

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.13687, 13688 and 13844 of 2016  
and W.P.(MD).No.9926 of 2016

T.Shyam .. Petitioner in W.P.No.13687/16  
Minnal T.Shanmugam .. Petitioner in W.P.No.13688/16  
S.Jai Ganesh Shankar .. Petitioner in W.P.Nos.13844 & 9926/16

Vs

Life Insurance Corporation of India,  
Rep. By Zonal Manager,  
Southern Zonal Office,  
LIC Buildings,  
No.153, Anna Salai,  
Chennai - 2. .. Respondents  
in W.P.Nos.13687 & 13688 / 2016

- 1.The Life Insurance Corporation of India,  
Rep. By the Chairman,  
Central Office,  
Yogakshema,  
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, Chennai - 2.
- 3.The Senior Divisional Manager,  
Life Insurance Corporation of India,  
Divisional Office, Jeevan Prakash,  
Gandhiji road,  
Thanjavur - 1. .. Respondents in W.P.No.13844/16
- 4.The Life Insurance Corporation of India,  
Rep. By the Chairman,  
Central Office,  
Yogakshema,  
Mumbai - 400 021.

5.The Executive Director (Mlktg./CLIA),  
Life Insurance Corporation of India,  
Marketing Bancassurance & Alt.Ch.Dept.,  
Central office,  
Yogakshema, J.B.Marg,  
Mumbai - 400 021.

6.The Executive Director (Personnel),  
Life Insurance Corporation of India,  
Personnel Department,  
Central office,  
Yogakshema (West Wing), J.B.Marg,  
Mumbai - 400 021.

7.The Zonal Manager,  
Life Insurance Corporation of India,  
Southern Zonal Office,  
Old No.102, New No.153,  
LIC Building, Anna Salai, Chennai - 2.

8.The Senior Divisional Manager,  
Life Insurance Corporation of India,  
Divisional Office, Jeevan Prakash,  
Gandhiji road, Thanjavur - 1.

.. Respondents in W.P(MD).No.9926/16

Common Prayer in W.P.Nos.13687 and 13688/16: Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the concerned records from the respondent, quash the order of the respondent dated 15.03.2016 and consequently direct the respondent to regularize the services of the petitioner in the post of Senior Marketing Executive from the date of his joining viz., 26.04.2010 and pass such further orders.

Prayer in W.P.No.13844/16: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records from the second respondent in correction with the order dated 15.03.2016 and quash the same and direct the respondent to consider the petitioner for absorption and permanent appointment in the light of the order of the Managing Director of the Life Insurance Corporation of India dated 20.09.2012 addressed to the Government of India or pass any further order.

Prayer in W.P.No.9926/16: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to consider the petitioner for either to the post of Administrative Officer as per the letter dated 20.09.2012 of the Managing Director of the Life Insurance Corporation of India addressed to

the Ministry of Labour and Employment or to the post of Assistant Divisional Manager as per the Life Insurance Corporation of India Senior Marketing Executive Scheme 2009 for the existing and immediate future vacancies and promote him accordingly with all monetary and service benefits.

W.P.Nos.13687 & 13688 of 2016  
For Petitioner : Ms.R.Vaigai, SC  
for Mr.Balan Haridas  
For Respondents : Mr.C.K.Chandrasekar

W.P.No.13844/16 & W.P.(MD).No.9926/16  
For Petitioner : Ms.R.Nirosha  
for Mr.D.Selvanayagam  
For Respondents : Mr.C.K.Chandrasekar

COMMON ORDER

Challenging the correctness of the impugned order dated 15.03.2016 passed by the Zonal Manager, Life Insurance Corporation of India, Chennai, ending the engagement of the petitioners as Senior Marketing Executives on contract basis on 25.04.2016, with a further direction to return their respective Identity Cards and other materials, if any, to the Senior Divisional Manager, the petitioners have filed the present writ petitions.

