

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5515 of 2016

=====

Management of the Sr. Divisional Manager, Life Insurance Corporation of India,
Patna Divisional Office No. 1, Fraser Road, Patna - 800001 (Bihar).

.... Petitioner

Versus

1. The Union of India through the Principal Secretary, Ministry of Labour & Employment, Government of India, New Delhi.
2. Ranjit Kumar, son of Late Alakh Niranjana Prasad, resident of Mohalla - Gandhi Nagar, Biran Bigha, Road No. 5, Dehri-on-Sone, Rohtas.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Nilanjan Chatterjee, Advocate

Mr. Abhimanyu Vats, Advocate

For the Respondent no.2 : Mr. K.N. Gupta, Advocate

For the Respondent-U.O.I: Mr. Abhay Shankar, Jha, C.G.C.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-07-2017

Heard learned counsel for the petitioner, learned counsel for the Union of India and learned counsel for the private respondent.

2. This writ application has been filed for setting aside the award dated 30th September, 2015 passed by the Presiding Officer, Industrial Tribunal, Patna in Reference Case No.09(C) of 2014 between the management of Life Insurance Corporation of



India (for short 'LIC') and their workman Sri Ranjit Kumar (respondent no.2) whereby the Tribunal has held the action of the management of LIC to terminate the service of respondent no.2 with effect from 01.02.2013 to be not valid and directed to reinstatement of the workman with full back wages.

3. The facts of the case in brief are that the respondent no.2 was engaged as Financial Services Executive (for short 'FSE') with effect from 15.02.2008 and was posted at Aurangabad Branch by LIC vide letter dated 15.02.2008. In terms of engagement letter dated 15.02.2008 issued to the respondent no.2, his engagement as FSE was subject to the terms and conditions of LIC of India (FSE) Scheme, 2007 modified as on 15.06.2012. Clause 8 of the engagement letter clearly provided that the contract will be terminated forthwith without giving any notice in case he does not procure the stipulated minimum new business in two consecutive quarters.

4. The aforesaid selection of respondent no.2 was on purely contractual basis for a period of three years. Clause 2 of the engagement letter clearly provided the minimum business parameter. Since the respondent no.2 failed to procure required business parameter in two successive quarters ending 31.05.2012 and 31.08.2012, the Manager (B&AC) issued a letter dated



25.06.2012 to the respondent no.2 informing him about the shortfall in his business. On receipt of the notice, the respondent no.2 requested the Manager (B&AC) to allow him to continue during his 5th year and promised to complete his target of the said year. On request of the respondent no.2, the Manager (B&AC), Patna Divisional Office No.1 vide his note dated 04.10.2012 duly recommended by the Senior Divisional Manager, Patna Divisional Office No.1 on 01.11.2012 requested the Executive Director (B&AC) to give an opportunity to the petitioner to continue in service as a very special case. However, the Central Office authorities did not accept the recommendation of the Divisional Office as it was against the terms and conditions of engagement and refused to extend continuation of respondent no.2 which was duly communicated by the Central Office to East Central Zonal Office, Patna vide e-mail dated 8th December, 2012. After recommendation was turned down by the Central Office, the Manager (B&AC) prepared an office note dated 24.12.2012 and, thereafter, the termination order was communicated to the respondent no.2. During this period, when the extension was still to be finalized at the Central Office level, the respondent no.2 continued to work.

5. On receipt of the order of termination, respondent no.2 raised a dispute in the matter of termination which was referred



for adjudication to the Presiding Officer, Industrial Tribunal, Patna giving rise to Reference Case No. 09(c) of 2014. The reference was made in the following terms:-

“Whether the action of the management of LIC of India, Divisional Office, Patna to terminate the service of Sri Ranjit Kumar with effect from 1.2.2013 was valid? If not, what relief the workman is entitled for?”

6. In course of evidence, both the parties submitted their list of documents and witnesses. On behalf of the workman, the respondent no.2 deposed as WW-1 whereas on behalf of the management of LIC of India, Md. Sayeed Akhtar Khan, the Chief Manager (B&AC), Divisional Office No.1, Patna appeared and proved engagement letter, copy of LIC of India, the letter of its performance, the chart of quarterly review dated 04.10.2012, copy of note sheet dated 04.12.2012 and copy of note sheet dated 24.12.2012.

