BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 10.01.2017

ORDER PRONOUNCED ON:24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.(MD) No.1161 of 2016

G.Thanaseela ... Appellant/Writ Petitioner

Vs

1.The Chairman,
Life Insurance Corporation of India,
Central Office, "Yogakxhema",
Jeaveen Bima Mark,
Mumbai400 021.
2.The Zonal Manager,
Life Insurance Corporation of India,
South Zone, Chennai.
3.The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Tirunelveli.

... Respondents/Respondents

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 19.08.2014 made in W.P.(MD).No.16756 of 2012.

For Appellant :Mr.E.V.N.Siva
For Respondents :Mr.C.Godwin

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Prayer in WP(MD). 16756/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ, order or direction of any other writ in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd respondent dated 24.5.2010 and quash the same and consequently direct therespondents to reinstate the petitioner with continuity of service with all consequential benefits and directing to the respondents to pay the renewal commission due to the petitioner as an LIC agent

JUDGMENT

[Judgment of the Court was delivered by

R.SUBBIAH,J.]

This appeal has been filed against the order dated 19.08.2014 made in W.P.(MD).No.16756 of 2012, whereby, the impugned order of the second respondent, dated 24.05.2010 stood confirmed and consequently, the prayer of this appellant to reinstate her with continuity of service and with all consequential benefits and with a further direction to the respondents therein to pay the renewal commission was rejected by the learned Single Judge. Aggrieved over the same, the appellant is before this Court.

The short facts, which are necessary for the disposal of this Writ Appeal, are summarised as follows:-

2. The appellant herein is the Writ Petitioner in W.P (MD).No.16756 of 2012. The case of the appellant/ Writ Petitioner is that she was appointed as an L.I.C.agent of the respondent Corporation in the year 1992. She has put in more than 13 years of unblemished service in the respondent Corporation. While so, on 20.07.2006, the third appellant herein had issued a show cause notice to the appellant/Writ Petitioner requiring her explanation in the wake of the fact that as many as 19 cheques were issued by her in favour of the Corporation towards payment of renewal of premium, in relation to different policies held by different policy holders. The allegation of the respondent Corporation is that out of the 19 cheques issued by her, six cheques were dishonoured as 'unpaid' by the bankers concerned for the reason that it had 'insufficient funds'. Further, the appellant/Writ Petitioner submits that out of the 19 policies mentioned in the show cause notice of the third respondent, only seven policies belonged to her and the others were not the policies of the appellant/ Writ Petitioner and on enquiry, appellant/Writ Petitioner found that all the policies belonged to agents, who were also deceived by one Sivakumar. In fact, the appellant/ Writ Petitioner was prompt in giving service to all the policy holders and never misused the premium amount of the policy-holders. It is further stated that not even a single compliant either orally or in writing from the policy-holders was received by the respondent Corporation in all these last 13 years of her service. The appellant/Writ Petitioner submitted her explanation to the show cause notice issued by the third respondent, but the third respondent without considering the same, passed the preliminary order, dated 21.12.2006, by terminating the agency of the appellant/ Writ Petitioner under Regulation 16(1)(b) of the Life Insurance Corporation of India (Agents) Regulations, 1972 and forfeiture of renewal commission under Regulation 19(1) of Regulations. Thereafter, the appellant/ Writ Petitioner filed an

appeal before the second respondent against the order of the third respondent, dated 21.12.2006. However, the second respondent had rejected the appeal by the impugned order dated 24.05.2010 confirming the order of the third respondent. Hence, the petitioner came forward to file W.P(MD).No.16756 of 2012 with the prayer stated as supra. But, the learned Single Judge had rejected the claim of the Writ Petitioner and confirmed the order of the second respondent. Hence, the appellant is before this Court with the present Writ Appeal.

3. By inviting the attention of this Court as regards Rule 15 (c) of the Life Insurance Corporation of India (Agents) Regulations, 1972, the learned Counsel for the appellant would submit that if an agent in any judicial proceeding, has been found to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against the Corporation or any of its subsidiaries or against any person having official dealings with the Corporation or any of it subsidiaries his/her appointment shall be liable to be terminated without notice and the competent authority shall forthwith terminate his/her appointment. But, such is not the case on hand here. He would further submit that as per Regulation 16(a) of the Life Insurance Corporation of India (Agents) Regulations, 1972 if he/she has failed to discharge his/her functions, as set out in regulation 8, to the satisfaction of the competent authority and as per Regulation 16(b) of the Life Insurance Corporation of India (Agents) Regulations, 1972, if he acts in a manner prejudicial to the interests of Corporation or to the interests of its policyholders, the action of the respondent Corporation can be justified. But, in the instant case, absolutely, she was not found guilty of fraud by any judicial proceedings. When that being so, the impugned order passed by the respondents is liable to be dismissed and consequently, he prays that the prayer of the Writ Petition has to be allowed.