2. Ms.R.Vaigai, learned Senior counsel, for Mr.Balan Haridas, learned counsel for the petitioners in W.P.Nos.13687 and 13688 of 2016, assailing the impugned order, submitted that the respondent Corporation issued an advertisement inviting applications for contractual engagements for the post of Senior Marketing Executives and in response to the said advertisement, all the petitioners have applied for the said post and thereafter, they were called for the written examination and on being fully satisfied with the written examination, they were all issued with an appointment order dated 26.04.2010. As per the said appointment order, the period of engagement is for three years and the same can be renewed for another period of three years and again the same can be extended for yet another period of three years, totally, maximum period of upto 9 years. While appointing the petitioners, the respondent has applied all the Rules governing for public appointments, rules of reservation, age, educational qualification, etc. However, their appointment was termed to be contract for the period of 3 years, which could be extended for further two terms. The respondent has also provided all the proper sitting arrangements, with direct phone line, computer with intranet facility and also provided with email ID. In addition thereto,

all the petitioners were issued with visiting cards and salary roll number as provided to the regular employees, therefore, such an procedure followed by the respondent shows that the petitioners were treated as regular employees. Whiles, the order of appointment terming them as contract employees is wholly to keep them in tender hooks, especially, when the respondent Corporation being a State within the meaning of Article 12 of the Constitution of India, they cannot indulge in any such practice.

3. It is further stated that after fully satisfying with the performance of the petitioners right from the beginning, the respondent Corporation had also extended the so called contract on 11.06.2013 and to that effect, the Marketing Manager and Senior Divisional Manager have given their recommendation for extension of their services. Therefore, it goes without saying that the petitioners have performed their functions to the fullest satisfaction of the respondent Corporation, hence, the impugned order issued against the petitioners, violating Clause IV, which specifically states about the issuance of 30 days of notice in writing before terminating their engagement, is liable to be interfered with.

4. Adding further, learned Senior counsel submitted that when the work being performed by petitioners as Senior Marketing Executive is a regular one, the respondent Corporation has equated the said post on par with Administrative Officer. Besides, in view of proper sitting arrangements with direct phone line, intranet facility and the payment of monthly entertainment budget as applicable to the cadre of Administrative Officer, it goes without saying that the petitioners were all treated as regular employees for all practical purpose. Therefore, the impugned order passed by the respondent, without complying with the condition No.IV of the order of engagement dated 18.03.2010, is liable to be quashed.

5. Continuing her arguments, it is further submitted that IDBI Bank and Canara Bank had also engaged personnel on contract basis, however, after some time, taking note of the performance of the candidates, they had regularized the services of those candidates, therefore, the petitioners, who are also similarly placed persons, may be directed to be regularized, since the respondent Corporation is a State within the meaning of Article 12 of the Constitution of India, hence, they cannot take a different stand and terminate their services. Finally, it is contended that during the pendency of the writ petitions, the respondent Corporation has issued one more advertisement calling for application from suitable candidates for the post of Assistant Administrative Officer on 15.12.2015. The said post is a feeder cadre for promotion to the post of Administrative

Officer, therefore, when the post of Administrative Officer is equivalent to the post of Senior Marketing Executive, all the petitioners, who are three in numbers, can be accommodated in the available vacancies for the post of Administrative Officer.

6. In support of her submissions, learned Senior counsel has also relied upon a judgment passed by this Court in W.A.No.1902 of 2012, dated 28.08.2014 for a proposition that if an order of discharge is passed in violation of principles of natural justice without referring to the relevant provision, then the same is liable to be interfered with by this Court under Article 226 of the Constitution of India.

7. Learned Senior counsel also has relied upon one another judgment in the case of Senior Divisional Commercial Manager, South Central Railways and others Vs. SCR Caterers, Dry Fruts, Fruit Juice Stalls Welfare Association and another [(2016) 3 SCC 582] for a proposition that the respondent Corporation is duty bound to ensure that no person in vulnerable position is exploited.

8. Ms.R.Nirosha, learned counsel appearing for the petitioners in W.P.Nos.13844 of 2016 and W.P.(MD).No.9926 of 2016 has adopted the above said arguments of the learned Senior counsel appearing for the petitioners in W.P.Nos.13687 and 13688 of 2016.

9. Mr.C.K.Chandrasekaran, learned counsel appearing for the respondent Corporation, by filing a detailed counter affidavit, urging this Court to dismiss the writ petition as it is not maintainable, submitted that the respondent Corporation has rightly acted in accordance with the Rules, while appointing the petitioners by issuing an order of engagement dated 26.04.2010, making it clear that their engagement is only for a period of 3 years, followed by 2 more renewals, subject to satisfactory performance in the respondent Corporation, totally, maximum upto the period of 9 years. Therefore, finding that their services to the respondent Corporation is no longer required, the respondent has passed the present impugned order ending their services. Challenging the same, when writ petitions were filed, this Court, vide its order 13.04.2016, had granted an order of interim stay against the operation of the impugned order. By virtue of the same, the petitioners have been continuing their services even today. But, sadly, during the pendency of the writ petitions, a scheme, under which the petitioners were appointed, also came to be closed on 16.06.2017. When the respondent Corporation has taken a policy decision to close the scheme, namely, Senior Marketing Executives (On Contract Basis) Scheme, 2009, on 16.06.2017, till date, the petitioners have not questioned the closure of the

said Scheme. Therefore, it is contended, without questioning the closure of the said Scheme, the petitioners cannot maintain the present prayer seeking regularization of their services.

