

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.06.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.668 of 2016

and

W.M.P.Nos.486 to 488 of 2016

Dr.K.Rayar

.. Petitioner

vs

1. Life Insurance Corporation of India
Central Office, rep.by its Chairman
Yogashema Jeevan Bima Marg
P.B.No.19953, Mumbai 400 021.

2. Chief Senior Business Associate
Life Insurance Corporation of India
Central Office,
Yogashema Jeevan Bima Marg
P.B.No.19953, Mumbai 400 021.

3. The Zonal Manager
Life Insurance Corporation of India
Southern Zonal Office
LIC Building, Anna Salai
Chennai 600 002.

4. Senior Divisional Manager
Life Insurance Corporation of India
Divisional Office
Jeevan Prakash, Arcot Road
P.B.No.423, Vellore 632 004.

5. Marketing Manager
Life Insurance Corporation of India
Divisional Office
Jeevan Prakash, Arcot Road
P.B.No.423, Vellore 632 004.

6. The Branch Manager
Life Insurance Corporation of India
Branch Office, East Pondy Road
Villupuram 605 602.

.Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records in the impugned order of the fifth respondent dated 12.11.2015 and the consequential impugned order of the second respondent dated 26.11.2015 to quash the same and to direct the respondents 1 to 3 to enrol the petitioner in Senior Business Associate Scheme for the year 2015-2016 as per the modified Senior Business Associate Scheme.

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.S.Silambanan Sr.Counsel for
M/s.Kaavya Silambanan
Associates

ORDER

The prayer in the writ petition is for the issuance of a writ of certiorarified mandamus to quash the impugned orders passed by the fifth and second respondents dated 12.11.2015 and 26.11.2015 respectively and to direct the respondents 1 to 3 to enrol the petitioner in Senior Business Associate Scheme for the year 2015-2016 as per the modified Senior Business Associate Scheme.

2. The case of the petitioner in brief is as follows:

(i) The petitioner was appointed as an LIC Agent on 18.11.1981; later he was promoted as a Development Officer during the year 1987 and after completion of the probation period, he was confirmed in the said post during the year 1989. Due to certain disciplinary proceedings, he was terminated from service on 12.04.2005 and this Court vide order dated 26.11.2008 directed the respondents/Life Insurance Corporation to reinstate the petitioner into service. However, without doing so, the respondents challenged the same in writ appeal and thereafter before the Hon'ble Apex Court; however, both the appeals were dismissed confirming the order of reinstatement passed by this Court in the writ petition. Thereafter, he was reinstated into service on 19.08.2015 however, without back wages. Further, this Court has directed that the period between the date of dismissal and till the date of his reinstatement have to be counted for all practical purposes including terminal benefits.

(ii) In the meantime, during the year 2009, LIC introduced a Senior Business Associate Scheme for its Development Officers which extends certain benefits and privileges to the Officers; however certain

eligibility criteria were fixed. Later vide the circular of the competent authority, the eligibility criteria was modified and powers were also given to the Zonal Manager to waive upto 1% cost ratio for allowing the already enrolled Senior Business Associate to maintain his office and to continue as SBA on two occasions in his entire service.

(iii) Following the same, the petitioner made an application for enrollment under the Senior Business Associate Scheme. However, the fifth respondent without any jurisdiction rejected the said application. Challenging the said rejection order, the petitioner submitted a representation to the second respondent and also preferred an appeal to the third respondent, who is the competent authority to decide the same. However, the second respondent without relegating the powers to the competent authority, viz., the third respondent had rejected the representation submitted by the petitioner.

(iv) Thereafter, the Marketing Department of the Central Office had once again called for fresh enrollment to the Senior Business Associate Scheme for the year 2015-2016 and had directed the divisions to send date of selected Development Officers to the Zonal Office to forward it to the Marketing Division. Therefore, he would submit that he is entitled to 1% waiver if the cost ratio of the year 2004-2005 is taken into consideration. Since he is about to retire during September 2018, by way of abundant caution, the petitioner has filed the present writ petition challenging the impugned orders passed by the fifth and second respondents dated 12.11.2015 and 26.11.2015 respectively.

3. Learned counsel appearing for the petitioner would submit that the fifth respondent is not the authority to reject the application submitted by the petitioner as the competent authority to pass such an order is the third respondent. However, the third respondent has neither considered his representation nor rejected the same. Further the authority has taken the wrong appraisal year, viz., 2003-2004 instead of taking the year 2004-2005 and thereby rejected the application of the petitioner for enrollment into the Senior Business Associate Scheme. Accordingly, he would pray for setting aside the impugned orders passed by the respondents and to consider the case of the petitioner for enrollment into the SBA Scheme for the year 2015-2016.

