IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12086 of 2009

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Ganga Safi, son of Sri Rameshwar Safi, residing at and P.O. Kamalpur via Pandaul, District Madhubani, at presently working as Assistant, Life Insurance Corporation of India, Branch Office at Madhubani Khadi Gramodyoga Bhawan, Madhubani

.... Petitioner/s

Versus

1. Life Insurance Corporation of India through its Chairman, Life Insurance Corporation of India, Central Office Yogakshrma Jeewan Bima Marg, Mumbai-400021
2. Zonal Manager, Life Insurance Corporation of India, Eastern Zonal Office, Hindustan Building 4th Chitranjan Avenue, Calcutta-700072
3. Senior Divisional Manager, Life Insurance Corporation of India, Jeewan Prakash, Umashankar Prasad Marg, Muzaffarpur-842002
4. Branch Manager, Life Insurance Corporation of India, Madhubani Branch, Madhubani, Khadi Gramodyog Bhawan, Madhubani

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Mukesh Pd.Singh

For the Respondent-LIC: Mr. Abhimanyu Vatsa,
: Mr. Rajni Kant Singh

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 09-03-2018

Heard learned counsel for the petitioner and learned counsel for the Life Insurance Corporation.

2. In the present case, the petitioner is challenging the order dated 8.10.2003 (Annexure-12) passed by Senior Divisional Manager, Life Insurance Corporation of India whereby and whereunder a penalty of reduction in basic pay by two stages permanently in terms of Regulation 39(1)(d) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as LIC Regulation) has been imposed against charge of delayed refund of Leave Travel Concession

Advance (hereinafter referred to as LTC advance) although under Rule 18 (vii) of LTC Rule of LIC of India with instruction of the LIC dated 10.7.1993 (Annexure-4) there is provision to recover LTC advance from the salary of the employee if the same was not refunded within 7 days by the employee in case of not availing the LTC and similar provision is under Central Government Standing Order O.M. No.F/23(2)-E.II(A)/93 dated 26,8,1993 (Annexure-3) provides that any advance can be recovered from employee with penal interest at the rate of 2% per annum over and above the rate of interest given by the Central Government on Provident Fund amount but instead of applying these rules and regulations for recovery of the said amount from the petitioner but choose to initiate a departmental proceeding on the charge of misconduct and imposed the above penalty. Further prayer has been made for quashing the order dated 29.3.2004 (Annexure-13) passed by the Zonal Manager, Life Insurance Corporation of India (Appellate Authority) rejected the appeal of the petitioner thereby affirmed the order passed by the Disciplinary Authority and further prayer has been made for quashing the order dated 14.1.2009 (Annexure-21) thereby memorial filed by the petitioner has been rejected by the respondent no.1 Life Insurance Corporation of India.

3. In the present case, the only question is to be decided whether on account of non-refunding the amount of LTC or

delayed refund of the amount of LTC will be a subject matter for a departmental proceeding and the management can have a jurisdiction to inflict the penalty in view of the fact that the said action or inaction on the part of the delinquent having not been mentioned in the list of misconduct mentioned in the Disciplinary Appeal Rules of the Life Insurance Corporation or conduct Rule dealing with service condition of employee. As learned counsel for the petitioner has submitted that any conduct which has not been mentioned in the list of misconduct minor or major cannot be ground for initiation of departmental proceeding against the employee and inflict the punishment. Management would have jurisdiction to punish with respect to those acts which has been mentioned in conduct rule mentioning do and don't do and if any employee violates those conditions will be liable for initiation of proceeding and also liable for the punishment but, as has been submitted by learned counsel for the petitioner that there is no such provision prohibition or anywhere it has been categorically mentioned that if an employee fails to exercise the option of LTC and does not refund the amount within 7 days would constitute a misconduct and liable for punishment.

