

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.2.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.175 & 176 of 2018
and
C.M.P.Nos.1109 & 1110 of 2018

S.Pandiyaraj Appellant in W.A.No.175/2018

2.P.Arunprakash Appellant in W.A.No.176/2018

Versus

1. The Life Insurance Corporation of India,
rep. by the Chairman,
The Executive Director (Marketing/PD)
Central Office, Marketing Department,
III Floor, "Yogakshema" Building,
West Wing, Jeevan Beema Marg,
Mumbai 400 021.
2. The Zonal Manager,
Life Insurance Corporation of India,
Southern Zonal Office,
Old No.102, New No.153,
LIC Building, Anna Salai,
Mount Road, Chennai-2.
3. The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Salem Division, Salem.

Respondents in both cases

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 15.9.2017 passed in W.P.Nos.36166 of 2016 and 1242 of 2017 on the file of this court.

Writ Petition filed under Article 226 of the constitution of India to call for the records on the file of the 1st respondent in connection with the order of Modification in Ref.Mktg./ZD/20/206 dated 23.07.16 to Draft of Annexure III-C and also the order of the 3rd respondent in connection with the orders passed by him in his proceedings No. Nil dated 27.09.16 in Annexure III 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 ultravires.

Prayer in W.P.NO.1242 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 23.7.16 to Draft of Annexure III-C and also the order of the 3rd respondent in connection with the order passed by him in ANNEXURE-III dated 30.12.16 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 ultravires.

For appellants : Mr.Stalin for
Mr.R.Jayaprakash

For respondents: Mr.S.Silambanan, Senior Counsel for
M/s.Kaavya Silambanan Associates

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. Learned counsel appearing for the petitioners submitted that officers working 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 LIC respondent herein. 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 Supreme Court has held that termination of services, straightaway without imposing minor penalties first, on the ground of poor performance of the employee of the Insurance Company, is illegal.

3. Per contra, the learned Senior Counsel 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 are filed only as against a show cause notice and therefore, they are not maintainable.

4. Accepting such a stand, 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 it is only a show cause notice, 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 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 is only a show cause notice, 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-IX)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Life Insurance Corporation of India,
rep. by the Chairman,
The Executive Director (Marketing/PD)
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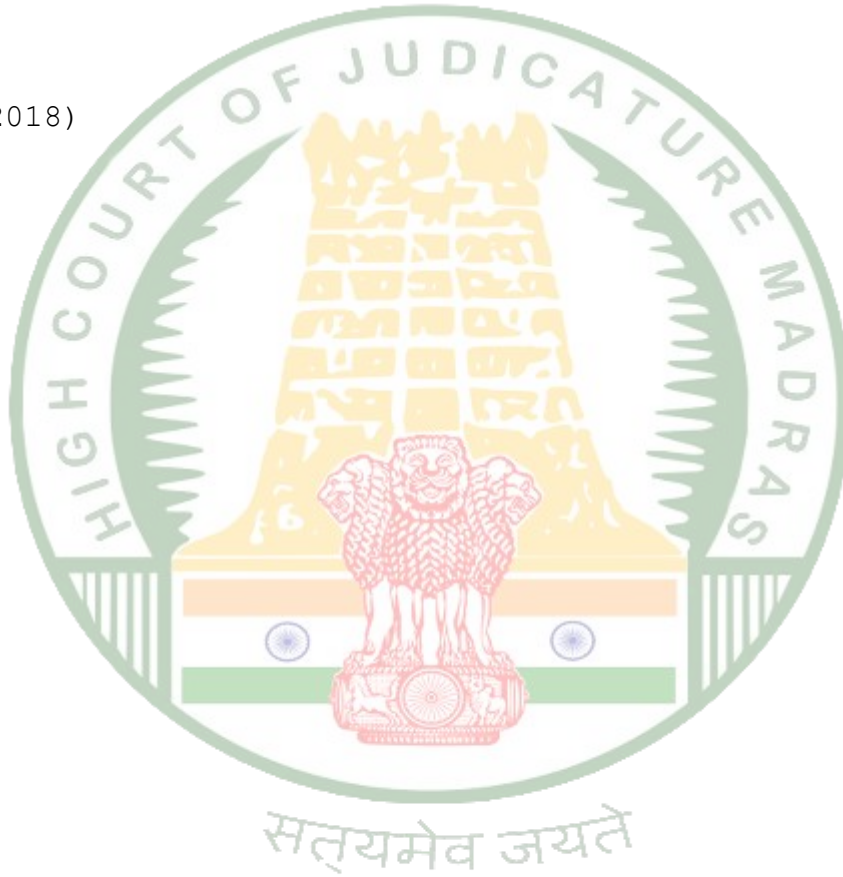
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Divisional Office, Salem Division, Salem.

+ 2 ccs to M/s. K. Jayaprakash, Advocate Sr.8506, 8507
+ 2 ccs to M/s. Kaavya Silambanan Associates, Sr.7928

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PPA(CO)
EU(02/03/2018)



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