

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.12.2017

CORAM

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

W.A.Nos.1655 to 1657 of 2017
and
C.M.P.Nos.21430 to 21433, 21475 & 21476 of 2017

K.Radhakrishnan	Appellant in WA 1655/2017
R.Thambidurai	Appellant in WA 1656/2017
T.Vijayanandh	Appellant in WA.1657/2017

Versus

1. The Life Insurance Corporation of India,
rep. by the Chairman,
Central Office,
"Yogakshema"
Mumbai 400 021.
 2. The Zonal Manager,
Life Insurance Corporation of India,
Southern Zonal Office,
Old No.102, New No.153,
LIC Building, Anna Salai,
Mount Road, Chennai-2.
 3. The Senior Divisional Manager,
Life Insurance Corporation of India,
Salem Division, Salem. Respondents in WA 1655/17
-
1. Union of India, rep. by
The Secretary to Government,
Ministry of Finance,
Department of Financial Services,
III Floor, Jeevan Deep Building,
Parliament Street, New Delhi 110 001.
 2. The Life Insurance Corporation of India,
rep. by the Chairman,
"Yogakshema" Jeevan Bima Marg,
Mumbai 400 021.

3. The Life Insurance Corporation of India,
rep. by the Executive Director (Marketing/PPD)
Central Office, Marketing Department,
3rd Floor, Yogakkshema Building,
West Wing, Jeevan Bima Marg, Mumbai 400 021.
4. The Zonal Manager,
Life Insurance Corporation of India,
P.B.No.2450, LIC Building,
159, Anna Salai, Chennai-2.
5. The Senior Divisional Manager,
Life Insurance Corporation of India,
Salem Division, Post Box No.776,
Johnsonpet, Salem 636 007. Respondents in WA 1656/17
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The Secretary to Government,
Ministry of Finance,
Department of Financial Services,
III Floor, Jeevan Deep Building,
Parliament Street, New Delhi 110 001.
2. The Life Insurance Corporation of India,
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4. The Zonal Manager,
Life Insurance Corporation of India,
P.B.No.2450, LIC Building,
159, Anna Salai, Chennai-2.
5. The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Post Box No.3810,
Trichy Road, Coimbatore 641 018. Respondents in WA 1657/17

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 15.9.2017 passed in W.P.Nos.30660 of 2016, 8239 and 8240 of 2017 on the file of this court.

WP.No.30660 of 2016:

To call for the records on the file of the 3rd respondent in his proceeding No. Nil dated 21.07.16 in Annexure III B and also on the file of the 1st respondent in connection with the modification in his order dated 23.7.16 in Ref.Mktg/ ZD/ 20/ 2016 Modification in Draft of Annexure III-C and quash the same by holding that the interpretation of the Rules 7 and 8 of the Life Insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Rules 2009 and life insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Amendment Rules 2016 notified by the respondents 1 and 2 for straight termination without enquiry as un constitutional and ultravires.

WP.No.8239 of 2017:To issue a Writ of Certiorari call for the records on the file of the 3rd respondent in connection with the order of Modification in Ref. Mktg./ZD/20/2016 dt 23.7.2016 to Draft of Annexure III-C and also the order passed by the 5th respondent in his Proc. No. Nil, dt 18.3.2017 and quash the same and all other consequential proceedings based on that for termination of the petitioners by holding that the interpretation of the Rules 7 and 8 of the Life Insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Rules 2009 and Life Insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Amendment Rules 2016 notified by the respondents 1 and 2 for sought termination without enquiry as unconstitutional and ultravires.

WP.No.8240 of 2017:To issue a writ or Ceritiorari to call for the records on the file of the 3rd respondent in connection with the order of Modification in Ref. Mktg./ZD/20/2016 dt 23.7.2016 to Draft of Annexure III-C and also the order passed by the 5th respondent in his Proc. Mktg/D1, dt 13.3.2017 and quash the same and all other consequential proceedings based on that for termination of the petitioners by holding that the interpretation of the Rules 7 and 8 of the Life Insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Rules 2009 and Life Insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Amendment Rules 2016 notified by the respondent 1 and 2 for sought termination without enquiry as unconstitutional and ultravirus.

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

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

COMMON 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 petitioners 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 appellants/writ petitioners 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 respondents 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 petitions are filed as against show cause notice and therefore, the writ petitions challenging the show cause notice are not maintainable.

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

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 appellants. 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 appeals subject to the above observation. The explanation of the appellants 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 petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssk.

To:

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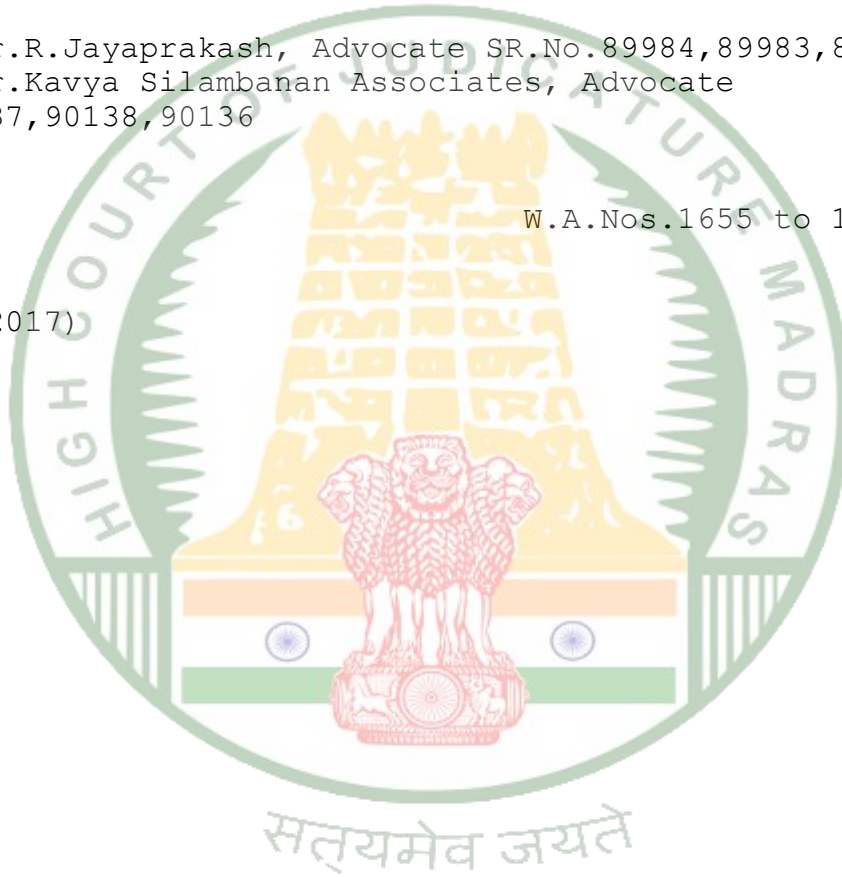
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+3cc to Mr.R.Jayaprakash, Advocate SR.No.89984,89983,89985
+3cc to Mr.Kavya Silambanan Associates, Advocate
SR.No.90137,90138,90136

W.A.Nos.1655 to 1657 of 2017

AD(CO)
GN(26/12/2017)



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