7. After hearing the parties, the Tribunal vide its award dated 13th September, 2015 recorded a finding that the Central Office did not consider the recommendation for continuation and no reason was given for termination which was not just and proper.

8. Learned counsel for the petitioner has submitted



that the order passed by the Tribunal is erroneous in law. He has submitted that the Tribunal failed to appreciate the fact that the appointment of the respondent no.2 was on contractual term. It has also failed to appreciate the fact that the respondent no.2 did not fulfil the business criteria, as he had failed to procure the required minimum business parameter in two successive quarters ending 31.05.2012 and 31.08.2012. He has submitted that in his cross-examination, the workman had admitted that his appointment was governed by FSE Scheme and that his service was on contractual term. He had also accepted the fact that he failed to fulfil the business criteria for two successive quarters. He has submitted that the finding of the Tribunal is perverse as the tribunal could not appreciate that at best the contractual appointment could have been continued for only five years which had already expired on 15.01.2013. Therefore, there was no question of reinstatement of respondent no.2.

9. Lastly, it has been submitted by the learned counsel for the petitioner that the decision of the Tribunal to award the full back wages to the respondent no.2 is clearly bad for the reason that the respondent no.2 had not made any statement either in his statement of claim or in the deposition that he was not gainfully employed during this period.



10. *Per contra*, learned counsel for the private respondent has submitted that this Court should not act as an appellate court while exercising the writ jurisdiction. He has submitted that termination of service after completion of the contractual period would necessarily require a show cause and hearing of the effected employee specially when the performance of the employee improved a lot after the concerned two successive quarters. It is submitted that it is true that the contract gives a right to terminate the service simplicitor, but not after levelling stigma of non-procurement of the stipulated minimum business parameter. He has contended that the FSE Scheme, 2007 also does not give any right to terminate service on the ground of failure to procure the required business. According to him, if the procurement of business had sufficiently improved after the so called two consecutive quarters and, for compelling reasons, if the respondent no.2 could not achieve the target at some stage of contract, the impact of such lower business parameter vanished after the respondent no.2 performed excellently well in the subsequent quarter. It is contended that there is no apparent error on the face of the record on the basis of which this Court would like to interfere with the order passed by the Tribunal.

11. I have heard learned counsel for the parties and



perused the record.

12. At this juncture, it would be relevant to extract clause 8 of the agreement entered into between the petitioner and respondent no.2, which reads as under:-

“The contract will be terminated forthwith without giving any notice to you in case you do not procure the stipulated minimum New Business in two successive quarters. The Contract shall also be liable for being terminated, if you commit breach of any Statutory Provisions or if you are found to be indulging in activities detrimental to the interests of the Corporation”.

13. Thus, it would be evident from perusal of the aforesaid clause 8 that in case of failure of the workman to procure the stipulated minimum new business in two successive quarters, the workman was liable for being terminated without giving any notice. It has not been disputed by the petitioner that he did fail to procure stipulated minimum new business in two successive quarters. Further, the ground on which the termination of the respondent no.2 was made, i.e. failure to procure the required number of business is not under challenge by the respondent no.2 rather the respondent no.2 himself had admitted in cross-examination that he did not fulfill the business criteria from



01.03.2013 to 31.05.2012 and 01.06.2012 to 31.08.2012. The respondent no.2 had also admitted in cross-examination that his appointment was governed by the FSE Scheme and it was on contractual term. As the respondent no.2 had failed to procure the required new business, his termination was clearly in terms of engagement letter and nothing wrong could have been found with it. Moreover, the engagement of the workman was done on a contractual basis initially, for a period of three years, which could have been extended for a period of two years only. As the respondent no.2 was appointed on 15.02.2008, in any view of the matter, his contract was liable to come to an end on maximum period of five years that would be 15.02.2013.

14. In the present case, the termination order was passed on 06.02.2013. Thus, in any event, at best, the respondent no.2 could have continued in service subject to fulfillment of the conditions of the contract for few days more.

15. In that view of the matter, the interference with the order of termination by the Tribunal was clearly erroneous on facts and law both.

16. Accordingly, the impugned order dated 30th September, 2015 passed by the learned Presiding Officer, Industrial Tribunal, Patna in Reference Case No.09(C) of 2014, is hereby set



aside.

17. The writ application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2017
Transmission Date	NA

