THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 7182 OF 2015

O R D E R:

The petitioner, who is employed as an Assistant with the Life Insurance Corporation of India (for short, 'the Corporation), sought for a writ of mandamus for declaring the action of the respondents in proceeding with the recovery of the amount of Rs.73,361/- in furtherance of the penalty order dated 29.12.2014 passed by the Senior Divisional Manager, Life Insurance Corporation of India, Warangal Division in spite of the pendency of the Appeal preferred there against on 17.01.2015 to the Zonal Manager of the Corporation, Hyderabad, as bad in law.

The facts relevant for the present are: one of the mischievous agents of the Corporation at Bhadrachalam has defrauded the Corporation by raising loans on four different policies to little more than Rs.8 lacs. One such policy bearing No. 681935507 was processed by the petitioner, is the allegation levelled against him. On this policy, a loan amount of Rs.2,93,444/- has been fraudulently raised by the agent. When the Corporation realized the mischief, they initiated the disciplinary proceedings against the petitioner for his negligent performance of duties. Those disciplinary proceedings have ultimately ended in an order passed by the Senior Divisional Manager-cum-Disciplinary Authority of the Corporation at Warangal on 29.12.2014 by imposing on the petitioner the punishment of recovery of loss apportioned in a sum of Rs.73,361/- and he was also warned to be more careful so as to avoid recurrence of such irregularities in future. Against this order of punishment, the petitioner appears to have preferred an Appeal to the Zonal Manager of the Corporation at Hyderabad on 17.01.2015. It is stated that the said Appeal is still pending. However, in the meantime, by a communication dated 16.02.2015, the Corporation has indicated that the recovery proceedings will commence by recovering a sum of Rs.5,000/- per month from the salary and allowances payable to the petitioner. That prompted the present Writ Petition.

Heard Sri P. Prabhakar Reddy, learned counsel for the petitioner and Sri Bathula Raj Kiran, learned Standing Counsel for the Corporation.

Sri Prabhakar Reddy would contend that the petitioner is not guilty of any negligence on his part, as alleged. The petitioner has performed his duties diligently,

but yet, due to the fraud played by the agent, the Corporation has sustained loss. Hence, the petitioner has preferred an Appeal to the Appellate Authority immediately against the orders of imposition of punishment and the Appeal is yet to be disposed of. He would submit that the petitioner has got a fair chance to succeed in the Appeal and even before the Appeal is taken up for disposal, if recovery is to be affected, his right to Appeal would become an empty formality.

Whereas, Sri Raj Kiran, learned Standing Counsel would contend that it is open to the petitioner to have moved the Appellate Authority seeking interim stay of recovery of the penalty amount pending Appeal and the Appellate Authority would have applied his mind and made an assessment about the balance of convenience lying in between the petitioner on the one hand and the Corporation on the other. Since the petitioner has not moved any such Interlocutory Application, the Corporation cannot be faulted for affecting the recovery on monthly installment basis.

As it is too well-known, fraud succeeds proportionately to the quantum of human ingenuity deployed. It may not be always easy to detect the fraudulent intentions of the parties, who seek to perpetrate. Some times fraud gets detected by the vigilance exercised later on. Therefore, some precious time may have elapsed in the process. If the petitioner as an employee of the Corporation has taken all necessary and appropriate precautions, while performing his duties, his inability to detect fraud or suspect the intentions of the trickster at the very beginning may not necessarily lead to the conclusion of negligence on his part. Negligence of performance of duties has got to be tested on the touchstone of the average care and caution that is required to be deployed by a responsible employee. There cannot be any absolute standard that can be drawn for the purpose of comparison. It all depends upon the facts and circumstances. Therefore, I am sure the Appellate Authority will bear these aspects of the matter in mind while dealing with the Appeal said to have been preferred by the petitioner on 17.01.2015.

Since the loss suffered by the Corporation is sought to be recovered from the petitioner proportionately, it is only appropriate that the Appeal should be heard and decided as expeditiously as is possible, preferably within a period of three months from the date of receipt of a copy of this order. Any recoveries affected, in the meantime, will abide by the result in the Appeal.

With this, the Writ Petition stands disposed of. No costs.

At this stage, the learned Standing Counsel enters a caveat that in case the Divisional Manager does not decide the Appeal, in the meantime, he shall not be proceeded against for contempt of Court action. I assure the learned Standing Counsel that should the Divisional Manager deliberately, willfully and wantonly disobey this order, he will be treated strictly in accordance with law.

The miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

20th March 2015

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