

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.78 of 2018

In

Civil Writ Jurisdiction Case No.7035 of 2015

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1. The Life Insurance Corporation of India through its Chairman, Yogachhem, Jeevan Bema Marg, Post Box No. 19953, Mumbai- 400021
 2. The Zonal Manager, East Central Zone, Life Insurance Corporation of India, Jeevan Deep Building, Exhibition Road, Patna
 3. Senior Divisional Manager, Life Insurance Corporation of India, Patna Division-I, Jeevan Prakash Building, Fraser Road, Patna
 4. Senior Branch Manager, Life Insurance Corporation of India, Patna Branch-IV, Jeevan Prakash Building, Fraser Road, Patna
 5. Sri A.M. Sahay, Manager (CLIA)-Cum-Investigation Officer, Life Insurance Corporation of India, Patna Division- I, Jeevan Prakash Building, Fraser Road, Patna

... .. Appellant/s

Versus

Ashok Prasad, Son of Sri Radha Krishna Praasd, Presently Resident at Mohalla-Shivaji Nagar, House No. JKS-E-114, Chandpur Bela Road, Police Station- Jakkanpur, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Paras Mani, Advocate

For the Respondent/s : Mr. Krishna Kant Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 27-09-2019

Heard Mr. Paras Mani, learned Advocate for the appellant/Life Insurance Corporation of India and Mr. Krishna Kant Singh for the respondent.

2. The respondent's Agency Code was terminated by the Senior Divisional Manager, Life Insurance Corporation of India vide order dated 27.09.2011, which order stood affirmed by order dated 14.10.2014 passed by the Zonal Manager, Life Insurance Corporation of India in an appeal preferred by the respondent.

3. The aforesaid orders of termination of Agency Code and the appellate order were put to test before this Court vide C.W.J.C. No. 7035 of 2015. A learned Single Judge of this Court vide judgment dated 27.11.2017 found that the termination of Agency Code of the respondent was disproportionate to the proposed guilt of the respondent and it was unduly harsh and as such, the orders passed by the Disciplinary Authority as well as the Appellate Authority were set aside and the appellant/Corporation was directed to restore the agency of the respondent.

4. The appellant/Corporation has challenged the aforesaid orders on several grounds, but the main focus of the



challenge is that the learned Single Judge, without dislodging the factual position with respect to the misdemeanour committed by the respondent, applied the principle of proportionality on the punishment given to the respondent, namely, termination of the Agency Code. It has been submitted on behalf of the appellant that while doing so, the learned Single Judge sat over the aforesaid orders as if an appeal was being decided against those orders. The further argument of the appellant is that in such a proceeding, it is only to be seen whether ample opportunity was provided to the delinquent/employee/Agent and the process of decision making was fair and not the end result, which is in the domain of the employer. Apart from this, what has actually been harped upon by the learned counsel for the appellant is that in the event of leaving the issue open whether the respondent had actually indulged in an act for which he was put to notice and was subjected to the punishment of termination of his Agency Code, the principle of proportionality was applied which is not in consonance with the principles on which a writ petition is to be decided, especially in case, where in a disciplinary proceeding, punishment is awarded to the delinquent.

5. From the records it appears that the



respondent, for having indulged in such an act, was slapped with a suspension of his agency and was directed not to enter the premises of the concerned branch of the appellant/Corporation. The aforesaid order of suspension and the proscription on him to enter the concerned branch office of the appellant/Corporation was challenged by the respondent through C.W.J.C. No. 12329 of 2011 which was disposed of on 14.09.2011 upholding the decision of the appellant/Corporation in suspending the agency of the respondent, but the respondent was permitted to enter into the branch office till further orders were passed by the Corporation regarding his agency. Ultimately, the Agency Code of the respondent was terminated leading to the litigation which has been referred to above.

6. The learned counsel for the appellant submits that the purpose of grant of agency, which is in the nature of a licence is to bring business to the Corporation. It is more in the nature of contract which is governed by the Life Insurance Corporation of India (Agents) Regulations, 1972. Section 16 of the Regulation deals with certain conditions under which the agency of a person could be terminated. The respondent was subjected to a show-cause notice in terms of Section 16 (1)(b) namely that he had acted in a manner prejudicial to the interests



of the Corporation or to the interests of its policyholders. Pursuant to the aforesaid show-cause notice, the respondent had replied, but his reply was not found to be convincing and therefore, he was subjected to the aforesaid punishment of termination of the Agency Code.

7. The respondent on the other hand, submits that if at all, a show-cause notice was given to him, it pre-supposes that the explanation which was offered by him would be assessed dispassionately and a proceeding be initiated to test the veracity of the allegation or the genuineness of the defence so taken by the respondent. He, therefore, castigates the orders passed by the Disciplinary as well as the Appellate Authority as being without application of mind and without there being any inquiry with respect to the correctness of the allegation.

8. It has further been submitted that the learned Single Judge's order takes note of all these aspects, including the right to livelihood of the respondent and that in any proceeding, arbitrariness and perversity, if discerned, ought to be removed. While dealing with the case, the learned Single Judge has also looked up the entire aspect of the matter including the contention raised on behalf of the respondent that even in a contractual engagement, the principle of fairness,



albeit lack of arbitrariness, has to be strictly observed, or else, the entire proceeding would be rendered meaningless and without any effect.

9. After having heard the learned counsel for the parties and having perused the judgment delivered by the learned Single Judge, we are of the view that the learned Single Judge has travelled beyond the principle of judicial review under Article 226 of the Constitution of India in substituting his own opinion regarding the proportionality of the sentence. We have also noted that the learned Single Judge did not conclude that the allegations were non-existent or framed for the purposes of harassing/troubling or teaching the respondent some kind of lesson for his intemperate behaviour. If the learned Single Judge found such allegation to be existing and has assessed that it was a reflection of his disgust and intolerance, he could not have then applied the principle of proportionality of sentence.

10. We have also given our anxious consideration to the contents of the Life Insurance Corporation of India (Agents) Regulations, 1972. Section 16 of the Rules referred to above which deals with termination of agency for certain lapses provides that every order of termination made under the Section shall be in writing and communicated to the



agent concerned and that it can be terminated by the competent authority at any time by giving him one month's notice thereof in writing. After the expiry of the period of notice, the agency would stand terminated. Nowhere in the aforesaid process, as set out under Section 16 of the regulation any provision has been made for putting any agent to a detailed proceeding for terminating the agency. In the present case, we find that the notice as required under the Rules has been served upon the respondent. He has also been apprised of the reason for which he was issued a show-cause notice. Only after a senior officer of the appellant/ Corporation found the explanation of the respondent to be non-acceptable, his Agency Code was terminated, but without any further stipulation regarding payment of premium to him after the termination of such Agency Code. The order of termination of the agency was affirmed by the Appellate Authority which had the approval of the Chairman of the appellant/Corporation.

11. Thus, we find that the learned Single Judge has shown unnecessary indulgence to the respondent in setting aside the aforesaid orders and directing the appellant Corporation to restore the agency of the respondent. Discipline in a work-place has to be maintained.



12. We are in respectful disagreement with the order passed by the learned Single Judge.

13. Consequently, we deem it appropriate to set it aside.

14. The appeal stands allowed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

P.K.P./-

AFR/NAFR	AFR
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