

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.09.2015

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.A.Nos.1120 and 1121 of 2015
M.P.Nos.1 and 1 of 2015

1. The Executive Director (Personnel),
Life Insurance Corporation of India,
5th Floor, West Wing,
Personnel Department, Yogakshema,
Jeevan Bima Marg, Mumbai 400 021.
 2. The Zonal Manager,
Life Insurance Corporation of India,
LIC Building, Anna Salai,
Chennai 600 002.
 3. The Chief Manager,
Life Insurance Corporation of India,
Bye-Pass Road, Hosur 635 100. ... Appellants in both W.As./
Respondents
- vs.
- C.Ramamurthy ... Respondent in W.A.1120/15/
Petitioner
- H.Manjunatha ... Respondent in W.A.1121/15
Petitioner

Writ Appeals are filed under Clause 15 of Letters Patent, against the orders, dated 30.03.2015, made in W.P.Nos.17126 and 17127 of 2012.

W.P.No2.17126 & 171270 of 2012: Petitions under Article 226 of the constitution of India, to issue a writ in the nature of pedaration declare the action of the respondents in not calling the petitioner for the written examination on 26.6.2011 pursuant to the application dated 30.5.2011 for the post of Peon and ultimately denying employment orally from 1.3.2012 as illegal and consequently direct the respondents to hold written examination and interview for the petitioner to the post of Peon in the available vacancy and consider the appointment of the petitioner in the post of Peon.

For Appellants

: Mr.V.Parthiban

For Respondents

: Mr.Balan Haridas

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR,J)

Life Insurance Corporation of India (in short "LIC"), represented its Executive Director, Mumbai and two others, have challenged the orders of the learned single Judge, made in W.P.Nos.17126 and 17127 of 2012, dated 30.03.2015, by which, a Mandamus has been issued, directing the LIC of India, Chennai, to consider the case of the petitioners, for absorption, in the light of the certificate, dated 24.06.2011, issued by LIC, Salem Division, indicating that the petitioners/respondents had worked for a period more than five years. The Writ Court has further directed that the writ petitioners should also undergo the written test, as specified in the notification issued for absorption.

2. Facts deduced from the materials on record, are as follows:

The writ petitioners/respondents in both the appeals, have passed SSLC and joined LIC as temporary sub-staff in Hosur Branch in the years 2002 and 2000 respectively. They were paid salary on monthly basis. LIC has formulated a scheme, for absorption of Class IV employees. As per the scheme, temporary employees working in the Corporation, for more than five years and possess minimum eligible qualification and age, are eligible for consideration. For the purpose of selection, the LIC has to hold a limited written examination in the vernacular language with limited syllabus. Successful shortlisted candidates would be called for interview and those, who also successful in the interview, would be appointed. The scheme had been recorded by the Hon'ble Supreme Court in Civil Appeal Nos.953-968 of 2005, dated 18.01.2011. In this regard, the Executive Director, LIC, Mumbai, has issued a circular, dated 27.05.2011.

3. It is the case of the respondents in both the appeals that pursuant to the scheme, they made applications for the post of Peon on 30.05.2011. Along with the said applications, they have also submitted proof of temporary employment certificates for 5 years and 9 months, issued by the Chief Manager, Hosur Branch of the Corporation. Though the respondents have submitted their respective applications for the post of Peon, the appellants have not called them for written examination and for other processes, in appointing them, to the said post. Interview was conducted on 26.06.2011. Prior to the same, vide letter, dated 23.06.2011, the respondents have requested the Chief Manager, LIC, Hosur Branch, 3rd appellant herein, to forward their names to take up the written examination.

4. It is grievance of the respondents in both the appeals that though they had worked for 10 years, without any blemish, the Chief Manager, LIC, Hosur, has given them separate certificates, as if they had worked only for 5 years and 9 months, ie., from 01.04.2005 to 22.11.2011 and from 01.04.2005 to 18.11.2011

respectively, and that the earlier period, has been omitted to be taken into consideration, while calculating the total temporary length of service, rendered by them. In any event, as per the scheme, they had required five years of service, for being considered to the post of peon.

5. Before the writ Court, the respondents in both the appeals have further contended that in respect of the period from the years 2002 and 2000 respectively, to March 2005, the appellants- Corporation have paid wages to them, under fictitious names, to suit its convenience. With the above averments, the respondents have sought for a Writ of Declaration, declaring the action of the appellants, in not calling them, for the written examination held on 26.06.2011, pursuant to their application, dated 30.05.2011, for the post of peon, as illegal and consequently, denial of employment, orally from 01.03.2012, as illegal (in respect of W.P.No.17126 of 2012) and consequently, in both the writ petitions, prayed for a direction to the appellants to hold a written examination and interview for the respondents, in the post of peon in the available vacancies and consider their case, for appointment in the post of Peon.

