore the Club Membership in favour of the petitioners, while restoring the agencies by taking a lenient and sympathetic view. It is further contended that the petitioners admitted their guilt also and the issue is serious and would not deserve any sympathy. The appellate authority by taking a lenient view restored the agencies and refused correctly the club membership of the petitioners. It is further contended that restoration of club membership

is not automatic one and it is the discretion of the authorities. It is further contended that in view of Rule 24 of the Rules, there is an effective alternative remedy to the Chairman by way of memorial against the impugned order.

8. In view of the above, now the point that emerges for consideration of this court is whether the petitioners are entitled for the relief as prayed in the writ petition?

9. The Life Insurance Corporation of India, an Indian State owned Insurance Group and Investment Company with its Headquarters at Mumbai, came into being on 1.9.1956. With the prior approval of the Central Government, the LIC of India framed LIC of India (Agents) Regulations, 1972 (hereinafter called 'the Regulations'), touching the method of recruitment of agents and the terms and conditions of their appointment and work. The Regulations, which are germane and relevant for the purpose of the present writ petitions, are 16, 17, 20 and 24 and the same are reproduced hereunder:

"16. Termination of agency for certain lapses:

- (1) The competent authority may, by order, determine the appointment of an agent,
 - (a) if he has failed to discharge his function, as set out in regulation 8, to the satisfaction of the competent authority;
 - (b) if he acts in a manner prejudicial to the interests of the Corporation or to the interests of its policy holders;
 - (c) If evidence comes to its knowledge to show that he has been allowing or offering to allow rebate of the whole or any part of the commission payable to him;
 - (d) if it is found that any averment contained in his agency application or in any report furnished by him as an agent in respect of any proposal is not true;
 - (e) if he becomes physically or mentally incapacitated for carrying out his functions as an agent;
 - (f) if he being an absorbed agent, on being called upon to do so, fails to undergo the specified training or to pass the specified tests, within three years from the date on which he is so called upon;

Provided that the agent shall be given a reasonable opportunity to show cause against such termination.

(2) Every order of termination made under sub-regulation (1) shall be in writing and communicated to the agent concerned.

(3) Where the competent authority proposes to take action under sub-regulation (1), it may direct the agent not to solicit or procure new life insurance business until he is permitted by the competent authority to do so.

17. Termination of agency by notice:

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(1) The appointment of an agent may be terminated by the competent authority at any time by giving him one month's notice thereof in writing.

(2) An agent may, by giving one month's notice in writing to the competent authority discontinue his agency and after the expiry of the period of one month, his agency shall stand terminated.

20. Appeals:

(1) Every agent shall have a right of appeal to the relevant appellate authority set out in Schedule-VII against an order terminating the appointment which has been passed under regulation 15 or regulation 16 or sub-regulation (1) of regulation 17 or regulation 18.

(2) Every person submitting an appeal shall do so separately and in his own name.

(3) The appeal shall be addressed to the authority to whom the appeal lies, shall not contain any disrespectful or improper language and shall be complete in itself.

(4) The appeal shall be submitted through the authority which made the order appealed against.

(5) No appeal under this regulation shall be entertained unless it is submitted within a period of three months from the date on which the applicant receives a copy of the order appealed against:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

24. Memorial:

An agent whose appeal under these regulations, not being an appeal against an order under sub-regulation (1) of regulation 17, has been rejected by the appellate authority may address a memorial to the Chairman of the Corporation in respect of that matter within a period of three months from the date of receipt by the agent of a copy of the order of the

appellate authority and the Chairman shall, after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of these case justify”.

10. The controversy in the present writ petitions is required to be examined in the light of the above mentioned Regulations. There is absolutely no dispute with regard to the chronology of events as set out in the writ affidavits and the counters. In response to the show cause notices dated 13.6.2003 issued by the 3rd respondent-Senior Divisional Manager under proviso to Regulation 16(1) of the Regulations, calling upon the petitioners to show cause as to why the penalty of termination of agencies should not be imposed on them, the petitioners herein submitted their explanations. The 3rd respondent-Senior Divisional Manager found the said explanation unsatisfactory and while narrating the circumstances leading to the action, passed orders, terminating the agencies of the petitioners with eligibility to receive commission. As against the said order of termination of the agency, the petitioners filed appeal before the 2nd respondent-appellate authority contending that the order of termination is contrary to Regulations and that the punishment of termination is excessive and is an extraneous act of the authority and that they are repenting for the event of happening. The Senior Divisional manager while referring to the letter of the 2nd respondent dated 24.12.2003, wherein the 2nd respondent consented for restoration of agency without club membership, vide proceedings dated 29.12.2003 ordered reinstatement of the petitioners as Agents without Club Membership.

11. In the instant case, the 3rd respondent after giving opportunity as provided under the proviso to Regulation 16(1) passed the order of termination of the agency dated 27.10.2003 by recording reasons and while narrating the circumstances leading to such action. As per Regulation 20 of the Regulations, the petitioner herein filed appeal

and as per the proviso to Regulation 23(1), it is obligatory on the part of the appellate authority to afford the appellants a reasonable opportunity of representing their case. While replying to the averment in the affidavits filed in support of the writ petitions, in the counters filed on behalf of respondents, there is absolutely no reference as regards affording any such opportunity by the appellate authority, except stating that taking a lenient and sympathetic view, the 2nd respondent modified the order of termination and restored the agency only. It is true that as per Regulation 24 of the Regulations, there is a remedy to the petitioners by way of filing memorial before the Chairman against the impugned orders and in the considered opinion of this Court, at this length of time, this Court finds absolutely no justification to direct the petitioners to avail the said remedy. Since the appellate authority failed to provide any opportunity to the petitioners herein, this Court is of the opinion that the petitioners are entitled for such opportunity by way of remanding the matter to the appellate authority. The mandatory requirements of law cannot be dealt with in a mechanical manner and the same should be implemented in their true letter and spirit by the authorities. In the instant case, there is absolutely no evidence to show that such opportunity was given by the appellate authority at the time of disposal of the appeals. Therefore, this Court deems it appropriate to provide such opportunity to the petitioners by remanding the matters to the appellate authority.

12. For the aforesaid reasons, the writ petitions are allowed, setting aside the orders dated 29.12.2003 to the extent of refusing to restore the Club Membership in favour of the petitioners and the matter is remanded back to the appellate authority for fresh consideration on the aspect of Club Membership alone after giving notice and opportunity of hearing to the petitioners. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 31.12.2014
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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Date: 31.12.2014

K.Virupakshi Petitioner in W.P.No.15408 of 2004

K.Venkateshwarlu & others. Petitioners in W.P.No.15409 of 2004

G.Khader Saheb & others Petitioners in W.P.No.15875 of 2004

And

Life Insurance Corporation of India,
represented by Chairman, LIC of India,
Central Office, Mumbai & others.

Respondents in all the W.P.s.