10. Adding further, he would submit that when a similarly placed person filed a writ petition in CWP No.20117 of 2015 praying to absorb and regularize their services as Senior Marketing Executives, the Hon'ble Punjab and Haryana High Court also dismissed the said writ petition on 03.06.2016. Besides, while dealing with a similar issue, the Hon'ble Bombay High Court, vide its order dated 18.08.2016 passed in W.P.No.4495 of 2016, dismissed the similar prayer made by the petitioners therein, who were appointed as Senior Marketing Executives under the said Scheme. Therefore, since the similar prayer made by the similarly placed persons has already been decided against the petitioners, the present writ petitions are also liable to be dismissed.

11. Heard the learned counsel appearing on either side and perused the materials available before this Court.

12. It is an admitted fact that all the petitioners have been engaged as Senior Marketing Executive on 26.04.2010 on contract basis in the respondent Corporation for a period of three years, with a condition that subject to satisfactory performance and need of the Corporation, the contract may be renewed for a further two terms, that is maximum upto 9 years. It is also not in dispute that while they have been working in the said post, the respondent Corporation has passed an order dated 15.03.2016 ending the services of the petitioners with effect from 25.04.2016, besides, they were advised to return the Identity Card and other materials, if any, to the Senior Divisional Manager. Against which, when the present writ petitions have been filed, this Court vide its order dated 13.04.2016, directed the respondent Corporation to maintain the status-quo with regard to the employment of the petitioners until further orders. Pursuant to the order of this Court, they have been continuing in the services of the respondent Corporation till today.

13. However, during the pendency of the writ petitions, Executive Director (Personnel) of the respondent Corporation, vide proceedings dated 16.06.2017, ordered for closure of the Senior Marketing Executives (On Contract Basis) Scheme, 2009, with immediate effect. For better appreciation, relevant portion of the proceedings is extracted below:-

"Re: Closure of Senior Marketing Executives (On Contract Basis) Scheme, 2009.

This is to inform that the Corporation has closed the Senior Marketing

Executives (On Contract Basis) Scheme, 2009,  
with immediate effect."

In view of the above above said proceedings of the Executive Director (Personnel) of the respondent Corporation closing the Senior Marketing Executives (On Contract Basis) Scheme, 2009, the petitioners, who have been appointed under the said Scheme, cannot press their prayer seeking regularization of their services in the respondent Corporation, because, when the Scheme appointing the petitioners as Senior Marketing Executives itself was closed, their appointment itself was closed . Therefore, their prayer for regularization has become infructuous.

14. Moreover, while dealing with a similar issue, the Hon'ble Bombay High Court, vide its order dated 18.08.2016 passed in W.P.No.4495 of 2016, dismissed the said writ petition giving a finding that a cumulative reading of 2009 Scheme, makes it clear that the respondent intended engaging Senior Marketing Executives under the Scheme purely on contract basis, with an initial engagement for three years and to be extended maximum for two more terms. Thus, the said Scheme in no manner indicates that the engagement made thereunder has any trait of any permanent post/vacancy. It has further observed that the letter issued to the petitioners therein was termed as engagement letter not appointment order and on this basis, the Hon'ble Bombay High Court has finally come to the conclusion that the submissions of a right to absorption cannot be accepted in view of specific clauses of the engagement letter, which, in no uncertain terms record that the engagement of the petitioners therein is a contractual one.

15. In the cases on hand, as highlighted above, the petitioners herein also engaged in the respondent Corporation on contract basis for a period three years, however, subject to their satisfactory performance and need of the Corporation, their services may be renewed for a further two terms, that is maximum upto 9 years. In the above said judgment of the Hon'ble Bombay High Court, a similar issue was dealt with and decided against the persons working under the said 2009 Scheme holding that a similar challenge raised by the Financial Service Executives Welfare Association against the Corporation came to be rejected and that judgment has also attained the finality, in view of the dismissal of the Special Leave to Appeal (C) No.14641 of 2015 by the Hon'ble Supreme Court by an order dated 09.03.2016. Therefore, in such view of the matter, the petitioners, who were also appointed under the said 2009 Scheme, cannot press their prayer seeking regularization of their services. Besides, as stated supra, now the said 2009 Scheme itself was closed by the Executive Director (Personnel) of the respondent Corporation. Therefore, when the said 2009 Scheme itself, under which petitioners were appointed, is no longer

existing, the present writ petitions filed by the petitioners questioning the impugned proceedings dated 15.03.2016 ending their services cannot be entertained by this Court.