4. Mr.S.Silambanan, learned Senior Counsel appearing for the respondent-Life Insurance Corporation by relying upon the counter filed, submitted that there is no provision for waiving the basic eligibility criteria for entry into the Senior Business Associate Scheme and the appropriate authorities have duly replied regarding the same to the petitioner. He would further submit that the Original Authority has rejected the representation of the petitioner and as against the same, appeal was preferred by the petitioner and the application of the petitioner along with the appeal to the Chairman was forwarded to the Central Office for further action and by virtue of order dated 15.02.2016, the appeal preferred by the petitioner was rejected and the said rejection order was also served upon the petitioner on 22.02.2016. Accordingly, he would submit that all possible avenues have been utilized by the petitioner for consideration of his case. Therefore, he would pray for the dismissal of the writ petition as the same is not maintainable.

5. Heard both sides and perused the materials available on record.

6. As rightly pointed out by the learned Senior Counsel appearing for the respondent-Life Insurance Corporation, discretionary power cannot be compelled to be implemented by way of Court direction. Further, the case of the petitioner was not considered by the authorities concerned is not correct as the Appellate Authority itself also dismissed his appeal. Therefore, the contention of the petitioner that the competent authority was not allowed to exercise their discretionary power cannot be sustained. In fact, the waiver sought for by the petitioner was not given by the authorities and in the impugned orders they have clearly set out the reasons for not considering the same. Secondly, since the new scheme was introduced only in the year 2009 and during the said period the petitioner was not in service as he was reinstated only on 19.08.2015 consequent upon the orders passed by this Court, which was confirmed by this Court in Writ Appeal and also by the Apex Court in the Special Leave Petition, the petitioner does not come within the parameters as enunciated in the circular issued for enrollment to the post of Senior Business Associate Scheme.

7. For all the above stated reasons, I do not find any reason to interfere with the impugned orders passed by the appropriate authorities. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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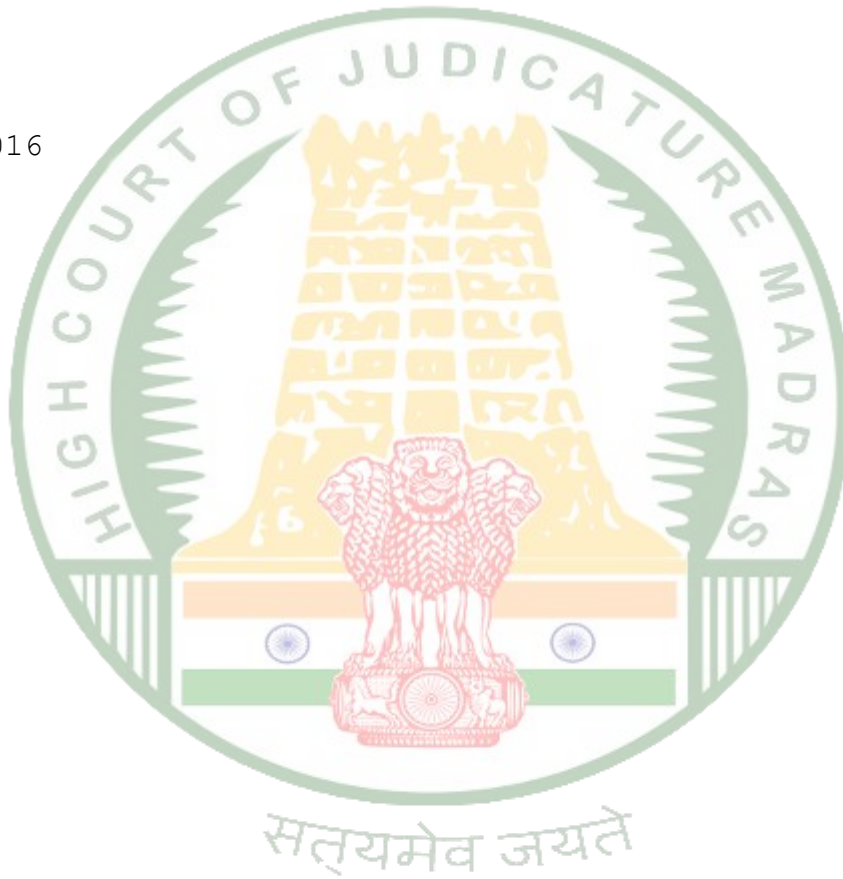
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