4. For deciding this issue, this Court will have to see certain facts involved in the present case that the petitioner has been working as Assistant at Madhubani Branch in the Life Insurance Corporation of India since 23.2.1996. The Life Insurance

Corporation of India is an state within the meaning of Article 12 of the Constitution of India and LIC has framed a service condition which is known as Life Insurance Corporation of India, Staff Regulation, 1960. There is a LTC Rule which enables the employee to avail the benefit of LTC and for that the LIC used to give advance of money for such purposes. The petitioner had opted for the LTC advances on different occasions in between 1997 and 1999 and also refunded the same as it was not utilized within the period of 2 to 4 months, that led to service of notice dated 6.3.2000 asking the petitioner to show-cause why action be not taken against him for delayed refund of LTC advance whereafter the petitioner submitted his show cause dated 16.3.2000, he explained the reason for not availing the LTC as well as delay caused in refunding of amount, the reasons show cause was not accepted and in turn the Branch Manager of LIC, Madhubani Branch issued the charge sheet to the petitioner on 16.8.2001 in respect of those LTC advances which were taken and refunded three years back. As it appears that the petitioner took LTC advance on 8.7.1997 for Rs.9600/-, refunded the same on 8.9.1997. He had further taken LTC advance on 10.9.1998 for Rs.15,000 and refunded it on 18.12.1998. He took LTC advance on 23.2.1998 for Rs.10,000 and refunded the same on 29.6.1998 and lastly the petitioner took LTC took advance on 3.5.1999 of Rs.10,000/- and refunded the same on 31.7.1999. For the delayed refund of advance amount it has been treated to be temporary misappropriation by the Corporation amounting to Rs. 44,400/- and that entails the issuance of show cause for violating of Regulations 21 and 24 of the LIC Regulation, 1960. The petitioner submitted his show cause on 12.9.2001 wherein he has mentioned that as the LTC advance was properly sanctioned by the competent authority which the petitioner was entitled and the same has already been refunded as the same could not have been utilized on the reason beyond the control of the petitioner and there was no reason or intention to misappropriate, defraud and cheat the Corporation. He has further taken a plea that under the Clause 18(vii) of LTC Rule provides the advance amount of LTC is not utilized, the same is required to be refunded within 7 days and there is also a provision for realization of the said amount from the salary of the petitioner. Rule 39 of LIC Regulation stipulates the management will have a jurisdiction for good and sufficient reasons, an employee who commits a breach of regulations of the Corporation or who displays negligence inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation or conflicting with the instructions or who commits a breach of discipline or is guilty of any other act prejudicial to good conduct and for that the different punishment has been provided right from censure to dismissal and in the regulation, the list of misconduct specifically has not been mentioned but, Rule 39 comprehends the action to be misconduct which are against the rule and regulation and commission of negligence by the employee. Rule is completely vague, does not specifically provides which acts are the misconduct leaving gray area providing discretion to management for an act which they understood the conduct is prejudicial to the interest of Corporation.

5. In the present case as the management found that the explanation submitted by the petitioner was not proper, rejected the same and initiated a regular departmental proceeding against the petitioner. The Enquiry Officer submitted the report and found the charges leveled against the petitioner to have been proved and it has been held that action of the petitioner is against to the condition laid down in Regulation 39(i)(d) of the LIC of Indian and Staff Regulation, 1960 whereafter the management issued the show cause notice for proposed penalty of reduction of basic pay by two stages permanently which the petitioner replied and ultimately the disciplinary authority passed the order against the petitioner thereby reduced the basic pay by two stages permanently by order dated 8.10.2003 (Annexure-12) passed by the Divisional Manager and the petitioner has filed an appeal which has been rejected, memorial has also been rejected by the respondent no.1.

6. In the present case, learned counsel for the petitioner submits that there is a provision under the LTC Rule that in failure to utilize the LTC, the employees are required to return the same within 7 days and if he fails to return the same, the liberty lies to LIC to realize the said amount along with interest and that too the petitioner in his explanation has specifically assigned the reason for not utilizing the LTC benefit which he has opted and for that that he could not have been proceeded in departmental proceeding and he has further submitted that mere non-utilization of the benefit of the LTC when itself there is a LTC Rule provides for realization of the amount, it is out of imagination that it will cause any prejudice to the Corporation or the said action can be said to be detrimental to the interest of the Corporation. When there is already the power has been conferred by LTC Regulation they can realize the said amount along with the interest and as such the entire exercise is completely illegal inasmuch as the said action has not been mentioned in any of the conduct rule in violation of the same would constitute the misconduct. In support of his submission he has placed reliance on the two judgments: A. L. Kalra Vs. Project and Equipment Corporation of India Ltd., reported in (1984) 3 SCC 316 and one judgment of this case Court in the case of Praful Chandra Jha v. The life Insurance Corporation of India Lrd., reported in 2013(1) PLJR 7 and the order dated 19.9.2012 passed in LPA No.1275 of

