BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.07.2017
CORAM:
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
W.A.(MD).No.1109 of 2016 &
C.M.P.(MD).No.6815 of 2016

1. The Executive Director, (Marketing),
   Life Insurance Corporation of India,
   Central Office,
   Yogakshema, Jeevan Bima Marg,
   P.B.No.19953, Mumbai 400 021.

2. The Zonal Manager,
   LIC of India,
   Zonal Office, Southern Region,
   153, Annasalai, P.B.No.2450, Chennai-600 002.

3. The Senior Divisional Manager,
   LIC of India, Divisional Office,
   Gandhi Road, Thanjavur.

4. The Marketing Manager,
   LIC of India, Divisional Office,
   Gandhi Road, Thanjavur.

5. The Chief Manager,
   LIC of India, Branch Office,
   Vaigai Nallur Agraharam, Kulithalai,
   Karur District. :Appellants/Respondents

Vs.

D.Jerald Innocent Babu : Respondent /Petitioner

PRAYER:Writ Appeal is filed under Clause 15 of Letters patent Act against the order dated 23.09.2015 in W.P.(MD).No.7337 of 2014.

Prayer in W.P.(MD).No.7337 of 2014:

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 3rd respondent dated 12.02.2014 and to quash the same and consequently, to direct the respondents to pay the commission on renewal of premium to the petitioner till 28.02.2007 together with interest at 6% p.a., within a reasonable time.

For Appellants : Mr.G.Prabhu Rajadurai
For Respondent : Mr.G.Thalaimutharasu

JUDGMENT

[Judgment of the Court was delivered by **M.M.SUNDRESH,J**]

Before the learned Single Judge, the respondent being the writ petitioner filed writ petition seeking a writ of Certiorarified Mandamus seeking to challenge the order rejecting his request for payment of commission of renewal premium.

2. The learned single Judge placing reliance upon the Division Bench judgment of Calcutta High Court reported in **(2013) 2 CHN 117 (Rajeev Lohia Vs. Life Insurance Corporation Ltd.,)** and held that the respondent/writ petitioner is entitled to the relief sought for while accepting the contention of the appellant that the respondent/writ petitioner has completed 10 years of service.

3. The facts are otherwise. The respondent did sent his resignation on 28.02.2007. However it was accepted only on 01.10.2007 contrary to regulation governing the parties which says maximum period is only one month. Regulation also provides a deeming provision, which makes it clear that if no order is passed after one month, then it is deemed to have been accepted. Even otherwise, once a resignation is submitted, literally took one month after the date of the letter given. If that is taken into consideration, then the date of application 28.02.2007 has to be reckoned, which admittedly brings the respondent/writ petitioner less than 10 years of service.

4. Section 44 of the Insurance Act, 1938 (hereinafter referred as the Act) prohibits cessation of payments of commission. It is apposite to place the above said provision hereunder:-

> "44. Prohibition of cessation of payments of commission. _(1) Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent providing for the forfeiture or stoppage of payment of renewal commission to such insurance agent, no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:
>
> Provided that-

(a) such agent ceases to act for the insurer concerned after the Central Government has notified in the Official Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agent's ceasing to act for him; or

(b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent. In any case; or

(c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person."

5. In the aforesaid section we are concerned with proviso (b) and (c). While it is the case of the appellants that it comes under proviso (c). It is the case of the respondent it would come under proviso (b). Proviso (b) deals with such agent has served the insurer continually and exclusively for at least 5 years. It also speaks about policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer on the date of one year before his ceasing to act as such agent on behalf of the insurer. Further, the commission of renewal permiums due to him does not exceed four per cent in any case. Proviso (c) of Section 44 of the Act deals with such agent who served the insurer for a period of 10 years. In this case after ceasing to act as such, an agent shall not directly or indirectly solicit or procure insurance business for any other person.

6. In the case on hand, the respondent joined some other insurance by name M/s.Bajaj Alliance on 20.02.2007. Therefore, a stand has been taken by the appellants placing reliance upon Section 44(c) of the Act. Though number of judgments have been relied upon by the counsel, we are of the view it is simple because of consideration under 44(b) of the Act.

7. Admittedly, the respondent was an agent having worked for less than 10 years. Therefore his case can only be considered under Section 44(b) of the Act. It is a settled law that a provision or a word contained therein will have to be read as such by applying literal interpretation. The principle of *purposive interpretation* or *Causus Omissus* will have to be applied, when there is an ambiguity or an interpretation would make the provision redundant.

8. As discussed above, proviso (c) of Section 44 stands apart from proviso (b) of Section 44. Section 44 (b) deals with a case of 5 years, whereas Section 44(c) deals with case of 10 years. Section 44(b) deals with satisfying other agencies and so is a case of 44(c). Therefore a case falling under 44(b) cannot impounded into Section 44(c). In such view of the matter, we are inclined to pass the following order.

1) The order impugned passed by the appellants/respondents stands set aside.
2) The case of the respondent would come under Section 44(b) of the Insurance Act, 1938.
3) The appellants will have to pass appropriate orders by treating the case of the respondent/writ petitioner as one under Section 44(b) of the Act, subject to other compliance mentioned therein, within a period of 8 weeks from the date of receipt of a copy of this order.

The writ appeal is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

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LIC of India, Branch Office,
Vaigai Nallur Agraharam, Kulithalai,
Karur District.

+1cc to Mr.G.Thalaimutharasu, Advocate Sr.No.68594
+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.68492

JIKR

VB/GT/SAR2/08/08/2017/5P/8C

ORDER MADE IN
W.A.(MD).No.1109 of 2016 &
C.M.P.(MD).No.6815 of 2016
27.07.2017