

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.12.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1639 of 2017
and
C.M.P.No.21328 of 2017

Pon Arun Shangar

.. Appellant

Versus

The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Marketing Department,
P.B.No.3810 India Life Building,
Trichy Road, Coimbatore 641 018.

.. Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.9.2017 passed in W.P.No.34741 of 2016 on the file of this court.

W.P.No.34741 of 2016:-

Writ petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in connection with the order passed by him in his Proc.Ref:Mktg/Sales, dated 3.9.16 and quash the same.

For appellant : Mr.R.Singaravelan, Senior Counsel for
Mr.R.Jayaprakash

For respondent : Mr.S.Silambanan, Senior Counsel for
M/s.Kaavya Silambanan Associates

JUDGMENT

(Judgment of the court was made by RMT.TEEKAA RAMAN, J.)

Heard the learned counsel appearing for the parties.

2. Learned counsel appearing for the petitioner submitted that as against the show cause notice in respect of officers in the Life Insurance Corporation of India in the cadre of Development Officer, have been served with show cause notice as to non-performance of the target fixed by the LIC respondent herein. He is very particular about the word 'shall' used in the phrase 'why your services should not be terminated' and would contend that it is predetermined to terminate the services of the appellant/writ petitioner and when a similar argument was advanced before the Kerala High Court, the Kerala High Court held that the word 'may' should have been used rather the word 'should'. He would rely upon the decision in K.S.RAVINDRAN v. NEW INDIA ASSURANCE CO LTD. ((2015) 7 SCC 222), wherein the Supreme Court has held that termination of services straightaway without imposing minor penalties first, on the ground of poor performance of the employee of the Insurance Company as illegal.

3. Per contra, the learned Senior Counsel appearing for the respondent would contend that as against the judgment of the Kerala High court, LIC has moved SLP and obtained stay. He would further contend that it is only at the show cause notice, the writ petition is filed as against show cause notice and therefore, the writ petition challenging the show cause notice itself is not maintainable.

4. Taking the same view, the learned Single Judge after going through the factual aspects of the case, disposed of the writ petition.

5. On going through the materials available on record, we are of the view that since it is only a show cause notice we are not inclined to interfere with the same. However, in our considered view, the usage of the word 'should' will amount to pre-determination of the issue and it leads to the apprehension expressed by the learned Senior Counsel appearing for the appellant. Therefore, such usage is hereby deprecated.

6. Further, nowadays, the LIC has been encouraging the online policies with technological developments. Therefore, it is high time for effecting necessary amendments with regard to the terms and conditions of service for the Development Officers in connection with their performance in securing the insurance policies.

7. Since the challenge in the present proceedings is only a show cause notice, without interfering with the order passed by

the learned Single Judge, we dispose of the writ appeal subject to the above observation. The explanation of the appellant would be considered on merits and in accordance with law complying with the principles of natural justice and also in the light of the decision in (2015) 7 SCC 222). No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssk.

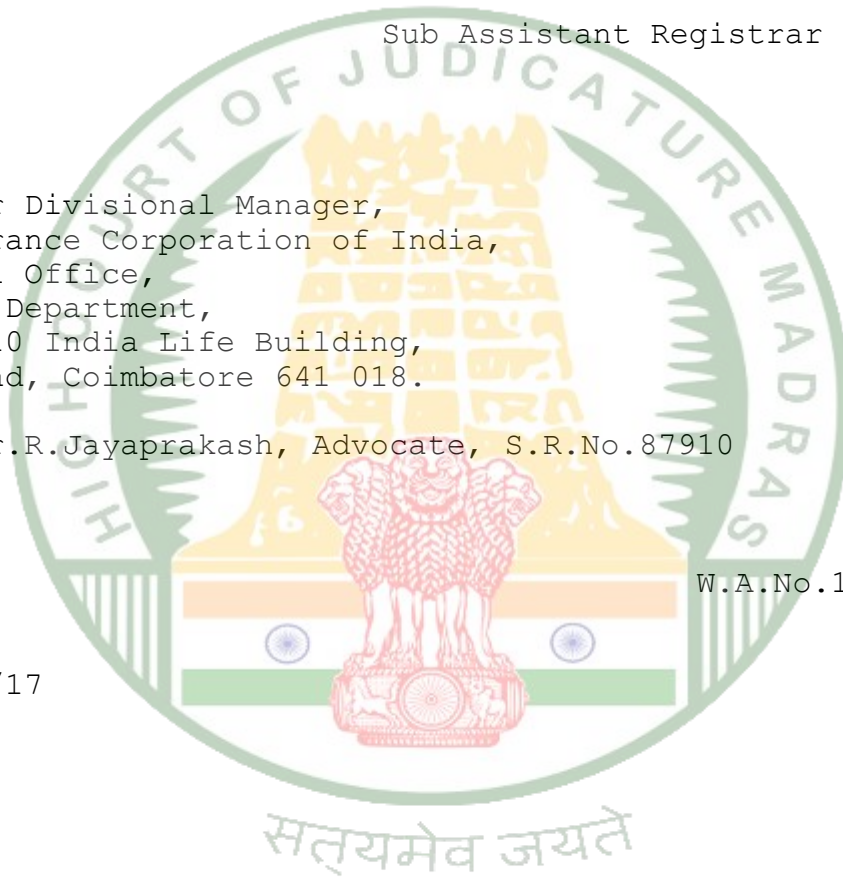
To:

The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Marketing Department,
P.B.No.3810 India Life Building,
Trichy Road, Coimbatore 641 018.

+lcc to Mr.R.Jayaprakash, Advocate, S.R.No.87910

W.A.No.1639 of 2017

DK(CO)
RRK/22/12/17



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