

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 6601/2001

% **23rd March, 2015**

RAVI JETLEY

..... Petitioner

Through: Ms. Amita Gupta, Advocate

versus

UNITED INDIA INSURANCE CO. LTD. Respondent

Through: Mr. Sameer Nandwani, Advocate for
Mr. K.L. Nandwani, Advocate for
respondent no. 1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner who was an employee of the respondent/United India Insurance Co. Ltd, seeks the relief of quashing of the recovery of incentive moneys paid to the petitioner for the years 1994-1995 and 1995-1996. The amount in question of which recovery is sought by the respondent on account of incentive moneys wrongly being paid to the petitioner is a sum of Rs. 91,560/- for the year 1995-1996 and Rs. 52,935/- for the assessment year

1998-1999. An amount of Rs. 1,09,427/- has already been deducted from the incentive money of the petitioner for the assessment year 1999-2000. I must however at this stage say that there should be some lack of clarity as regards the exact amount as stated by the petitioner which is being recovered from the petitioner on account of incentive being wrongly paid to the petitioner, however, along with the petition Annexure P-17 has been filed which is a letter dated 17.8.2001 of the respondent which talks about the total recoverable amount being Rs. 1,44,495/- and since part of the amount has been recovered from the incentives of the petitioner for the year 1999-2000, the balance recovery works out to Rs. 35,068/-.

2. As per the incentive scheme of the respondent/Insurance Company, with respect to every client/customer which has been introduced by a Development Officer or an Agent, such person gets a particular incentive amount as per the business which is brought in by the new customer/client. Petitioner was working as Development Officer with the respondent and there is a dispute with respect to the incentive money payable with respect to the client/customer M/s. Vestas RRB (India) Ltd. Whereas the petitioner claims that he had introduced this client, the case of the respondent is that this client was introduced not by the petitioner but by one Mr. S.K.

Srivastava, AAO (D) and which Mr. S.K. Srivastava, AAO (D) had issued the first cover note for this customer for the period of April, 1994 to September, 1994. Mr. S.K. Srivastava, AAO (D) was looking after some other administrative work, and therefore, petitioner Mr. Ravi Jetley was asked to do the administrative work of the account of Mr. S.K. Srivastava, AAO (D) including of M/s. Vestas RRB (India) Ltd., and therefore, petitioner for the years in question being 1994-95 and 1995-96 was not to be paid incentives for the account of M/s. Vestas RRB (India) Ltd. and it was to be payable to Mr. S.K. Srivastava, AAO (D) but the same was wrongly paid to the petitioner.

3. As per the counter affidavit filed by the respondent, and to which there is no dispute on behalf of the petitioner, once one client is introduced by one Development Officer/Agent it is only that person who gets incentive for that customer even for the subsequent period although the work may be looked after administratively by some other Development Officer/Agent. In fact, petitioner for this reason in the rejoinder affidavit has stated that petitioner was not granted certain incentives payable with respect to the customer Lakhani Group which was introduced by the petitioner, but that incentive was wrongly paid to one Mr. M.G. Sharma.

4. The issue therefore to be decided is whether petitioner had or had not introduced the account of M/s. Vestas RRB (India) Ltd. for the petitioner to have got incentive with respect to this customer/client.

5. The best evidence or the document which the petitioner could have produced to show that the petitioner had introduced the account of M/s. Vestas RRB (India) Ltd. to the Insurance Company was to file the first cover note, and which would have been issued under the signatures of the petitioner as a Development Officer. Petitioner has admittedly not filed this document showing that petitioner was the Development Officer who issued the first cover note with respect to account of M/s. Vestas RRB (India) Ltd. Not only that, petitioner was called upon by the respondent vide the respondent's letter dated 27.5.1997 to explain as to why recovery should not be made against the petitioner for the incentive wrongly paid, and which letter dated 27.5.1997 was in follow up to the earlier letter of the respondent dated 18.5.1997 asking explanation from the petitioner. Petitioner by his reply letter dated 24.7.1997 has not disputed the aspect that petitioner did not introduce the account of M/s. Vestas RRB (India) Ltd. Petitioner in fact in his reply dated 24.7.1997 sent to the respondent/Insurance Company stated that why incentive should not be recovered from the petitioner will be

submitted in due course but admittedly petitioner never gave any detailed reply. Though counsel for the petitioner argued that petitioner had followed up his letter dated 24.7.1997 with his letter dated 1.4.1998, however, this letter dated 1.4.1998 filed as Annexure P-12 to the writ petition does not show that the same is received by the respondent, and the petitioner has also not filed any proof that the petitioner in what manner dispatched this letter to the respondent. Therefore, petitioner never gave any explanation which he was required to give with respect to his having introduced the account of M/s. Vestas RRB (India) Ltd.

6. Even for the sake of argument if we take that petitioner had sent his letter dated 1.4.1998, however, self-serving averment that the petitioner had introduced the account of M/s. Vestas RRB (India) Ltd. cannot help the petitioner because the only and the best way to show that a client was introduced would be to show the first cover note under the signatures of the petitioner, but, petitioner has not filed the same and is only using the pretext that this document is with the respondent and not with the petitioner.

7. Therefore, this Court cannot accept the argument that petitioner had introduced the account of M/s. Vestas RRB (India) Ltd. Once the petitioner has not introduced the account of M/s. Vestas RRB (India) Ltd. and

petitioner only subsequently dealt with the account of M/s. Vestas RRB (India) Ltd. for administrative exigencies, petitioner was wrongly paid the incentive pertaining to the account of M/s. Vestas RRB (India) Ltd. for the years 1994-1995 and 1995-1996 and which was to be really paid to Mr. S.K. Srivastava, AAO (D).

