

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.28744 of 2019

and

WMP.No.28495 of 2019

Vinoth Govindharaj

... Petitioner

Versus

1.Life Insurance Corporation of India,
Rep. by the Chairman,
"Yogakshema," Jeevan Bima Marg
Mumbai-400021.

2.The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office Marketing Department,
P.B.No.3810, India Life Building,
Trichy Road, Coimbatore-18.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue orders, writs or directions, in particular a Writ of Certiorari calling for the records of the second respondent relating to the show cause notice dated 30.08.2019 issued by the petitioner and quash the same.

For Petitioner : Mr.Raja
Senior Counsel
for M/s.Ramapriya Gopalakrishnan

For Respondents : Mr.C.K.Chandrasekhar

ORDER

This Writ Petition has been filed seeking for issuance of Writ of Certiorari, to call for the records of the second respondent relating to the show cause notice dated 30.08.2019 issued by the petitioner and quash the same.

2. It appears that the due to non performance of the target fixed by the Life Insurance Corporation of India / the respondent herein, the petitioner has been issued with show

cause notice dated 30.08.2019, calling for explanation from the petitioner as to why his services should not be terminated in terms of the sub-rule 8 of Rule.6 read with Rule.7 of the Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 2009 amended as Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Service) Amendment Rules-2016. As against the impugned show cause notice, without submitting explanation, the petitioner has come forward with the present writ petition seeking to quash the same on the ground that the impugned show cause notice would explicit that the petitioner is going to be terminated without even holding an enquiry which is in violation of the principles of natural justice.

3. The learned Senior Counsel appearing on behalf of the petitioner would submit that the impugned show cause notice cannot be sustained since it straight away contemplated the termination of services of petitioner. He would also contend that the termination of services straight away on the ground of poor performance of the petitioner without imposing any minor penalties is illegal and the same is liable to be set aside.

4. Generally, the Writ Court restrains itself from entertaining the writ petitions filed, challenging the show cause notice. However, it is pertinent to note that the similar writ petitions have been filed challenging the show cause notice impugned therein which came to be dismissed by this Court vide order dated 15.09.2017 in W.P.Nos.35411 of 2017 etc. (batch case) and the same was put under challenge in Writ Appeal No.1639 of 2019 and the Division Bench of this Court vide its judgment dated 08.12.2017, has disposed of the Writ Appeal with the following observation:

"2. Learned counsel appearing for the petitioner submitted that as against the show cause notice in respect of officers 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 appellant/writ petitioner 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 as illegal.

3. Per contra, the learned Senior Counsel appearing for the respondent would contend that as against the judgment of the Kerala High court, LIC has moved SLP and obtained stay. He would further contend that it is only at the show cause notice, the writ petition is filed as against show cause notice and therefore, the writ petition challenging the show cause notice itself is not maintainable.

4. Taking the same view, the learned Single Judge after going through the factual aspects of the case, disposed of the writ petition.

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 Senior Counsel appearing for the appellant. 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 appeal subject to the above observation. The explanation of the appellant 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 petition is closed."

5. The learned counsel appearing for the respondent would

submit that even the petitioner submits explanation, the same would be considered by the respondents in the light of the order of the Division Bench.

6. Considering the facts and circumstances and in view of the order passed by the learned Division Bench, stated supra, which will held good for the present Writ Petition, the petitioner is directed to submit his explanation / representation in respect of the impugned show cause notice within a period of one week from the date of receipt of a copy of this order. On such explanation / representation being made by the petitioner, the respondents are directed to pass appropriate orders in accordance with law and on merits complying with the principles of natural justice and also in the light of the decision in (2015) 7 SCC 222).

7. With the above direction this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The Chairman, Life Insurance Corporation of India,
"Yogakshema," Jeevan Bima Marg
Mumbai-400021.

2. The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office Marketing Department,
P.B.No.3810, India Life Building,
Trichy Road, Coimbatore-18.

+1cc to Mr.K.Ramapriya Gopalakrishnan, Advocate, S.R.No. 83482
+1cc to Mr.C.K.Chandrasekhar, Advocate, S.R.No. 83802

W.P.No.28744 of 2019

and

WMP.No.28495 of 2019

RSV(CO)
GN(12/11/2019)