IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 21/07/2015

DATED:10/08/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.10287 of 2011

M.Munusamy ...Petitioner

Vs.

1. The Presiding Officer,
   Central Government Industrial Tribunal cum Labour Court,
   1st Floor, 'B' Wing,
   No.26, Haddows Road,
   Shastri Bhavan, Chennai - 600 006.

2. The Senior Divisional Manager,
   Life Insurance Corporation of India,
   Chennai Division - I,
   No.102, Anna Salai,
   Chennai - 600 002. ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the concerned records from the first respondent, quash the award passed by the first respondent dated 21.01.2011 in I.D.No.16 of 2010 and consequently direct the second respondent to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

For Petitioner : Mrs.R.Maheswari

For Respondents : Mr.V.Parthiban for R-2
Tribunal (R-1)

O R D E R

The petitioner, viz., A.Munusamy, an agent under second respondent with effect from 1988 and appointed as Development Officer in 1995 at Chengalpet Branch Office was alleged of having introduced two proposals on the life of one Mr.Ravindran on 30.03.2002 through Agent T.Sivaraman and A.Thirunavukarasu culminating in policy Nos.713510618 and 713510617 while R.Ravindran had died on 20.10.2001; that he had given his addresses in both the policies; that he had given moral hazard report in respect of the identity of the insurer; that he attempted to revive the policies relating to R.Ravindran on 04.07.2002 by witnessing declaration of good health of deceased Ravindran and that he attempted to derive fraudulent benefits influencing the agents and to collude. Due to his fraudulent act, he was suspended on 14.08.2004. To show cause notice dated 24.08.2004, he gave explanation denying the allegations. He was charge sheeted on 07.01.2005 to which also he gave explanation. After a farce enquiry, a report was drawn to which, he offered comments being perverse. Show cause notice dated 17.04.2006 was issued proposing punishment of removal. He replied on 27.04.2006 disowning liability to be punished but punishment was imposed on 30.06.2006. Appeal was rejected on 16.08.2006 in a summary manner. A memorial before the Chairman was also rejected on 05.06.2007. The two policies were canvassed and introduced by agents T.Sivaraman and A.Thirunavukarasu. The agents had completed the medical examination of R.Ravindran on 30.02.2002 through Dr.Anand and had handed over the proposal and he countersigned the Agent Confidential Report. The petitioner acted bonafidely on the basis of representation of the Agents. LIC had obtained letter to the effect that the proposals were not canvassed by the agents and thereafter introduced to the petitioner. It also availed the services of the agents against the petitioner which is foisted, showing hollowness of the charges. Agent Sivaraman had given false evidence as could be found established in the enquiry and also that he knew R.Ravindran. The Agent Tirunavukarasu had been doing the agency work through his father himself not knowing the rules. No credence can be given to his evidence also. Tirunavukarasu attested the Agent Confidential Report. Petitioner had only witnessed the signature of the person who gave the policies to the petitioner's agent with no malafide intention. It was out of good faith placed on the agent. It was the agents who were to be proceeded against. The petitioner had been developing the business year to year with 42 agents canvassing the business under him. Proposals in respect of a dead person were not within his knowledge. The finding is without evidence only relying on witnesses, parties to the fraud. The enquiry is a farce and in violation of principles of natural justice. The punishment is totally unjustified and grossly illegal.

There is no loss to the Corporation nor gain to the petitioner. The punishment is grossly disproportionate and is liable to be interfered with under Section 11A of the ID Act. He has not been gainfully employed now. The complainant Jayanthi is not a witness. It deliberately misdirected the Tribunal that the nature of job of the petitioner was supervisory not coming within the definition of workman as held by the Hon'ble Supreme Court.

2. The respondents / Management have filed a counter statement and resisted the said case. Mrs.Jayanthi, wife of Late R.Ravindran gave a complaint alleging the petitioner to have arranged for issuing policies in the name of her deceased husband. It is on the basis of two moral hazard reports certified by the petitioner as to satisfaction about the identity of the parties and on the basis of independent enquiries that the two proposals were completed under Policy No.713510618, the BOC Nos.13827, dated 30.03.2002 and BOC No.9584 dated 31.01.2002 in the names of Sri Sivaraman and Munusamy. The petitioner's policy was adjusted, towards the first premium. He was informed to have acted prejudicially to good conduct and to have committed breach of Regulation 21 and 24 read with Regulation-39(1) of LIC of India (Staff Regulations, 1960). The Agent Tirunavukarasu gave evidence that he has not canvassed or signed in the Agent's Confidential Report. The signature was found not to tally as deposed by him. Agent Sivaraman signed in the proposal and ACR at the instance of the petitioner but not in the medical report. He also did not accompany the life assured person for medical examination. His signature in the medical report also did not tally, which findings were not contested by the petitioner. Agents were not examined as Corporation witnesses. His malafide intention to defraud the Corporation is evident. He was given full opportunity in the enquiry. There is no violation of principles of natural justice. The punishment is not disproportionate. He being a Supervisory Officer on the Agent is not a workman under the ID Act. ID Act and will not prevail upon provisions of LIC. The claim has to be dismissed.

