IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.5910 of 2014
Date of decision: 23.09.2015

Lachhmi Chand

... Petitioner

Versus

Life Insurance Corporation of India and others

... Respondents

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. B.S. Patwalia, Advocate,
for the petitioner.

Mr. Piyush Sharma, Advocate,
for the respondents.

AMOL RATTAN SINGH, J.

The petitioner seeks quashing of the orders dated 30.03.2010, 20.09.2010 and 13.04.2011 (Annexures P-9, P-11 and P-13, respectively), by the first of which he was imposed a punishment of reduction by three stages in the time scale applicable to him. The 2nd and 3rd order impugned, were passed on an appeal and a memorial filed by him before respondents No. 2 and 1 respectively, dismissing such appeal and memorial.

A charge-sheet was issued to him levelling the following charges:-

> "1. That you issued a cheque No.061236 dated 16.05.2006 for Rs.74,076/- to meet the audit recovery when sufficient balance was not there in your account. This cheque was sent for collection by BO on 18.05.2006 but

it was returned by UTI Bank with the remarks "Insufficient funds". Thus you did not take appropriate steps for its clearance even after its issuance.

2. Vide your letter dated Nil addressed to the Branch Manager, Nabha you requested for refund of the sum of Rs.74,076/- earlier deposited by you so as to meet audit recovery, fully knowing that cheque issued by you in relation to the audit recovery had not been cleared from your bank account and also that credit of SSS premium had already been duly allowed to you. By seeking such refund, you acted fraudulently and gained yourself unduly at the cost of Corporation. By this process, you also attempted to avoid the audit recovery and thus benefited yourself to the detriment of Corporation's interest."

His reply not having been found satisfactory, the matter was enquired into, and with the enquiry officer having found the petitioner guilty of the aforesaid services, he was asked to submit his comments on the findings, with such comments having been furnished by him.

However, agreeing with the findings, the punishing authority (respondent no.3) issued him a show cause notice proposing the imposition of the aforesaid punishment, to which the petitioner again replied, but not convinced with the same, the punishment was imposed upon him on 30.03.2010.

2. Mr. Patwalia, learned senior counsel appearing for the petitioner, submitted that, as a matter of fact, the first charge was wholly unfounded because the petitioner had actually told his Branch Manager while submitting his cheque dated 16.05.2006, that he did not have the amount in his account and would come by it in a few days and as such, the cheque be not presented till 20.05.2006. However, the cheque having been

presented on 18.05.2006, it was dishonored, after which the petitioner deposited the required amount of Rs.74,076/-, in his account and thereafter, the amount was duly withdrawn, upon the cheque having been presented again.

Thus, learned Senior Counsel submitted, that the first charge was wholly unwarranted.

As regards the second charge, Mr. Patwalia submitted that the petitioner cannot be blamed for seeking the refund of the aforesaid amount of Rs.74,076/-, which was also duly given to him by his immediate superior and therefore, this charge also is wholly unwarranted.

3. Mr. Piyush Sharma, learned counsel for the respondent Corporation, on the other hand, pointed to the reply filed by the respondents, to the writ petition. He submitted that, as a matter of fact, the amount of Rs.74,076/- was actually first given to the petitioner on 17.11.2005, by way of an incentive in respect of work stated to have been done by him, but the said incentive was disallowed by the audit team in its report for the year 2006-07 and as such, the petitioner was asked to refund the same.

Though the petitioner had issued the cheque bearing No.061236, knowing that there were insufficient funds in his account, he subsequently approached his Branch Manager to refund the said amount, without actually having paid it back. The Branch Manager allowed his request and, factually, the amount that was deposited in the petitioners' account on 19.06.2006 (after the cheque had been dishonored on 18.06.2006), was a deposit made not by the petitioner but by the Corporation, pursuant to the request of the petitioner for refund of the amount.

Thus, as a matter of fact, without even having given the amount back to the Corporation, at any stage, the petitioner again got the said amount “refunded” to his account. Hence, as on 19.06.2006, the petitioner had actually been paid a sum of Rs.1,48,152/-, i.e. double the sum of Rs.74,076/-.

Therefore, when the cheque issued by him was encashed on 22.06.2007, what came back to the Corporation was Rs.74,076/- with another amount of Rs.74,076/- still remaining with the petitioner.

That amount was eventually paid back by him in two installments, in the year 2007. Hence, learned counsel for the respondents submitted, that the petitioner actually behaved in a rather cunning manner, and got his Branch Manager to refund an amount to him, which he himself had not refunded to the Corporation despite being told to do so and despite having issued a cheque for that amount (Rs.74,076/-).

4. In view of the above, Mr. Sharma submitted that the petitioner deserves no sympathy and, as a matter of fact, the punishment of reduction of three stages in his pay scale, was less than the punishment that he actually deserves.

5. Mr. Sharma next submitted that the petitioner has approached this Court, against the order dated 13.04.2011, only in the year 2014, when almost three years had gone by, obviously knowing that there was no merit in his case.

6. In rebuttal, Mr. Patwalia though could not deny the factual position, again reiterated that the petitioner had not acted fraudulently because the incentive given to him was duly sanctioned by his Branch

Manager in the first place and thereafter, with him having been asked to refund the amount, though he had issued the cheque, he had explained to the Manager that the amount was actually due to him and as such, he had been given the said amount again.

He further submitted that in any case, simply on account of a cheque bouncing, once, which he made good within four days, i.e. by 22.06.2006, the punishment awarded is wholly disproportionate to any offence which may have been committed.

7. Having heard learned counsel for the parties, though Mr. Patwalias' argument, at first blush, does not sound unreasonable, however, whatever be the merits of the incentive falling due or not falling due to the petitioner, which in any case is not detailed in the petition in the petitioners' favour, even otherwise, the fact remains that the petitioner knowing fully well that he had issued a cheque for an amount which was not in his account and more importantly, that he had actually been asked to refund the amount, yet got another amount of Rs.74,076/- deposited in his account before his cheque was re-presented for encashment. Hence, knowing fully well that he had been paid Rs.74,076/- twice, he, giving the Corporation the impression that he was refunding the amount, actually got the said amount deposited again in his account, without the first refund by him having ever taken place. His intention was obviously not bonafide, in any manner.

No doubt, the Branch Manager should also have at least been asked for an explanation by the respondents as to why he allowed the incentive to have been given again, without any verification at all, contrary to the audit report. Yet, that does not detract from the fact that the petitioners' actions were not at all above board.

8. Therefore, keeping in view the above discussion, I find no infirmity in the impugned order, imposing upon the petitioner, a punishment of reduction of pay by three stages.

Consequently, this writ petition is dismissed, with costs of Rs.10,000/-.

23.09.2015 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**