

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22861 of 2012 (O&M)

Date of Decision:- 14.7.2016.

Amrit Paul Kaur

.....Petitioner

Versus

Life Insurance Corporation of India and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gurnam Singh, Advocate for the petitioner.

Mr. Nitin Thatai, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

1.) In this petition, the petitioner has questioned the validity of the order dated 1.8.2012 (Annexure P-9) by which services of the petitioner has been discharged.

2.) Petitioner's father Jaswinder Paul Singh was working as Development Officer in the office of the respondents-LIC of India. While he was in service, he died on 10.3.2011. In the month of December, 2011, petitioner's mother submitted a representation seeking for compassionate appointment to her daughter, in accordance with the policy of the Corporation relating to appointment on compassionate ground. Pursuant to the application/

representation, the petitioner was called for interview on 16.1.2012. Name of the petitioner was recommended and she was appointed on 10.2.2012 as an Assistant in the pay scale of ₹ 7640-21050/-. The respondents discharged the petitioner from service under Regulation 14 (4) of LIC of India (Staff) Regulation, 1960 read with clause 4 of the appointment letter dated 10.2.2012 (Annexure P-9). The petitioner feeling aggrieved by the order of discharge presented the petition.

3.) Learned counsel for the petitioner submitted that order of discharge dated 1.8.2012 has been issued without assigning any reason and without notice. Order of discharge is nothing but removal from service. The minimum requirement is at least to have a notice before issuing order of discharge dated 1.8.2012 is not complied.

4.) Learned counsel for the petitioner further submitted that reasons for discharging the petitioner as is evident from reply statement filed by the respondents that the petitioner's mother was gainfully employed as Teacher in the Government School. Consequently, the petitioner was not eligible to be appointed on compassionate ground under clause 21 (3) of LIC of India Recruitment of (Class-III & IV Staff) Instructions, 1993. While process of recruitment to the post of Assistant by way of compassionate appointment, the respondents were very much aware that the petitioner's mother was gainfully employed which was disclosed in the application form. Initially, the respondents took the

stand that petitioner has suppressed that her mother was gainfully employed, thus order of discharge has been passed. Later on the respondents have realized with reference to the documents available that the petitioner did disclose the fact that her mother was gainfully employed. Learned counsel for the petitioner in order to substantiate the ground that she is entitled for notice/inquiry before order of discharge with reference to foundation for discharging the petitioner that the petitioner did not disclose the fact that her mother was gainfully employed and so also ground or reason for discharge is that petitioner's mother is gainfully employed. Hence, appointment was not in accordance with policy. Learned counsel for the petitioner cited the following decisions:-

(i) 1999 (3) S.C.T. 645 (Rakesh Kumar Vs. State of Punjab) – Para 7.

(ii) 2016 (1) S.T.C. 1 (Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others) – Para 27.

(iii) (2002) 10 SCC 133 (Prithipal Singh Vs. State of Punjab and others).

(iv) 2013 (1) S.C.T. 387 (*State Bank of India and others Vs. Palak Modi and another*).

5.) In all these decisions, the principle laid down by the Supreme Court is if an order of termination or discharge is passed, the Court can look into the file and to ascertain the reasons. In other

words, the Court can lift the veil and declare that the termination is simpliciter, the employer has punished the employee for an act of misconduct or reasons are on certain allegations. In the present case foundation for issuing discharge order is that the petitioner failed to disclose the fact that her mother is gainfully employed. Therefore, before order of discharge, the respondents should have issued a show cause notice/inquiry and reasons must have been disclosed in the order of discharge. It is also contended that with an ulterior motive, reasons have not been disclosed in the order of discharge. If the reasons are disclosed that the petitioner has failed to disclose the fact that petitioner's mother's employment, then it would amount to misconduct and inquiry is attracted. In other words short-circuit method has been adopted by the respondents to overcome holding of inquiry. Hence, the order of dismissal/discharge is liable to be set aside.

6.) Per contra, learned counsel for the respondents submitted that for the purpose of issuance of discharge order, no notice is required as per Regulation 14 (4) LIC of India (Staff) Regulations 1960. Clause 4 reads as follows:-

“(4) During the period of probation an employee shall be liable to be discharged from service without any notice”.

7.) It was further contended that even in the order of discharge reasons need not be assigned having regard to the terms and conditions stipulated in the order of appointment to the

petitioner. Learned counsel for the respondents further submits that petitioner's initial appointment itself is not in accordance with clause 21 (3) of LIC of India Recruitment of (Class-III & IV Staff) Instructions, 1993 with reference to the fact that the petitioner's mother was gainfully employed. If a member of the family is gainfully employed, in such circumstances, compassionate appointment is impermissible. In support of the contentions that no need to issue notice and to assign reasons while passing the order of discharge, learned counsel for the respondents cited the following decisions:-

(i) 2001 (3) SCC 117 (H.F. Sangati Vs. R.G. High Court of Karnataka).

(ii) 2011(2) SLR 722 (Harinder Singh Vs. Chandigarh State Cooperative Bank and another).

(iii) 1963 AIR (SC) 1552 (Ranendra Chandra Banerjee Vs. Union of India and another).

8.) It was contended that having regard to the Regulations 1960 and Instructions 1993 and conduct of the petitioner, the respondents have rightly discharged the petitioner from service. Therefore, no interference is called in respect of impugned order of discharge (Annexure P-9).