3. After considering both sides averments, the Tribunal had framed two issues, viz.,

> "(i) Whether the removal of Munusamy from service of the LIC is legal and justified?
>
> (ii) To what relief the concerned workman is entitled?"

4. On the side of the petitioner 17 exhibits were marked, as Ex.W1 to Ex.W17, viz., Ex.W1-order of suspension dated 14.08.2004, Ex.W2-show cause notice dated 24.08.2004, Ex.W3-Reply to show cause notice dated 14.09.2004, Ex.W4-charge sheet, dated 07.01.2005, Ex.W5-reply to charge sheet dated 15.02.2005, Ex.W6-written submission of petitioner dated 17.01.2006, Ex.W7-letter enclosed with enquiry report dated 02.02.2006, Ex.W8-comments of the petitioner on the enquiry report dated 09.02.2006, Ex.W9-second show cause notice dated 17.04.2006, Ex.W10-reply to second show cause notice dated 27.04.2006, Ex.W11-Order of the Disciplinary Authority dated 30.06.2006, Ex.W12-Appeal filed by the petitioner dated 16.08.2006, Ex.W13-Order of the Appellate Authority dated 11.12.2006, Ex.W14-Memorial filed by the petitioner dated 18.01.2007, Ex.W15-Order passed on memorial dated 05.06.2007, Ex.W16-enquiry proceedings, Ex.W17-Documents marked in the enquiry. On the side of the Management, one document viz., Disciplinary Proceedings brief report and findings was marked as Ex.M1, dated 12.12.2005.

5. The Tribunal, on opining that the signature of one agent is obviously forged while the signature of the other was managed to be obtained by the petitioner, held that the petitioner had the intention to commit misconduct. Further, the Tribunal opined that the non-examination of Jayanthi, the complainant is not materially causing prejudice either to Management or to the petitioner in that document themselves constitute the best evidence possible. Hence, the Tribunal held that the petitioner is guilty of proved charges held in an enquiry and confirmed the punishment imposed on the petitioner.

6. Aggrieved by the order passed by the Tribunal, the petitioner has filed the above writ petition.

7.The highly competent counsel Mrs.R.Maheswari appearing for the petitioner submits that the Management arbitrarily suspended the petitioner on 14.08.2004. Thereafter, the Management had issued a show cause notice dated 24.08.2004. The petitioner / employee had submitted his explanation denying the allegations by way of written submission. Subsequently, the Management served a charge sheet on the petitioner on 07.01.2005 to which also the petitioner submitted a detailed explanation, this was not well considered by the Management and consequently removed him from service. Thereafter, Departmental / Administrative Appeal has been filed and the same was rejected. The petitioner acted with bonafide intention on the basis of representation of the agents, viz., T.Sivaraman and A.Thirunavukarasu. The Management had obtained a letter from the agents stating that the proposals were not canvassed by the agents and thereafter, introduced to the petitioner and as such, the services of the agents are against the petitioner. The Agents viz., Sivaraman and A.Thirunavukarasu had participated in the domestic enquiry, but their evidence is inconsistent. She further submits that the petitioner had not received any personal gain regarding the policy and in the said transaction no loss has been incurred by the Corporation. During the domestic enquiry, the complainant was jointly not examined. The learned Tribunal had framed two issues, but both the issues had not been decided on merits. Further, there is a dispute on the signature for which, no opinion was obtained from the Forensic Department. Therefore, the impugned order of the Tribunal is not maintainable.