6. Before the Writ Court, the appellants in their counter affidavit, has submitted that in Civil Appeal 953 to 968, in the matter of D.V.Anil Kumar v. LIC of India, vide order, dated 18.01.2011, the Hon'ble Apex Court, as one time measure, has directed to recruit all the eligible temporary Class IV employees, working in LIC of India, for more than five years, as on 18.01.2011 and who had possessed the minimum eligible qualification and satisfied the age, at the relevant time of their entry into LIC of India, by holding a limited written examination, which would be in vernacular language with a limited syllabus to be announced in advance. The Apex Court was further directed that the successful shortlisted candidates should be called for interview and such of those persons, who shall be successful, in the interview, should be initially appointed and posted anywhere in the respective zone. Pursuant to the directions of the Hon'ble Supreme Court, notice of employment, dated 20.05.2011, has been issued, inviting applications from all the eligible temporary employees in Class IV Cadre, who satisfied the following conditions,

"All temporary class IV employees working in LIC of India for more than five years as on 18.01.2011 and who possessed minimum eligible qualification (pass in Standard IX) and age as prescribed by LIC of India in its Recruitment Rules/Instructions at the relevant time of their entry into LIC of India."

Employment notice further provided for relaxation of upper age limit, subject to the condition that the candidate should not have crossed the age of superannuation of 60 years on the date of his/her appointment, if selected. It is also notified that those who are satisfied the eligibility condition of working for 5 years, as on 18.01.2011, would not be considered for selection.

7. Before the Writ Court, the appellants-LIC has further contended that pursuant to the employment notice, dated 20.05.2011, applications, dated 30.05.2011, were received from the writ petitioners. Though a temporary employment certificate was issued by the Chief Manager, Hosur Branch, where the petitioner were stated to be engaged, as per the information received from Salem Division, the petitioner in W.P.No.17126 of 2012, had drawn wages, only for a period of four years, two months and 20 days and the petitioner in W.P.No.17127 of 2012, had worked for two years, nine months and 2 days, during the period of intermittent engagement from 01.04.2005 to 18.01.2011, as evidenced by the entries in the sub-ledger maintained in Salem Division. Thus, concluding that the petitioners did not satisfy the conditions of five years, as on 18.01.2011, LIC has submitted that they were not considered for appointment and thus, allowed to participate in the written examination held on 26.06.2011. For the abovesaid reasons, the appellant has prayed for dismissal of both the writ petitions.

8. After considering the material on record, arguments advanced on the either side, upholding the engagement of the writ petitioners/respondents for a period of five years and nine months, vide separate orders, dated 30.03.2015, in W.P.Nos.17126 and 17127 of 2012, the Writ Court, at Paragraphs 5 and 6 (in the same words), ordered as follows:

"5. There is no dispute that the scheme framed by the respondents for absorption of temporary staff contained a condition that the appointee should have worked for a minimum period of five years. The petitioner has produced a certificate, dated 24.06.2011, issued by the Life Insurance Corporation of India, Salem Division, indicating that he has worked for a period of five years nine months. The petitioner is therefore perfectly correct in his contention that he is eligible to write the examination for absorption in Life Insurance Corporation of India. I am therefore of the view that appropriate direction should be issued to the second respondent to conduct written test in accordance with the Regulations for the purpose of considering the suitability of the petitioner for absorption, taking into account the certificate, dated 24.06.2011.

6. In the result, a writ in the nature of the writ of Mandamus is issued, directing the second respondent to consider the case of the petitioner for absorption in the light of the certificate dated 24.06.2011. It is needless to point out that the petitioner should also undergo the written test as specified in the notification issued for absorption. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order."

9. Though Mr.V.Parthiban, learned counsel for LIC of India, assailed the correctness of the abovesaid order, on the grounds, inter alia, that the Writ Court has erred in issuing the abovesaid

directions, when the factum of employment of the respondents in both the appeals was not reflected in the entries, in the sub-ledger of Salem division and further contended that the employment certificate issued by the Chief Manager, Hosur Branch, ought to have been accepted, as the sole criteria for accepting the period of employment and that the same required corroboration of any other documents, in the concerned branch, this Court is not inclined to accept the said contentions, for the reason that the certificate, dated 24.06.2011, issued by the Chief Manager, Hosur, to the effect that the writ petitioners/respondents were employed as temporary employees in LIC of India, from 01.04.2005 to to 22.11.2011 and from 01.04.2005 to 18.11.2011, respectively, for a period of five years and nine months, cannot simply be rejected on the ground that no corresponding records were maintained in Salem Division or for the matter that, no entries were made in the sub-ledger in Salem Division. Employment Certificates, dated 24.06.2011, in respect of the writ petitioners, are extracted hereunder:

