

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2015

CORAM

THE HON'BLE MR.JUSTICE S.MANIKUMAR

and

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1232 of 2015

M.P.No.1 of 2015

The Zonal Manager,
Life Insurance Corporation of India,
Southern Zonal Office,
LIC Building, No.102, Anna Salai,
Chennai 600 002. ... Appellant

vs

S.Srinivasan ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent Act for setting aside the order dated 11.03.2015 made in W.P.No.18767 of 2014. Petition presented Under Article 226 of the Constitution of India, Praying to issue a Writ of Declaration the action of the respondent in not calling the petitioner for written test and interview pursuant to the application dated 01.06.2011 for the post of Peon is illegal, arbitrary and contrary to the Scheme framed and recorded by the Hon'ble Supreme Court in Civil Appeal NO.953-968 of 2005 dated 12.01.2011 and orally denying employment to the petitioner from 01.10.2013 as in violation of Section 25 F of the I.D.Act, 1947 and consequently direct the respondent to call the petitioner for Written test and and all other attendant benefits, cost.

For Appellant ... Mr.C.K.Chandrasekar

For Respondent ... Mr.Balan Haridas

JUDGMENT

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

Challenge in this appeal is, to the order, made in W.P.No.18767 of 2014, dated 11.03.2015, in and by which, a learned single Judge has issued a writ of mandamus, directing the Life Insurance Corporation of

India Limited, Chennai, in short, "LIC", appellant herein, to consider the case of the writ petitioner, for absorption, in the light of the Certificate, dated 05.11.2011, issued by the Senior Branch Manager, CBO-12, Chennai.

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

The writ petitioner/respondent has passed SSLC, and joined LIC, on temporary basis. In the beginning, he was working in City Branch -I. He worked in the said Branch till 2007. Thereafter, he worked in City Branch No.XII, from the year 2007, till 2011, and he was stopped from 01.10.2013. LIC has formulated a scheme, for absorption of Class-IV employees. As per the said scheme, the employees, who worked in LIC for more than five years, as on 18.01.2011 and possess the minimum eligibility qualification, are eligible for absorption. However, for the purpose of selection, LIC has to hold a written examination in vernacular language, with limited syllabus. The successful shortlisted candidates would be called for interview, and, those, who are also successful in the interview, would be appointed. The scheme has been formulated by the Hon'ble Supreme Court in Civil Appeal Nos.953-968/2005, by an order, dated 18.01.2011. In this regard, the Executive Director (Personnel), LIC, Mumbai, has issued a circular, dated 19.05.2011.

3. It is the case of the writ petitioner/respondent, that, pursuant to the scheme, he made an application, dated 01.06.2011, to the post of Peon. The details of his employment were also vouched by the Senior Manager of the City Branch No.XII, and also by the Branch Manager, City Branch No.VII. The application submitted by the writ petitioner/respondent was forwarded on 02.06.2011 by the Branch Manager, City Branch No.VII, to P&IR Department, Divisional Office-II, Chennai-40. Though the writ petitioner/respondent has submitted his application and the Branch Manager concerned has also forwarded the same, he was not called for written examination, but, others were considered.

4. It is the grievance of the writ petitioner/respondent that though he had worked for 8 years continuously and satisfied the eligibility criteria and that service particulars were also forwarded by the Branch Manager concerned, the appellant herein did not consider his candidature. Before the Writ Court, the appellant-LIC, has contended 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 are 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 satisfy the eligibility condition of working for 5 years, as on 18.01.2011, would not be considered for selection.