2012 of which I am also a party and thereby the Division Bench has affirmed the judgment passed in the case of Praful Chandra Jha (supra) and the present case is entirely covered by the judgment of the learned Single Bench where similar question was raised and the Court has arrived to a conclusion that as because employee has failed to return the amount within 7 days or return the amount beyond that period will not constitute a misconduct whereas learned counsel for the LIC submits that it is not a singular instance when the petitioner had returned the amount beyond the seven days but, at least on four occasions in which the petitioner has opted for LTC and he had not utilized the LTC and returned the amount after a long delay and caused financial lost to the LIC as well as it is against the discipline of the Company that the employee would opt not utilized the LTC and return the amount after a long delay. He has also submitted that He was habitual violating LTC Rule and a singular instance may not constitute misconduct but if the employee repeats the same mistake, it would constitute a misconduct under Regulation 39 of the LIC Staff Regulation, 1960.

7. Learned counsel for the Corporation submits that for this conduct, the LIC has instituted internal vigilance enquiry against the petitioner along with other employees as they are in habit of committing such misconduct and violating the rules and in reply, learned counsel for the petitioner has submitted that LIC has

constituted a vigilance enquiry but, till date no report has been submitted.

8. Having considered the rival contentions of the parties, it is an admitted fact that in span of three to four years the petitioner has opted for LTC. It is also a fact that he had not utilized the LTC but he had returned the amount after a delay along with the interest. In such view of the matter, there is no financial loss to the Corporation with regard to the amount which was given to the petitioner and also 39(i) of the LIC Regulation does not specifically mentions or stipulates that if an employee opts the LTC fails to return the same within 7 days would constitute an act of misconduct but Rule 39 of the LIC Regulation has been formulated in such a manner it comprehends wide activity of the employee gives a wide discretion to the management to treat an action to be misconduct and can initiate a proceeding and inflict the punishment. The same issue came for consideration of A.L. Kalra (supra) case as well as the same issue came for consideration in M/s Glaxo Laborataries (I) Ltd. v. Presiding Officer, Labour Court, Meerut and other, reported in AIR 1984 SC 505 where Hon'ble Supreme Court has said that if the conduct of the employee has not been specifically mentioned in the list of misconduct for that he cannot be proceeded departmentally and punishment cannot be inflicted. In the present also, the situation is the same and it is also a fact if a

singular conduct will not constitute a misconduct repetition of the conduct how it will constitute a misconduct it does not stand to the reason of this Court. Learned counsel for the Corporation has also submitted that the order passed by the Disciplinary Authority, appellate authority and the authority who have exercised the power of memorial has discussed the entire fact in detail and there is nothing wrong in arriving to a conclusion that the petitioner has committed a misconduct violating the Staff Regulation of LIC but, on perusal of the order of the Disciplinary Authority as well as other authority who has affirmed the order of the Disciplinary Authority has not discussed and dealt with the issue that has been raised by the petitioner in the present case as well not taken into consideration the identical matter which has been dealt with in the case of 2013(1) PLJR 7 where the identical question was raise and has been replied and it has been recorded that such an act would not constitute a misconduct and pass the order in favour of the employee. This case is also completely covered by that judgment and that has been affirmed by the Division Bench and further no appeal has filed before the Hon'ble Supreme Court so it has arrived to a finality. This Court also finds that the order passed against the petitioner by Disciplinary Authority does not survive and, thus, the order passed by the Appellate Authority and order passed by the authority who has exercised the power under memorial (respondent no.1) against the petitioner are set aside and writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

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