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.Nos.1783 to 1785 of 2017
and
C.M.P.Nos.22539 to 22541 of 2017

B.Gayathri ... Appellant in W.A.No.1783/2017

S.Saravanan ... Appellant in W.A.No.1784/2017

A.Kanda Kumar ... Appellant in W.A.No.1785/2017

Versus

1.The Life Insurance Corporation of India,
rep.by the Chairman/the Executive Director
(Marketing/PD) Central Office,
Marketing Department,
III Floor, "Yogakshema" Bldg., West Wing,
Jeevan Beema Marg,
Mumbai-400 021.

2.The Zonal Officer,
Life Insurance Corporation of India,
Southern Zonal Office,
Old No.102, New No.153,
LIC Building, Anna Salai,
Mount Road, Chennai-2. ..1st and 2nd Respondents in all appeals

The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office II,
Anna Nagar Plaza, C-47,
II Avenue, Anna Nagar,
Chennai-40. ..3rd respondent in W.A.No.1783/2017

The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office I,
Anna Salai, Chennai-2. ..3rd respondent in W.A.No.1784/2017

The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Jeevan Prakash, Arcot Road,
Vellore-832 004. ..3rd respondent in W.A.No.1785/2017

Appeals filed under Clause 15 of the Letters Patent against the order dated 15.9.2017 passed in W.P.No.15828, 16829 and 19546 of 2017 respectively, on the file of this Court.

W.P.No.15828 of 2017: To call for the records on the file of the 1st respondent in connection with the order of Modification in Ref.Mktg./ZD/20/ 2016 dated 23.07.2016 to Draft of Annexure III-C and also on the file of the 3rd respondent in connection with the orders passed by him in Annexure III dated 8.6.2017 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 unconstitutional and ultra vires.

W.P.No.15829 of 2017: To call for the records on the file of the 1st respondent in connection with the order of Modification in Ref. Mktg./ZD/20/2016 dated 23.07.2016 to Draft of Annexure III-C and also the order of the 3rd respondent in connection with the orders passed by him Annexure III dated 22.06.2017 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 notified by the respondents 1 and 2 for straight termination without enquiry as unconstitutional and ultravires.

W.P.No.19546 of 2017: Call for the records on the file of the 1st respondent in connection with the order of modification in Ref.Mktg./ZD/20/2016 dated 23.07.2016 to Draft of Annexure III-C and also the order of the 3rd respondent in connection with the orders passed by him in Ref. Sales/DO dated 18.07.2017 and quash the same by holding that the interpretation or the Ruels 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 unconstitutional and ultravires

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

For respondents: Mr.G.Rajagopalan, Additional Solicitor General of India for Mr.C.K.Chandrasekar

COMMON 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 appellants submitted that the appellants, who are the 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 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 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 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 Additional Solicitor General 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 the writ petitions have been filed only against the show cause notices and such filing of writ petitions challenging the show cause notices itself 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 only show cause notices are 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 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 are only the show cause notices, 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(CS-VI)

//True Copy//

Sub Assistant Registrar

KM
To:
1.The Chairman / the Executive Director,
Life Insurance Corporation of India,
(Marketing/PD) Central Office, Marketing Department,
III Floor, "Yogakshema" Bldg., West Wing,
Jeevan Beema Marg,
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Anna Salai, Chennai-2.

5.The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Jeevan Prakash, Arcot Road,
Vellore-832 004.

+ 3 ccs to Mr. R. Jayaprakash, Advocate SR.92381, 92380, 92371
+ 2 ccs to Mr. C.K. Chandrasekkar, Advocate SR.92032, 92033

W.A.Nos.1783 to 1785 of 2017
and
C.M.P.Nos.22539 to 22541 of 2017

NRL(CO)
EU(09/01/2018)