5. It is the contention of the appellant that pursuant to the employment notice, dated 20.05.2011, applications were received. However, in the case of writ petitioner, the basic condition, viz., "working for more than 5 years as on 18.07.2011", was not satisfied, as there was no documentary evidence, to show that he had worked on daily wages from 12.04.2005. It was also contended that though the writ petitioner had not received the hall ticket for the written test held on 26.06.2011, he had not approached LIC or raised any case, for admission to the written test. It is also contended that though as per the certificate, issued by Mr.S.Gandhi, the then Senior Branch Manager, CBO, Chennai-XII, dated 31.05.2011, has stated that the petitioner has worked from 12.04.2005 to 28.04.2011, as per the records available with LIC, the writ petitioner was working with CBO-I, Chennai, from 30.05.2006, and not in CBO-12, Chennai. He was employed in CBO-12, Chennai, only from 24.08.2007. Appellant has further contended that the Branch Manager is empowered to issue a certificate, only for the period, during which, the employee had worked in that branch alone and therefore, Mr.S.Gandhi, Branch Manager is not competent to issue any certificate, for the person, who has not worked in that branch. Hence, the employment certificate issued by Mr.S.Gandhi, as stated above, can be relied on only, for the period commencing from 28.04.2007. For the abovesaid reasons, the appellant has prayed for dismissal of the writ petition.

6. Refuting the above averments, the writ petitioner, in his reply affidavit, has reiterated, that from 12.04.2005, he was working in Chennai Branch Office No.I, and, thereafter, from 28.04.2007, he was working in Chennai Branch Office No.12. The then Branch Manager, City Branch No.12, Mr.S.Gandhi, after verifying the service rendered by the writ petitioner, in Branch Office No.I, Chennai, issued a temporary employment certificate, wherein, it has been clearly mentioned that the

writ petitioner had worked from 12.04.2005 to 28.04.2011, with a length of service of 5 years 9 months and 6 days. The writ petitioner, in his reply affidavit, has further submitted that in respect of one employee, by name, Mr.Imran, he was initially employed in Mylapore Branch and later on, shifted to City Branch Office No.12. Mr.S.Gandhi, the then Branch Manager, City Branch Office No.12, issued a temporary certificate, after ascertaining the length of service, rendered by Mr.Imran in Mylapore Branch and the said individual was admitted to the written examination, called for interview and thereafter, also appointed. Similarly, one Mr.Janesheswaran, who had worked in City Branch No.12, was transferred to City Branch No.22 and, thereafter, to City Branch No.24. The Branch Manager of City Branch No.24, issued a temporary employment certificate, after ascertaining the length of service put in by Mr.Janesheswaran in City Branch Nos.12 and 22, and on that basis, Mr.Janesheswaran was also appointed. Some other persons, namely, Mr.Basheer and Ms.Rosy, who had worked in City Branch No.3 and not completed 5 years, were also appointed under the scheme. Similarly, in the cases of Mr.Chandru and Mr.Karthik, who had also worked in City Branch No.1 and not completed 5 years, as on 18.07.2011, were also appointed, under the scheme.

7. With the above averments, the writ petitioner has contended that the certificate issued by Mr.S.Gandhi, the then Branch Manager, cannot be ignored, on the grounds of competency, and further added that only after verifying the services rendered by the writ petitioner in other branch office, certificate was issued. He has reiterated that between 12.04.2005 to 28.04.2011, he had worked for 5 years, 9 months and 6 days, and thus, satisfied the requirement, for being considered to the post of Peon in LIC.

8. After considering the material on record and rival submissions, a learned single Judge, vide order, dated 11.03.2015, in W.P.No.18767 of 2014, has held as follows:

"5. There is no dispute that the Scheme framed by the respondent 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 31.05.2011 issued by the Life Insurance Corporation of India, Armenian Street Branch, indicating that he has worked for a period of 5 years 9 months and 6 days. 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 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 31.05.2011.

6. In the result, a writ in the nature of writ of mandamus is issued, directing the respondent to consider the case of the petitioner for absorption in the light of the certificate dated 31.05.2011. 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. Assailing the correctness of the order made in the Writ Petition, Mr.Chandrasekar, learned counsel appearing for the appellant-LIC, reiterated the very same grounds, made before the writ court. In addition to the above, on the basis of an additional affidavit, filed by the Assistant Secretary (L&HPF), LIC, Chennai, and the annexures thereto, learned counsel submitted that the Branch Manager, who had issued the certificate, has not noticed the fact that the writ petitioner had not worked in the said branch for the entire period. However, the Divisional Manager, on verification of records and the details, relating to the engagement of the writ petitioner, has held that the writ petitioner had not worked for 5 years, prior to 18.01.2011. He, therefore, submitted that non-consideration of the writ petitioner to the post was correct. Attention of this Court was also invited to the details appended to the additional affidavit, filed by the Assistant Secretary (L& HPF), LIC, Chennai.