9.) Heard learned counsel for the parties.

10.) Crux of the matter is whether before passing the order of discharge an employee is entitled for notice or reasons for order of discharge. Order of discharge reads as under:-

“LIFE INSURANCE CORPORATION OF INDIA

*Jeeven Parkash, Divisional Office, Urban Estate, Phase-I,
Dugri, Ludhiana -141002.*

*Mr. Amrit Paul Kaur,
Assistant (ON Probation),
S.R. No.175370,
L.I.C. Of India,
Branch Office-Khanna.*

*Re: Discharge from your Service during Probationary
Period*

*The undersigned, being the competent authority
under Regulation 6 read with Schedule-I of LIC of India
(Staff) Regulations, 1960, has decided to discharge you
from Service under Regulation 14(4) of LIC of India (Staff)
Regulations, 1960, and Clause 4 of your appointment letter
dated 10-02-2012 with immediate effect.*

Dated at Ludhiana this 01st day of August 2012.”

11.) Reading of the order of discharge reveals no reasons are assigned for discharge. It is true that time and again Courts have held that order of discharge need not contain reasons or notice is required if the order of discharge is with reference to the discharge of the post if there is any shortcomings and the authority is of the view that there is no satisfactory work of an employee. In such circumstances, order of discharge can be passed. In the present case admittedly, the petitioner was appointed on compassionate ground and she has disclosed that her mother is gainfully employed. The same was taken note of before appointing the petitioner. Later on respondents have realized that petitioner's appointment was

contrary to clause 21 (3) of LIC of India Recruitment of (Class-III & IV Staff) Instructions, 1993 which bars for appointment on compassionate ground if any member of the family is gainfully employed. Reasons and issuance of notice can be dispensed before discharging an employee only if the work is not satisfactory. Here is a case admittedly that foundation for order of discharge dated 1.8.2012 is that the petitioner concealed the fact that her mother is gainfully employed. Later on issue was rectified by the respondents contending that she has not disclosed the fact that her mother was gainfully employed during the course of argument. The only contention of the respondents is that petitioner's appointment is contrary to clause 21 (3) of Instructions, 1993. Therefore, the order of discharge is in order. This Court has called for records relating to the order of discharge dated 1.8.2012 (Annexure P-9). In the records there is no notings to find out reasons for discharge from service. The Apex Court held that even if the order of discharge do not disclose the reasons at least the file must disclose the reasons for order of discharge. In the absence of recording reasons before order of discharge in the file, it is evident that abruptly order of discharge has been passed with an ulterior motive in not giving reasons. If the reason is assigned that the petitioner failed to disclose that her mother was gainfully employed and order of discharge is issued, then it would be on the allegations. In this background, the cited decision by the respondents counsel are not

applicable to the case in hand.

12.) The Supreme Court and Courts have held that even administrative decisions must contain reasons. In the present case, the respondents are exercising quasi-judicial functions to discharge the petitioner under Regulation 14 (4) of the LIC of India (Staff) Regulations, 1960. Therefore, minimum requirement is to assign reasons. The Supreme Court in the reported decision viz., **Oryx Fisheries Pvt. Ltd vs Union Of India & Ors** (2010) 13 SCC 427 held as follows:-

“40. In Kranti Associates this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12).

“(a). In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b). A quasi-judicial authority must record reasons in support of its conclusions.

(c). Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d). Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e). Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f). *Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

(g). *Reasons facilitate the process of judicial review by superior Courts.*

(h). *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*

(i). *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j). *Insistence on reason is a requirement for both judicial accountability and transparency.*

(k). *If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

(l). *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*

(m). *It cannot be doubted that transparency is*

the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n). Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija V. Spain, (1994) 19 EHRR at p. 562, para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o). In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

13.) In Anoop Jaiswal vs. Government of India and another (AIR 1984 SC 636) the Apex Court pointed out that the form of order is not decisive as to whether it is by way of punishment or not and that even an innocuously worded order terminating the services may in the fact and circumstances of the case establish that an enquiry into the allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2). The Apex Court pointed out that the cause for the

order cannot be sidetracked and the recommendations which is the basis or foundation for the order should be read along with the order for the purpose of determining its character. Para 13 of the aforesaid decision is relevant which reads as follows:-

“13. In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the Gymnasium acting as one of the ring leaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ring leaders were not seriously taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.”

14.) Apex court in the case of ***D.P. Banerjee .v. S.N. Bose, National Centre for Basic Sciences, Calcutta [(1999) 3 SCC 60]*** it

is held as follows:

“Material which amounts to stigma need not been contained in order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted”.

15.) Apex court in the case of ***Shamsher Singh v. State of Punjab [AIR 1974 SC 2192]*** it is held as follows:

“If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service without the meaning of Article 311(2) of the Constitution. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive”.

16.) In view of the facts and legal aspects discussed above, the order of discharge dated 1.8.2012 (Annexure P-9) is set aside.

The petitioner is entitled for consequential service benefits during the period from 1.8.2012 to till date. In view of the quashing of the order of discharge, the respondents are directed to reinstate the petitioner within a period of one month from today.

(P.B. BAJANTHRI)
JUDGE

July 14, 2016.

sandeep sethi