

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.7.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Appeal No.1546 of 2015

The Senior Divisional Manager
Life Insurance Corporation of India
Chennai Division - I
No.102, Anna Salai
Chennai 600 002. ... Appellant/2nd Respondent

Vs.

1. M.Munusamy
2. The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
1st Floor, B Wing
No.26, Haddows Road
Shastri Bhavan
Chennai 600 006. ... Respondents/Petitioner &
1st respondent

Appeal under Clause 15 of the Letters Patent directed against the order dated 10.8.2015 made in W.P.No.10287 of 2011.

Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, to Call for the concerned records from the 1st respondent quash the award passed by the 1st Respondent dated 21.01.2011 in I.D.No.16 of 2010 and consequently direct the 2nd respondent to reinstate the petitioner with full back wages continuity of service and all other attendant benefits.

For Appellant : Mr.R.Thiyagarajan, S.C.
For Mr.V.G.Suresh Kumar

For Respondent-1 : Mr.S.R.Rajagopal
R2 Court

J U D G M E N T
(Delivered by G.Jayachandran,J)

This appeal is directed against the order of the learned single Judge made in the writ petition, challenging the order of dismissal passed against the respondent Munusamy, who was employed as a Development Officer in Life Insurance Corporation of India at Chengalpet.

2. The sum and substance of the allegation against the said Munusamy is that he, as a Development Officer, has taken out a policy in the name of a dead person and certified as if he has identified the party and on the basis of his independent enquiry, the statements made in the Agent's Confidential cum Moral Hazard report as true and correct to the best of his knowledge and belief. Later, on a complaint given by the daughter of said Ravindran, the Department has probed into the complaint and found that policy in the name of dead person furnishing the address of the delinquent Officer Munusamy was taken and premium was paid by adjustment. Therefore, after a full fledged enquiry, the said Munusamy was terminated from service. Aggrieved by that, the said Munusamy filed writ petition, wherein the learned single Judge has allowed the writ petition on the following grounds:

"(i) On the side of the Management the nominee i.e., the daughter of the petitioner's driver was not examined before the Tribunal to prove the alleged act of fraud committed by the petitioner.

(ii) On the side of the Management, the mode of payment and payment particulars pertaining to the premium on the policy Nos.713510618 and 713510617 were not marked before the Tribunal, which are related documents to prove the alleged act of fraud committed by the petitioner and as such, there is a lacuna in the impugned order.

(iii) The complainant had not lodged any criminal complaint before the Competent Police Officer regarding the alleged fraud committed by the petitioner. Likewise, the Management, which is also equally responsible to level a similar complaint before the Competent Police Officer regarding the serious offence of alleged dishonesty of the petitioner, has not done the same. Therefore, there is a lapse and shortcomings on the side of the Management. Hence, the impugned order passed by the

Divisional Office / Disciplinary Authority is not sustainable under law and as such, the Management's impugned order is not fit to be operated upon any further against the petitioner herein.

(iv) As per the statement of the Management, the daughter of the petitioner's driver is alleged to have been the nominee in the said policy. However, she has not been examined to prove that she had come forward to claim any monetary benefits on the said policy. As such, the main witness to prove the said allegation has not been examined. Therefore, there is a shortcoming in the impugned order passed by the Management and also the impugned order being passed by the Tribunal.

(v) The allegation regarding fraud had been levelled against the petitioner, but the same was not perpetrated and as

such, the petitioner does not come in the domain of fraud. Further, no loss has been incurred by the LIC. Therefore, the question of alleged fraud does not arise in the instant case."

3. Heard the learned senior counsel appearing for the appellant and the learned counsel appearing for the first respondent.

4. On scrutiny of the records and the impugned order passed by the learned single Judge, we are convinced that the order of the learned single Judge needs interference in the context. It is a clear case of misconduct and dereliction of duty by a responsible officer. While it is expected from him a strict vigil over the policy drawn or introduced by the Agents, he has failed in his duty miserably by certifying the proposal taken in the name of a dead person. After affixing the signature and seal stating that he is completely satisfied with the identity of the party (who was dead at that time) and on the basis of his independent enquiries, he declares the statements are true and correct to the best of his knowledge and belief. No doubt one Ms. Jayanthi has set the law in motion by preferring a complaint. Rightly the Department has not taken action based on her complaint alone, but it has made its own enquiry independently and only after satisfying itself that the delinquent officer has miserably failed in his duty, it has initiated departmental action after framing the appropriate charges. In case of this nature where public money is involved, officers of high rank

cannot shift the responsibility to the low rank people and escape from the clutches of law on the ground that no action has been taken against the low rank officers like Agents in this case.

5. We find no justification or reasoning in the order of the learned single Judge. Hence, it requires interference. Accordingly, the writ appeal is allowed, setting aside the order of the learned single Judge and restore the order passed by the Department dismissing the first respondent from service. There shall be no order as to costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kpl

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Chennai-2

+1cc to M/s.V.G.Sursh kumar, Advocate, S.R.No.46513

+1cc to M/s.S.R.Rajagopal, Advocate, S.R.No.47101

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W.A.No.1546 of 2015.

SSI (CO)
CU(09/08/2017)