10. Per contra, based on the averments in the reply affidavit to the additional affidavit filed by LIC, Mr. Balan Haridas, learned counsel for the writ petitioner/respondent submitted that the Assistant Secretary and had sworn to the additional affidavit, is an incompetent person, who has no knowledge on the issue, and, therefore, the same has to be ignored. He further submitted that when the Divisional Manager has claimed to have verified the records, he has not chosen to file an affidavit. He has also prayed to reject the annexure to the additional affidavit, filed by the Assistant Secretary.

11. However, taking this Court to the details in the annexure, learned counsel for the writ petitioner, further submitted that the averments in the additional affidavit, filed by LIC, are contrary to the counter affidavit, filed in the writ petition, wherein, earlier, it was claimed that the writ petitioner had worked from 30.05.2006 in City Branch No.I, and, thereafter, in City Branch No.XII, from 24.08.2007, but the annexure does not reflect the period of engagement of the writ petitioner between 2005-2006 and 2006-2007. Thus, pointing out the incongruities and self-contradictory statements made by LIC before the Writ Court and this Court, learned counsel for the writ petitioner has prayed that no credence be given to the additional affidavit and the annexure, thereto. In addition, he also submitted that on 18.06.2011, on behalf of Senior Branch Manager, one Ms.S.S.Geetha, Higher Grade Assistant, CBO-XII, Chennai, had written a letter to the Personnel and Industrial Relations Manager, Personnel & Industrial Relations,

Divisional Office-II, which would show that the latter had received the copy of the voucher, evidencing payment, made to the writ petitioner, in the year 2005. He therefore submitted that the details furnished in the annexure do not reflect proper maintenance of records, for temporary engagements.

Heard the learned counsel for the parties and perused the materials available on record.

12. Certificate issued by Mr.S.Gandhi, Senior Branch Manager, CBO-XII, Chennai, dated 31.05.2011, is extracted hereunder :

APPOINTMENT OF PEONS AS PER SUPREMENT COURT ORDER DATED 18.01.2011

PROOF OF TEMPORARY EMPLOYMENT CERTIFICATE

1. Name of the candidate : Mr.S.Srinivasan
2. Name of the candidate's father name : Mr.T.M.Selvam
3. Date of Birth (dd/mm/yyyy) : 15.01.1974
4. Duration of employment as Temporary Employee in LIC : 5 years 9 months 6 Days
5. Period of employment as Temporary Employee in LIC : From 12.04.05 to 25.02.2011
6. Whether candidate was in employment in LIC on 18.01.2011 (Yes/No), If No, Give : Yes
- (a) Brief Reasons : --
- (b) Last Day in Office before 18.01.2011 and : --
- (c) First Day in Office after 18.01.2011 : --
7. Documents verified to : (1) Payment Details (*)
support the above information (Please mark (tick) against the document (2) Attendance record, if any:
(3) Appointment Letters, if any:

(4) Any other record with details:

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

Sd/
S.Gandhi
S.R.No.6651
Sr. Branch Manager
CBO-12, Chennai-1.
31.05.2011

[(*) connotes Tick]

13. Reading of the above shows that the said Senior Branch Manager, CBO-XII, Chennai, has stated that the writ petitioner was a temporary employee of LIC between 12.04.2005 and 25.02.2011, for a period of 5 years 9 months and 6 days. In his certificate, for Column No.7, documents verified, to support the above information, Mr.S.Gandhi has put a tick mark in Sub-Column No.1, Payment Details. On 02.06.2011, the application of the writ petitioner has been forwarded to P& IR Department, Divisional Office-II, Chennai-40. The Branch Manager has clearly stated that his certificate is based on the available records.

14. As rightly pointed out by Mr.Balan Haridas, learned counsel for the writ petitioner, there is incongruity and contradictory statements in the version of the appellant. Earlier, before the writ Court, the appellant has stated that as per the records available, with the Corporation, the petitioner was working in CBO-I, from 30.05.2006 and not in CBO-12. Thus, there is admission by LIC that records were available, when the counter affidavit was filed before the writ Court. However, in the annexure to the additional affidavit filed in the writ appeal, there are no details of engagement in THE YEAR 2006.