4. The learned Counsel for the respondent Corporation would submit that admittedly, the appellant/Writ Petitioner herein has not remitted the premium amount collected by her to the respondent Corporation within the stipulated time and therefore, the submission made by the appellant by relying upon Rule 15(c) of the Life Insurance Corporation of India (Agents) Regulations, 1972 on account of certain disqualifications and Regulation 16(a) and (b) of the same Regulations are totally misconceived. In any event, he would submit that the issue involved in this Writ Appeal is no more res integra. When a similar issue came up for consideration before this Court, the Division Bench of this Court in the case of O.A.Seshadri Vs. The Chairman and Managing Director and others in W.A.No.239 of 2003 rejected the contention of the appellant/Writ Petitioner therein and confirmed the order made in W.P(MD).No.9980 of 1995 dated 01.07.2003. Hence, he prays for the dismissal of this Writ Appeal.

5. Heard the submissions made on either side and perused the materials available on record.

6. Before adverting into the case on hand, a perusal of the judgment of the earlier Division Bench of this Court made in W.A.(MD).No.239 of 2003 dated 23.02.2004 relied upon by the respondent Corporation would give quietus to the issue. In other words, we find some force in the contentions of the respondent Corporation in the judgment relied upon by the respondent Corporation. The relevant portion found in the said judgment is usefully extracted below:-

> "8. A careful reading of the above regulation would disclose that the source of power of the Corporation to take action is distinct and independent. Regulation 15 relates to termination of agency on account of certain disqualification. When an agent is terminated on the ground of disqualification, no notice is contemplated. Coming to the impugned order of termination, the charges levelled against the petitioner that he after collecting the renewable premium from certain policy holders did not remit the said amount and the premium paid by one of the policy holders was remitted after lapse of seven years. These facts have been established in the enquiry conducted by the Regional Manager as directed by the appellate authority. The learned counsel for the petitioner would not argue the case on merits. The submission of the learned counsel is on the basis of the following paragraph of the show cause notice dated 21.4.1992:
>
> > "whereas from the above irregularities it is established that Sri O.A.Seshadri, Agent, Code No.490727, City Branch 7, Madras is guilty of-
> > i) Misappropriation of the funds belonging to the policy-holders/Corporation;
> > 2) Being in illegal possession of an office stationery and misusing the forging the same with a view to misleading the policy holders.
> > 3) Misutilising the premium given by a policy holder to procure a new policy against the policy holder' intentions"
>
> In Paragraph-1, it is stated that the petitioner has been found guilty of misappropriation of the fund. Thereby the learned counsel would submit that once misappropriation found proved, the only course open to the respondent

Corporation is to invoke Regulation 15 by lodging a complaint. In the absence of such complaint the respondent Corporation cannot invoke Regulation 16 of Regulations. This argument of the petitioner is totally misconceived as the provisions of Regulations 15, 16, 19 are distinct and different as to the source of power of the Corporation. The Corporation is empowered to take action to terminate the agency on the ground of disqualification in terms of Section 15. In addition to the power, the Corporation is also to take action in the event that an agent has failed to discharge his functions as set out in the Regulation 8, which refers to payment of premium. As I referred earlier, it is the duty of the agent in terms of Regulations to ensure the remittance of premium by the poicy holders within the grace period only to ensure the Commissioner of the policy. Therefore, it goes without saying that once such remittance is made by the policy holder through his agent, there is a corresponding duty vests with the agent to remit the said amount to the Corporation within the grace period to ensure that the Commissioner of the policy otherwise the policy will get lapsed and the policy holder would not be entitled to any benefit of the polity, in the event of any untoward incident happens in the meantime. When there is failure to discharge of his functions, it is always open to the Corporation to invoke Regulation 16, more particularly, Regulation 16(1)(a) and (b) of Regulations. Hence, I find no merits of the submission of the learned Counsel that the respondent Corporation cannot invoke Regulation 16(1) (a) and (b) of the Regulations to terminate the agency of the petitioner, since ought to have invoked only Regulation 15."

7. Therefore, keeping the submissions made on either side, this Court is of the view that the dictum laid down by the Division Bench of this Court in the afore-stated judgment is squarely applicable to the case on hand. We do not find any reason or compelling reasons to derail the conclusion arrived at by the Division Bench of this Court for the simple reason that the very same submission put forward by this appellant herein was already negatived by the earlier Division Bench of this Court and therefore, the submission made by the appellant/Writ Petitioner in this regard lacks merit. Eventually, we have no hesitation to sail with the order of the learned Single Judge and consequently to dismiss this Writ Appeal.

8. Accordingly, this Writ Appeal stands dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To
1.The Chairman,
Life Insurance Corporation of India,
Central Office, “Yogakxhema”,
Jeaveen Bima Mark,
Mumbai400 021.

2.The Zonal Manager,
Life Insurance Corporation of India,
South Zone, Chennai.

3.The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Tirunelveli.

+1cc to Mr.E.V.N.Siva, Advocate, SR.No:3899
+1cc to Mr.C.Godwin, Advocate, SR.No:3813

ssm
AE/CM MSA/15.02.2017/6P/6C

W.A(MD).No.1161 of 2016
24.01.2017