APPOINTMENT OF PEONS AS PER SUPREMENT COURT ORDER DATED
18.01.2011

PROOF OF TEMPORARY EMPLOYMENT CERTIFICATE

1. Name of the candidate : Sri.C.Ramamurthy
2. Name of the candidate's father name : M.Chinna Krishnan
3. Date of Birth (dd/mm/yyyy) : 17.04.1984
4. Duration of employment as Temporary Employee in LIC : 5 years 9 months
5. (records available from 04/05)
6. Period of employment as : From 01.04.05 to 22.01.2011
Temporary Employee in LIC (Period 5 yrs. and nine months)
7. Whether candidate was in employment in LIC on 18.1.11
(Yes/No) : Yes
(a) Brief Reasons : Yes

(b) Last Day in Office before 18.01.2011 and :

(c) First Day in Office after 18.01.2011 :

8. Documents verified to support: (1) Payment Details:
vrs.

the above information (Please (2) Attendance

record, if any:
mark (tick) against the (3) Appointment
Letters, if any:
document (4) Any other record with
details:

Certified that the above information is correct as per
the records available.

Sd/
C.R.Shanthi
S.R.No.545625
for CHIEF MANAGER
HOSUR (72N)
24.06.2011

APPOINTMENT OF PEONS AS PER SUPREMENT COURT ORDER DATED
18.01.2011

PROOF OF TEMPORARY EMPLOYMENT CERTIFICATE

1. Name of the candidate : Sri.H.Manjunatha
2. Name of the candidate's
father name : Hanumanthappa
3. Date of Birth (dd/mm/yyyy) : 20.05.1980
4. Duration of employment as
Temporary Employee in LIC : 5 years 9 months
5. (records available
from 04/05)
6. Period of employment as : From 01.04.05 to
22.01.2011
Temporary Employee in LIC (Period 5 yrs. and
nine months)
7. Whether candidate was in
employment in LIC on 18.1.11
(Yes/No) : Yes
(a) Brief Reasons : Yes
(b) Last Day in Office before
18.01.2011 and :
(c) First Day in Office after
18.01.2011 :
8. Documents verified to support: (1) Payment Details:
vrs.
the above information (Please (2) Attendance
record, if any:

mark (tick) against the
Letters, if any:
document

(3) Appointment

(4) Any other record with
details:

Certified that the above information is correct as per
the records available.

Sd/
C.R.Shanthi
S.R.No.545625
for CHIEF MANAGER
HOSUR (72N)
24.06.2011

10. Bare reading of the entries in the certificate, dated 24.06.2011, shows that for the period of employment of the writ petitioners, as temporary employee in LIC, was from 01.04.2005 to 22.11.2011 and from 01.04.2005 to 18.11.2011, respectively, ie., five years and nine months and that to substantiate the same, records were available as on 01.04.2005 and thus, the Chief Manager, Hosur, has issued the respective certificates to the writ petitioners. Supporting the same, the Chief Manager, Hosur, has also sent two e-mails on 24.06.2011 at 11.45 A.M., to Salem Division, as proof of temporary employment of the writ petitioners/respondents, which reads as follows:

"Madam,

We herewith attach the scanned images of the revised PROOF OF TEMP. EMPLOYMENT CERTIFICATE of Mr.H.Manjunatha & Mr.C.Ramamurthy for doing needful at your end.

We have faxed the same to SDM Sectl. today morning at 11.30 hours.

We have already forwarded the representation letters received from both the applicants through COURIER yesterday addressed to Manager, P & IR, Salem.

Thanking you,
Chief Manager."

11. Receipt of these two documents, have not been denied by the appellants, but their only contention/objection, to the prayer sought for in the writ petitions, is that the records maintained, substantiating the period of temporary employment, donot find place in the entries in the sub-ledger maintained in Salem Division. Merely because, the said Division has failed to make necessary entires, in the sub-ledger, maintained in Salem Division, it cannot be contended that the writ petitioners/respondents were not in employment, between 01.04.2005 and 18/22.01.2011. The crucial date is 18.01.2011. It is evident from the above that without proper verification of the records sent by the Chief Manager, Hosur, appellants have denied an opportunity to the petitioners, to participate in the written examination, conducted on 26.06.2011 and the consequential, interview.