15. Quite contrary to the averments made before the Writ Court, an annexure has been filed before us, indicating that records are not maintained properly. When the appellant has admitted that the writ petitioner had worked in CBO-I, in 2006, as rightly pointed out by the learned counsel for the petitioner, it is not open to the appellant, to contend before this Court that only from 24.08.2007, the writ petitioner has worked in CBO-12.

16. From the pleadings of both the parties, it could be deduced that temporary staff engaged by LIC, have been shifted from one branch office to another, and the branch manager, in which, an employee last worked, had issued certificates enabling the temporary employees, to seek for regular appointment. Thus, Mr.S.Gandhi, Branch Manager, CBO-12, has issued the certificate to the writ petitioner, wherein, he has clearly stated that as per the payment records available, certificate, dated 31.05.2011, has been issued and he has clearly mentioned the period, as five years, nine months and six days.

17. Yet another factor to be seen is that the contention of the writ petitioner that Mr.Imran was initially appointed in Mylapore Branch and later on, shifted to CBO-12, and that Mr.S.Gandhi, the then Branch Manager, after verifying his engagement in Mylore Office, had issued a certificate and which was acted upon, has not been denied by the appellant. Equally, in the case of Mr.Janesheswaran, he was stated to have been employed in Branch Office No.XII and thereafter, transferred to Branch Office No.XXII and lastly, to Branch Office No.XXIV. The Branch Manager, CBO No.XXIV, the place, where the employee had last worked, has issued the certificate and that Mr.Janesheswaran, has also been considered.

18. Thus, from the above undisputed facts, it is clear that the Branch Managers, in which, the employees last worked, after verifying the previous engagement in other branches, have issued certificates and acted upon. Such being the case, it is not open to the appellant to contend that Mr.S.Gandhi, is not competent to issue any certificate, for the period, for which, the writ petitioner had worked in some other branches. Thus, it is evident that there is a clear discrimination in the case of the writ petitioner.

19. In November, 2014, when the appellant has filed its counter affidavit before the writ Court, the Corporation has contended that the writ petitioner had worked in 2006, but before us, they have turned turtle and state that only from 2007, he was working. Yet another aspect to be considered is that on 18.06.2011, on behalf of the Senior Branch Manager, one Ms.S.S.Geetha, Higher Grade Assistant, CBO-XII, Chennai, in which, the writ petitioner worked, has written a letter to the Personnel and Industrial Relations Manager, Personnel & Industrial Relations, Divisional Office-II. According to the writ petitioner, this letter is in reply to the telephonic information sought for, by the Personnel & Industrial Relations, Divisional Office-II. The contents of the letter is as follows:

"In this regard, with the telephonic information asking the proof of entry of S.Srinivas, temp. sub. Staff, we herewith send the xerox copy of the voucher paid to him in 2005. Kindly to the needful."

20. Though the appellant, in its additional affidavit, has stated that records are available only from 2007, from the abovesaid letter, it could be further deduced that while considering the candidature of the writ petitioner, the Personnel & Industrial Relations Department, seemed to have checked up with CBO-12. The test was on 26.06.2011. From the materials culled out, it is evident that the concerned Branch Manager, CBO-12, after verifying the records, has issued a Certificate, dated 31.05.2011 and the the same has not been acted upon, as done in the case of others.

21. As observed supra, the annexure does not reflect the facts and it varies even from the counter affidavit filed before the writ Court. Receipt of the Certificate, dated 31.05.2011 and the letter, dated 18.06.2011, have not been disputed. 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, do not find place in the entries maintained in the Divisional Office. Merely because, the Divisional Office has failed to maintain necessary records, it cannot be contended that the writ petitioner/respondent was not in employment, between 12.04.2005 and 28.04.2011. The crucial date is 18.01.2011. It is evident that the respondent has been denied of an opportunity, to participate in the written examination, conducted on 26.06.2011 and the consequential, interview.

