

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4279 of 2019

and CMP No.26726 of 2019

All India Scheduled Castes/Schedule Tribes
Buddhist LIC Employees Welfare Association
South Zone, Rep by its General Secretary,
R. Janarthanan, P&GS Department,
LIC of India, Divisional Office-1,
o.156, Anna Salai,
Chennai - 600 002

...Appellant/Petitioner

-vs-

1. Union of India
rep by its Secretary to Government of India,
Personal & Administration Reforms Department
New Delhi - 110 001
 2. The Life Insurance Corporation of India,
rep by its Executive Director (Personnel),
Central Office, Jeevan Bhima Marg,
Mumbai - 400 021
 3. The Life Insurance Corporation of India,
rep by its Zonal Manager,
South Zone, 156, Anna Salai,
Chennai - 600 002
- Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the order passed in WP No.2871 of 2019 dated 09.07.2019.

Prayer in W.P.No.2871 of 2019:

Writ of declaratory Mandamus declaring the impugned circular
dated 10.10.2018 in circular No.ZD/1379 issued by the Life
Insurance Corporation of India is illegal void unconstitutional

and the same may be struck down as invalid and direct the Respondents to provide the relaxations concession in the promotion from the post of Administrative Officer till the cadre of the Divisional Manager in the Life Insurance Corporation of India.

For Appellant : Sri.K. Shanmugakani

JUDGMENT

(Delivered by The Hon'ble The Chief Justice)

The appellant filed the writ petition giving rise to this writ appeal for declaring the Circular dated 10.10.2018 as invalid with a further direction to the Life Insurance Corporation of India to provide relaxation/concession in promotion on the post of Administrative Officer to the cadre of the Divisional Manager in the Life Insurance Corporation of India. The appellant/petitioner is a welfare association claiming itself to be of the LIC employees and represented by its General Secretary.

2. The allegations were that the impugned Circular did not contemplate the application of communal roster in the matter of public employment and was not in tune with the constitutional mandate as prescribed by the Apex Court time and again, and consequently the relief prayed for should be granted.

3. It appears that during the pendency of the writ petition, Life Insurance Corporation of India came up with another Circular, whereby they put the earlier Circular dated 10.10.2018 in abeyance. Taking notice of the subsequent circular the writ petition was treated to have become infructuous and accordingly dismissed on 09.07.2019. Questioning the same, the appellant has now come up in this appeal contending that the relief prayed for is a mandamus, in the nature of declaration to implement the law, which has not become infructuous merely because the Corporation had suspended its circular putting it simply in abeyance. It is urged that it was a temporary step taken by the Corporation which did not eclipse the right to get relaxation and concession claimed by the appellant/petitioner.

4. Learned counsel for the appellant contends that even if this subsequent event of putting the earlier Circular in abeyance had been noticed, then the further relief of commanding the respondent Corporation to implement the mandate of Hon'ble Supreme Court to grant relaxation and concession ought to have been adjudicated by moulding the relief as prayed for. For this, reliance has been placed by the learned counsel on three judgments:

1. (1981) 3 SCC 531 (Assessing Authority-cum- Excise and Taxation Officer, Gurgaon and another vs East India Cotton Mfg Co Ltd, Faridabad)

2. (2003) 2 SCC 533 (Indian Charge Chrome Ltd and another vs Union of India and Others

3. (2004) 2 SCC 76 (Ramrao and Others vs All India Backward Class Bank Employees Welfare Association and Others).

5. An affidavit has been filed in support of the stay application and in paragraph-17 and 18 it has been stated that the petition came to be dismissed on 09.07.2019 and thereafter, the respondent/Corporation has hurriedly completed promotion for the period 2018-2019 and has also commenced the promotion for the year 2019-2020.

6. In this background, it has been urged that this appeal being a continuation of the writ petition, any action taken after the dismissal of the writ petition should also be entertained in this writ appeal and the relief prayed for should be granted.

7. We have considered the submissions raised and what emerges from the aforesaid facts is that Life Insurance Corporation introduced the Circular on 12.02.2019 putting the earlier Circular dated 10.10.2018 in abeyance for the current years. The Circular dated 10.10.2018 had been put in abeyance temporarily reciting as follows:-

To,
HODs of Central Office,
All Zonal Managers (I/C) of Zones,
In-Charges of Offices where Officers from
LIC are posted on deputation, and Sr.
Divisional Managers (I/C) of Divisions.

Re:Instructions for Promotion of Class I Officers to the cadre of AO, ADM & DM and equivalent cadres.

Instructions were issued vide Per.Admn.Circular No.ZD/379 dated 10/10/2018 to implement the provisions of promotion under Regulation 7 of LIC of India (Staff) Regulations, 1960 for LIC Class-I Officers to the cadre of AO, ADM & DM and equivalent cadres. These

instructions were applicable for promotions from 2019-2020 onwards.

It has now been decided that these instructions shall be applicable for promotions from 2020-2021 onwards.

By Order
Executive Director (Personnel)

8. However, a perusal of the Circular does not indicate that it had come into effect either on account of filing of the writ petition or passing of any Order by the Court.

9. The contention now in this writ appeal is that the selections and promotions have been held without considering the relaxation as was originally prayed for by the appellant.

10. We are of the opinion that in the event the Life Insurance Corporation has proceeded to carry out any selections or promotions after the dismissal of the writ petition, then there was no occasion for the learned Single Judge nor any power was available to the Court to mould the relief after the dismissal of the petition. This cause of action therefore had to be subsequently impugned by way of a separate writ petition and learned counsel informs us that a separate writ petition has been filed.

11. In this background, there is no occasion for us to entertain the present plea, but so far as the legal issue that has been advanced by the learned counsel with regard to grant of relaxation and concession is concerned, the same was neither adjudicated nor decided by the learned Single Judge. Therefore, the said issue which has been raised in the subsequent writ petition can still be considered and decided on its own merits without being influenced by the impugned order in the writ petition or disposal of this writ appeal.

12. The case laws relied on by learned counsel for the appellant for the purpose of seeking relief can still be pressed by placing the facts and raising this plea before the Court concerned in the writ petition, which is stated to have been filed questioning the correctness or otherwise of the action of the Corporation.

13. Learned counsel has urged that Corporation may not be permitted to take such steps that may virtually amount to a harassment of litigative pursuit for the aggrieved person in

order to challenge the action arising out of the original cause of action that had been pleaded in the first writ petition as indicated above.

14. The aforesaid option has not been lost and it can still be agitated in the subsequent writ petition.

15. Therefore, we are not inclined to entertain this writ appeal. Accordingly, the writ appeal is consigned to records subject to above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. Secretary to Government of India,
Union of India,
Personal & Administration Reforms Department
New Delhi - 110 001.
2. The Executive Director (Personnel),
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