16. Accordingly, for the reasons stated above, the writ petitions fail and they are dismissed as devoid of any merit. Consequently, interim order passed by this Court on 13.04.2016 stands vacated. No Costs.

Sd/-  
Deputy Registrar

//True copy//

Sub Assistant Registrar

rkm

To

- 1.The Chairman,  
The Life Insurance Corporation of India,  
Central Office, Yogakshema,  
Mumbai - 400 021.
- 2.The Executive Director (Mktg./CLIA),  
Life Insurance Corporation of India,  
Marketing Bancassurance & Alt.Ch.Dept.,  
Central office,  
Yogakshema, J.B.Marg,  
Mumbai - 400 021.
- 3.The Executive Director (Personnel),  
Life Insurance Corporation of India,  
Personnel Department,  
Central office,  
Yogakshema (West Wing), J.B.Marg,  
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5.The Senior Divisional Manager,  
Life Insurance Corporation of India,  
Divisional Office, Jeevan Prakash,  
Gandhiji road, Thanjavur - 1.

Copy To

1. The Section Officer ER Records High Court, Madras.104.  
(Separate the WP(MD) 9926/2016 and send the same to Madurai Bench with copy of order)

2. The Section Officer, Writ Section, Madurai Bench of Madras High Court, Madurai (for further action)

3. The Section Officer, ER Section, Madurai Bench of Madras High Court, Madurai.

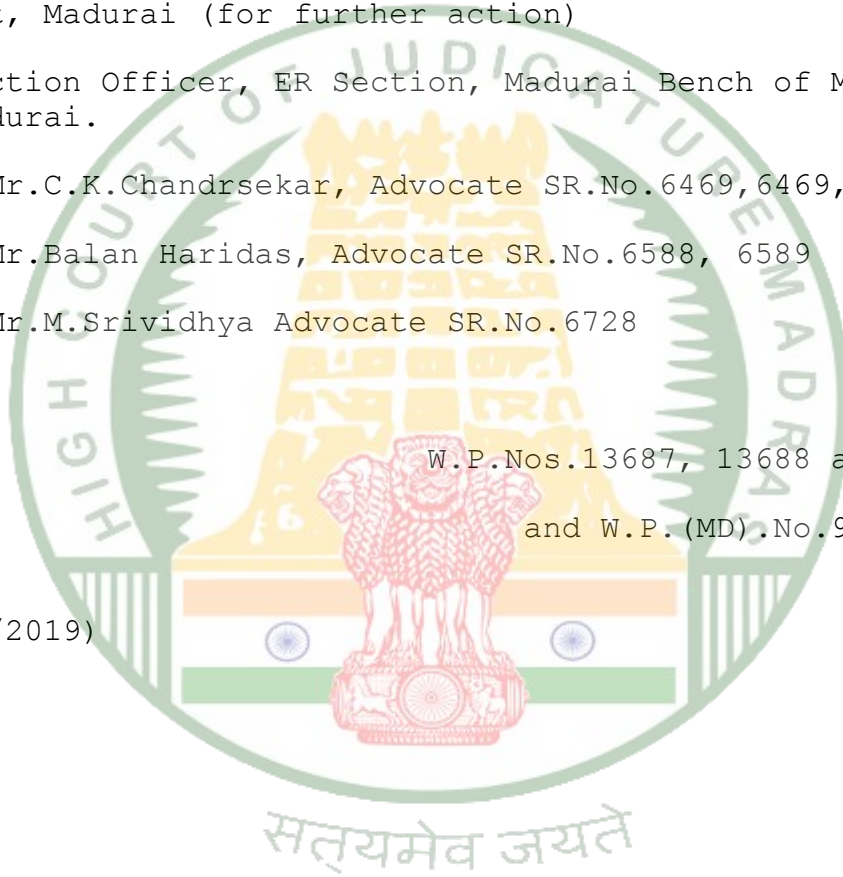
+3ccs to Mr.C.K.Chandrsekar, Advocate SR.No.6469, 6469, 6470

+2ccs to Mr.Balan Haridas, Advocate SR.No.6588, 6589

+1cc to Mr.M.Srividhya Advocate SR.No.6728

W.P.Nos.13687, 13688 and 13844 of  
2016  
and W.P. (MD).No.9926 of 2016

GMV (13/02/2019)



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