8. Counsel for the petitioner also argued that the account of M/s. Vestas RRB (India) Ltd. actually was introduced by the petitioner because the Agent Mrs. Poonam Sharma worked under the petitioner, and Mrs. Poonam Sharma received incentive money from the respondent, however, this would not clinch the issue in favour of the petitioner inasmuch as there is nothing on record as to whether respondent subsequently did or did not recover the amount from Mrs. Poonam Sharma and even assuming that incentives were wrongly paid to Mrs. Poonam Sharma that would not make the petitioner as the introducer of the account of M/s. Vestas RRB (India) Ltd. and which would only be if the petitioner had filed clear cut documents showing so, but which the petitioner has failed to do.

9. Petitioner by the writ petition has also sought the second relief of quashing the action of the respondent of reduction of basic salary of the petitioner from Rs. 13,270/- to Rs. 12,550. Petitioner has however not stated

in the writ petition that for how many months petitioner's salary was reduced from Rs. 13,270/- to Rs. 12,250/-. Pleadings of the writ petition are really extremely poor, and therefore, this Court very frankly fails to understand what is the period for which petitioner has been paid lesser basic pay at Rs. 12,550/-, inasmuch as petitioner admits during the course of arguments that subsequently petitioner's basic pay was again increased to Rs. 12,910/- and which is shown in Annexure P-23. Paras 24 to 26 of the writ petition and which really cannot be understood as to for what period basic pay of the petitioner is reduced, read as under :

- “24. That vide letter dated 16.4.2001, petitioner informed the Respondent No. 1 that from April, 2001, he is entitled to his first “Stagnation Increment” and requested them to grant the same. Copy of the letter dated 16.4.2001 is attached herewith as **Annexure P-18.**
25. That pursuant to letter dated 16.4.2001 the Respondent No. 1 increased the basic pay of the petitioner from Rs. 12,910 to Rs. 13,270/-, thereby giving “Stagnation Increment” of Rs. 360. Copy of the pay slip for the month of April, 2001 of the petitioner is attached herewith as **Annexure P-19.**
26. That to the surprise of the petitioner in May, 2001, the petitioner was paid Basic Pay of Rs. 12,550/- whereas originally he was getting Basic Pay of Rs. 12,910/- and it had already been enhanced to Rs. 13,270/- in April, 2001. The Respondent No. 1 did not issue any Show Cause Notice or assign any reason for reducing the Basic Pay from Rs. 13270/- to Rs. 12,550/-. Copy of the Pay Slip

for the month of May, 2001 is attached herewith as **Annexure P-20.**”

10. The respondent in its counter affidavit has stated that mistake occurred for only one month inasmuch petitioner became entitled to stagnation increment from May, 2001 and hence there took place differences in basic pay figures and which was subsequently corrected for the month of May, 2001 itself.

11. Petitioner has not given any requisite pleadings as to how the petitioner became entitled to stagnation increment from April, 2001 and in fact the writ petition is totally bereft of the averments as to how the petitioner satisfies, and that too from 1.4.2001, requisite eligibility for being granted stagnation increment from 1.4.2001. Therefore, in the absence of pleadings and its substantiation as to how the petitioner is payable stagnation increment from 1.4.2001, this relief which is prayed for cannot be granted, especially keeping in view the fact that the respondent has stated in its counter affidavit that for the next month itself i.e from May, 2001 necessary correction was done. It is high time that pleadings are drafted in such a manner by all the parties that a court is at least able to understand the same for giving relief. Since pleadings do not state the necessary facts as to how

the relief sought is to be granted, this Court fails to understand as to how the petitioner can be granted stagnation increment from 1.4.2001 and if petitioner's basic pay has been reduced to Rs. 12,550/- then for how many months.

12. Learned counsel for the petitioner lastly argued that if petitioner has to forego the incentive on the premiums paid by M/s. Vestas RRB (India) Ltd. then petitioner should get the incentives paid for the business of Lakhani Group which has been wrongly paid to Mr. M.G. Sharma, however, I find that once again only sketchy averments are made in the rejoinder affidavit and on the basis of sketchy averments petitioner cannot get the relief that the petitioner is entitled to incentive with respect to Lakhani Group or that the incentive of Lakhani Group is wrongly paid to Mr. M.G. Sharma. The sketchy averments made by the petitioner in his rejoinder affidavit read as under :

“H&I. In rejoinder to contents of reply to Ground ‘H’ and ‘I’ it is submitted that petitioner is ready to forego the incentives on premium of M/s Vestas if Respondent it ready to pay the incentive on premium of Lakhani Group to petitioner as it was his old client, for which the credit is being given to Mr. M G Sharma, who is presently bringing the business of Lakhani Group. Mr. M G Sharma has been promoted as branch manager and given car on interest free loan for doing the business of Lakhani Group.”

Hence in the absence of requisite pleadings and documents to substantiate the same, petitioner's claim of adjustment for his alleged dues payable in the account of Lakhani Group cannot be allowed.

13. In view of the above, there is no merit in the petition and the same is therefore dismissed. Since the main petition is dismissed, any amount received by the petitioner pursuant to the interim orders will be liable to be refunded to the respondent in accordance with law. Whatever amount deposited by the respondent in the Court be released to the respondent along with accrued interest, if any, within a period of four weeks.

MARCH 23, 2015
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VALMIKI J. MEHTA, J