8. The highly competent counsel appearing for the petitioner further submits that the first respondent Tribunal ought to have held that the Enquiry Officer ought to have not relied upon the evidence of the three witnesses examined on the side of the Management, for the simple reason that they were the actual persons who had tried to play fraud on the Corporation. Consequently, the first respondent Tribunal ought to have held that in the absence of any evidence against the petitioner, the charges are not proved. The highly competent counsel further submits that the first respondent Tribunal ought to have held that finding of the Enquiry Officer had been accepted by the Disciplinary Authority in a mechanical manner and the punishment of removal had been imposed. The highly competent counsel further submits that the first respondent Tribunal erred in holding that the policies were not proposed by the agents, when the proposal of the policy had the signature of the agents. She further submits that without any forensic report / handwriting expert opinion, the first respondent Tribunal held without any basis as if the signature of one of the agent was forged. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

9. The highly competent counsel Mr.V.Parthiban appearing for the second respondent submits that the petitioner being a Supervisory Officer on the Agent is not a workman under the ID Act. ID Act. The policy is revived after two years giving a declaration certifying good health of the proposer which is with clear intention to defraud. It is a preplanned fraud on the part of the petitioner. The petitioner has attested the certificate of Ravindran. One of the nominee for the policies is the daughter of the petitioner's driver. The highly competent counsel further submits that the petitioner had acted with fraudulent intention to cheat the LIC to receive for himself wrongful gain and the same was proved at the time of conducting domestic enquiry. Therefore, the highest punishment was imposed on the petitioner as he had committed a dishonest act. The first premium paid by way of cheque

was issued in the name of the petitioner. The signature of the life assured is also a forged one.. Therefore, the Tribunal appropriately confirmed the dismissal order passed by the employer.

10. The highly competent counsel appearing for the second respondent further submits that the findings have been extracted from the Tribunal on the basis of substantial document, which is of paramount importance. The Management had not committed any bias or arbitrary action in an alleged manner in order to punish the petitioner. The highly competent counsel further submits that during the domestic enquiry, it was proved that the two policies were completed under the organization of the petitioner. As per the statement of the complainant, viz., Jayanthi, the said Ravindran had expired on 28.10.2001, but the policies were introduced on 30.03.2002, which clearly proves that the petitioner has committed an act of fraud. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

11. From the above discussion, this Court is of the view that:-

(i) On the side of the Management the nominee i.e., the daughter of the petitioner's driver was not examined before the Tribunal to prove the alleged act of fraud committed by the petitioner.

(ii) On the side of the Management, the mode of payment and payment particulars pertaining to the premium on the policy Nos.713510618 and 713510617 were not marked before the Tribunal, which are related documents to prove the alleged act of fraud committed by the petitioner and as such, there is a lacuna in the impugned order.

(iii) The complainant had not lodged any criminal complaint before the Competent Police Officer regarding the alleged fraud committed by the petitioner. Likewise, the Management, which is also equally responsible to level a similar complaint before the Competent Police Officer regarding the serious offence of alleged dishonesty of the petitioner, has not done the same. Therefore, there is a lapse and shortcomings on the side of the Management. Hence, the impugned order passed by the Divisional Office / Disciplinary Authority is not sustainable under law and as such, the Management's impugned order is not fit to be operated upon any further against the petitioner herein.

(iv) As per the statement of the Management, the daughter of the petitioner's driver is alleged to have been the nominee in the said policy. However, she has not been examined to prove that she had come forward to claim any monetary benefits on the said policy. As such, the main witness to prove the said allegation has not been examined. Therefore, there is a shortcoming in the impugned order passed by the Management and also the impugned order being passed by the Tribunal.

(v) The allegation regarding fraud had been levelled against the petitioner, but the same was not perpetrated and as such, the petitioner does not come in the domain of fraud. Further, no loss has been incurred by the LIC. Therefore, the question of alleged fraud does not arise in the instant case.

12. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, besides the views expressed by this Court as (i) to (v), this Court allows the above writ petition. Consequently, the award passed by the first respondent in I.D.No.16 of 2010, dated 21.01.2011 is quashed. Further, this Court directs the second respondent herein to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits within a period of eight weeks from the date of receipt of a copy of this order. If the second respondent is not satisfied with this Court's order, he is at liberty to file an appeal only after making payment of 50% back wages to the petitioner from the date of dismissal of the petitioner from service till his reinstatement into his original employed position. There is no order as to costs.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
   Central Government Industrial Tribunal cum Labour Court,
   1st Floor, 'B' Wing,
   No.26, Haddows Road,
   Shastri Bhavan, Chennai - 600 006.

2. The Senior Divisional Manager,
   Life Insurance Corporation of India,
   Chennai Division - I,
   No.102, Anna Salai,
   Chennai - 600 002.

1 CC to Mrs.R.Maheswari, Advocate SR.No. 41293

W.P.No.10287 of 2011

BVR (CO)
PSI (10.08.2015)