12. The appellants cannot take shelter for not making necessary entries in the sub-ledger. Based on records, the Chief Manager, Hosur, has issued the certificates, dated 24.06.2011 to the writ petitioners/respondents and also sent E-Mails to the Salem Division. The case of the writ petitioners/respondents deserves to be considered on merits. Needless to state that if the Chief Manager, Hosur, had given false certificates, without any supporting document, nothing prevented the appellants, from taking action against the said Chief Manager, Hosur or for that matter, to take action against those responsible in Hosur Division, for not making necessary entries in the sub-ledger, maintained in the said Office. Apparently, LIC has not chosen to do both and therefore, the certificates, dated 24.06.2011, ought to have been given, its due credence, evidencing proof of temporary employment, between 01.04.2005 and 18/22.01.2011.

13. The respondents have passed SSLC. Qualifications for the post of Peon, in LIC, is Standard IX, plus five years of temporary employment, as on 18.01.2011. Both the writ petitioners/respondents have satisfied the eligibility criteria and thus, they are entitled to seek for regular appointment, in the light of the scheme, recorded by the Hon'ble Supreme Court. Denial of participation in the written test and interview, is arbitrary. For the reasons, stated supra, we do not find that there is any material irregularity or illegality, in the order of the Writ Court, impugned in this appeal.

14. Both the Writ Appeals are dismissed. Consequently, there shall be a direction to the appellants to comply with the directions issued by the Writ Court, in both the Writ Petitions, within a period of two months, from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

skm

To

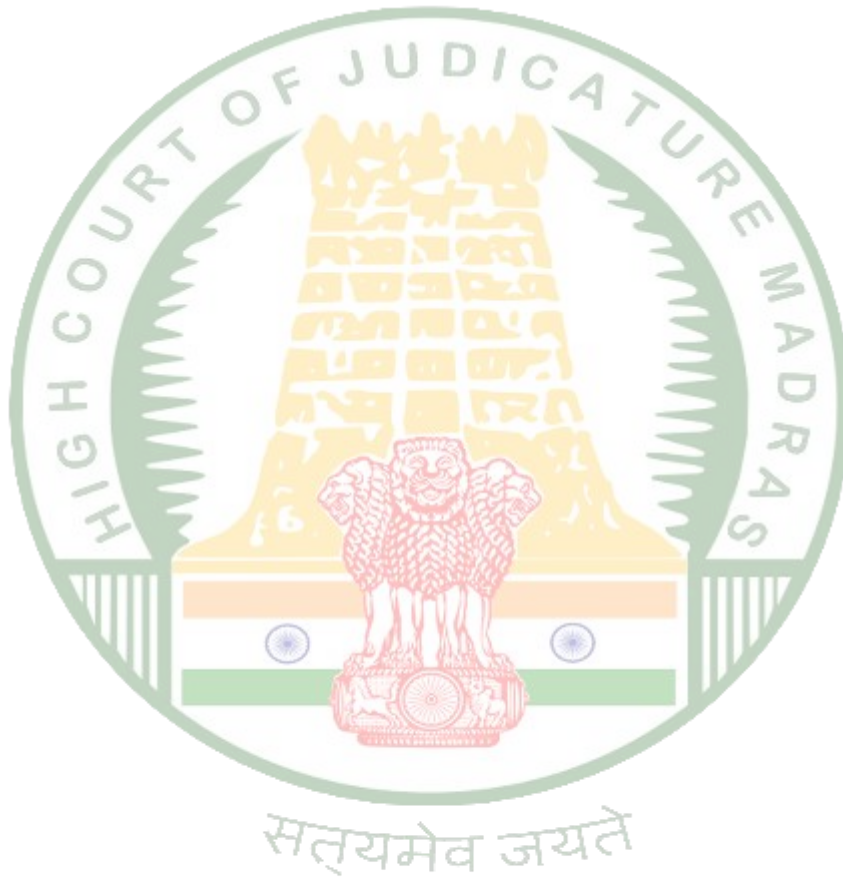
1. The Executive Director (Personnel)
Life Insurance Corporation of India,
5th Floor West Wing, Personal Department,
Yogakshema, Jeevan Bima Marg,
Mumbai - 400 021.
2. The Zonal Manager,
Life Insurance Corporation of India,
LIC Building, Anna Salai, Chennai 600 002.

3. The Chief Manager,
Life Insurance Corporation of India,
Bypass Road,
Hosur - 635 100

+2 ccs to M/s.V.Parthiban, Advocate, sr.47186, 47187
+2 ccs to M/s.Balan Haridas, Advocate, sr.47081, 47082

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