22. Based on the records, viz., payment details, the Senior Branch Manager, CBO-12, has issued the certificate, dated 31.05.2011 to the writ petitioner/respondent and subsequently, it has been verified by the Personnel & Industrial Relations, Divisional Office-II. The case of the writ petitioner/respondent deserves to be considered on merits. Needless to state that if the Senior Branch Manager, CBO-12, had given false certificate, without any supporting document, nothing prevented the appellant, from taking action against the said Senior Branch Manager, CBO-12 or for that matter, to take action against those responsible in the Divisional Office, for not making necessary entries, maintained in the said Office. Apparently, LIC has not chosen to take any action and therefore, the certificate, dated 31.05.2011, ought to have been given, its due credence, evidencing proof of temporary employment, between 12.04.2005 and 28.04.2011.

23. The respondent has passed SSLC. Qualifications for the post of Peon, in LIC, is Standard IX, plus five years of temporary employment, as on 18.01.2011. The writ petitioner/respondent has satisfied the eligibility criteria and thus, he is 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.

24. Hence, the Writ Appeal is dismissed. Consequently, there shall be a direction to the appellant to comply with the directions issued by the Writ Court, in the Writ Petition, within a period of two months, from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed.

skm

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To.

1. The Zonal Manager,
LIC of India, LIC Building
Anna Salai, Chennai - 600 002

+1 C.C. To MR.C.K.Chandrasekar, Advocate in SR.NO.56904

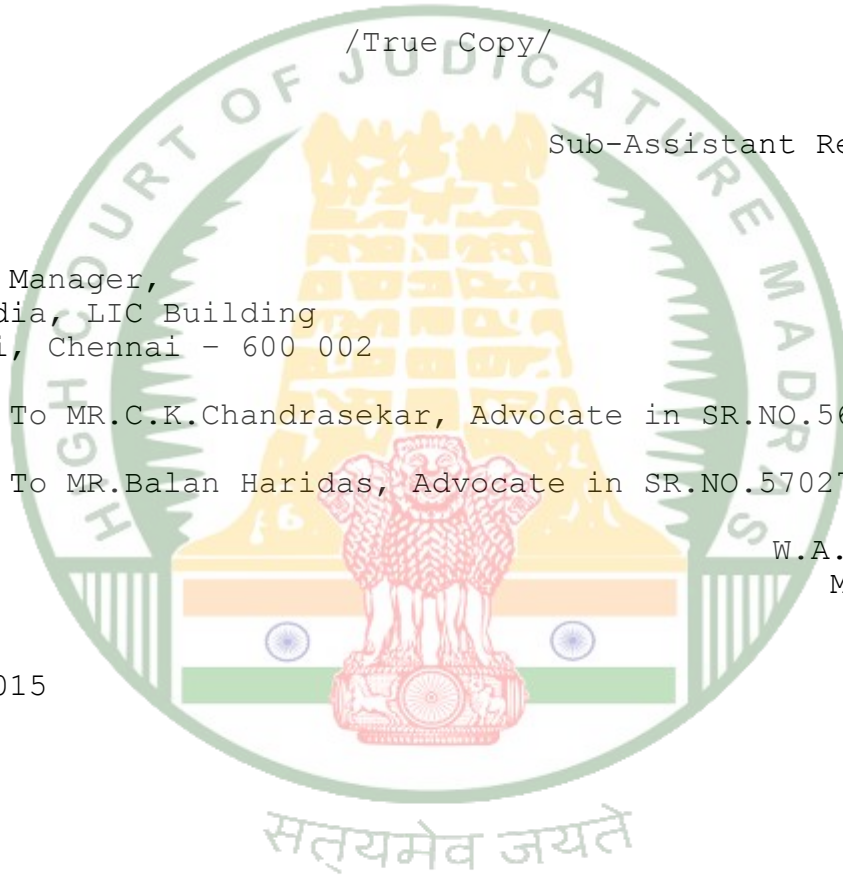
+1 C.C. To MR.Balan Haridas, Advocate in SR.NO.57027

W.A.No.1232 of 2015

M.P.No.1 of 2015

KSJ(CO)

sd : 19/10/2015



WEB COPY