IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.9386 of 2014
Date of decision : 27.01.2017

Naushad Ali and another

...Petitioners

Versus

Union of India and others

..Respondents

2. CWP No.20337 of 2015
Date of decision : 27.01.2017

Jatinder Kumar and another

...Petitioners

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Mansur Ali, Advocate for the petitioners.

Mr. V.K. Kaushal, Advocate for Union of India.

Mr. Rajneesh Malhotra, Advocate for Ombudsman.

Mr. Rajbir Singh, Advocate for
Ms. Priya Sanghi, Advocate for Aviva Life Insurance Co. Ltd.

****

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned writ petitions filed at the instance of petitioner(s), whereby the order passed by

Ombudsmen is under challenge. Claim of the petitioner is that they had purchased policy from AVIVA Life Insurance-respondent No.3 as indicated in the order on the assurance that it will be doubled after a lock-in period of three years. In its return, it comes to Rs.1,18,681/-in CWP No.20337 of 2015 and in CWP No.9386 of 2014, it comes to Rs.1.5 lacs. The petitioner (s) had approached this Court but this Court had remanded back the matter to the Ombudsmen to decide the case afresh but Ombudsmen has not entertained the claim on the premise that there was no deficiency of service of the insurance company as the amount received was invested in the share market and which varied with the same and since it suffered a loss, therefore, petitioner(s) was not entitled to the actual paid amount.

Mr. Mansur Ali, learned counsel appearing on behalf of the petitioner(s) submits that having failed to place on record any material in support of averments, deficiency had been proved to the hilt.

On the contrary, learned counsels appearing on behalf of respondent(s) submits that previous policy was cancelled. There was change in the terms and conditions and, therefore, the petitioner's claim had rightly been entertained and thus there was no grouse yet invoked the jurisdiction of this Court.

Keeping in view the aforementioned fact, I am of the view that detailed evidence is required to prove the terms and conditions, much less, evidence whether terms and conditions were adhered to by the Insurance Company or not. After establishing the aforementioned fact, the petitioner can substantiate the claim by filing the suit under Section 9 of Code of Civil

Procedure. This exercise cannot be done under Article 226 of the Constitution of India. Order under challenge cannot be the matter of interference in its judicial review.

At this stage, Mr. Mansur Ali, learned counsel appearing on behalf of petitioner seeks leave of this Court for withdrawal of the writ petitions for filing the suit provided the period spent in the present Court is condoned by taking the aid of provision of Section 14 of the Limitation Act.

Request of Mr. Mansur Ali, Advocate appears to be fair and just and petitioner(s) is granted liberty to file the civil suit in respect of their respective claims. Limitation would commence from the date of the order of Ombudsmen and in case suit is filed accompanied by application under Section 14 of the Limitation Act, the trial Court shall pass an order in pragmatic manner while considering the aforementioned fact.

Writ petitions stands disposed of in aforementioned terms.

27.01.2017 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**

Pawan Kumar
2017.02.08 12:35
I attest to the accuracy and
authenticity of this document