IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.12.2017

CORAM

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

W.A.No.1662 of 2017
and
C.M.P.Nos.21534 of 2017

G.Aravinda Kumar ... Appellant

Versus

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,
Yogakkshema,
Jeevan Bima Marg,
Mumbai-400 021.

3.The Life Insurance Corporation of India,
rep.by the Executive Director (Marketing /PPD),
Central Office, Marketing Dept., 3rd Floor,
Yogakkshema Building,
West Wing, Jeevan Bima Marg,
Mumbai-400 021.

4.The Zonal Officer,
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, Vellore Division. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 15.9.2017 passed in W.P.No.8238 of 2017 on the file of this Court.

Prayer in WP.No.8238 of 2017: 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 4th respondent in h is Proc. Mktg/D1, dt.27.1.2017 and quash the same and all other consequentialproceedings 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 & 2 for sought termination without enquiry as unconstitutional and ultra viros.

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

For respondents : Mr.S.Silambanan, Sr.Counsel for M/s.Kaavya Silambanan Associates for R2 to R5

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2.The learned senior counsel appearing for the appellant submitted that the appellant, who is the officer in the Life Insurance Corporation of India in the cadre of Development Officer, has been served with show cause notice as to non-performance of the target fixed by the respondent-Life Insurance Corporation of India. 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 Hon'ble Supreme Court has held that termination of services straightaway imposing minor penalties first, on the ground of poor performance of the employee of the Insurance Company, is illegal.

3.Per contra, the learned senior counsel appearing for the respondents 2 to 5 would contend that as against the judgment of the Kerala High court, LIC has moved SLP and obtained stay. He would further contend that the writ petition has been filed only against the show cause notice and such filing of 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 only show cause notice has been challenged, 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 the 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 VI)

//True Copy//

Sub Assistant Registrar

KM

To:

1.The Secretary to Government,
Government of India, Ministry of Finance,
Department of Financial Services,
III Floor, Jeevan Deep Building,
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2.The Chairman,
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5.The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Vellore Division.

+1cc to Mr.R.Jayaprakash, Advocate sR.No.92373

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NRL(CO)
sm:9.1.2018