



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.09.2018
PRONOUNCED ON : 12.04.2019
CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.8644 of 2011

T.Baskaran

.. Petitioner

Vs.

1.The Senior Divisional Manager,
(Disciplinary Authority),
LIC Divisional Office,
Gandhiji Road,
Thanjavur.

2.M.Mahalingam,
Enquiry Officer,
LIC of India,
Divisional Office,
Gandhiji Road,
Thanjavur.

3.M.Manian

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order of punishment passed by the 1st respondent in his proceedings in Ref.P.&IR dated 15.06.2011 and quash the same as illegal.

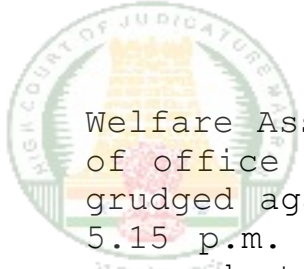
For Petitioner : Mr.M.E.Ilango
for M/s.Ajmal Associates

For Respondents 1 & 2 : Mr.S.Karthik,
for M/s.Profexs Associates

For 3rd respondent : Mr.N.Balakrishnan

ORDER

This writ petition has been filed by the petitioner challenging the impugned order of punishment passed by the 1st respondent dated 15.06.2011.



Welfare Association for the year 2006-08 and thereafter, a new set of office bearers assumed charge of the Association and they were grudging against the petitioner. While so, on 29.06.2010 at about 5.15 p.m. when the petitioner came out of the Office, the third respondent, who is now the Vice President of the Association, slapped him, for which the petitioner gave a criminal complaint against him for safety and after obtaining an undertaking of good conduct, the Police let off the third respondent. On the next day, i.e., on 30.06.2010 the petitioner came to know that the third respondent has given a complaint against him to the higher authorities on 29.06.2010 itself as if he slapped the third respondent during the Office hours at 4.45 p.m. Then, immediately, the petitioner also gave a complaint to the higher authorities narrating the events. But, on 24.08.2010, a charge memo was issued to the petitioner under Regulation 39 of the LIC of India (Staff) Regulation, 1960 framing the following four charges.

"(i) That you had slapped Thiru.M.Manian, HGA Sr.No.546650 at about 04.45 p.m. on 29.06.2010 near the entrance of Divisional Office annexe Building Ground Floor.

(ii) That you have not reported the matter immediately to any higher official.

(iii) That you have taken the matter to Police authorities instead of to LIC authorities.

(iv) That you have misbehaved violating all the norms of decency and decorum in the office thus bringing down the image of the corporation."

3. On 20.09.2010 the petitioner gave his explanation to the charge memo. After enquiry, the Enquiry Officer held that the charges are proved against the petitioner. After getting explanation to the report of the enquiry officer, the first respondent imposed a punishment of Reduction in Basic Pay by One Stage". Questioning the same, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the second respondent / enquiry officer is none other than the previous General Secretary of the Association and he has grudge against the petitioner as the petitioner was selected as General Secretary of the Association subsequently. Further, the second respondent / enquiry officer has been acting as strong member of the association and such an enquiry officer, will act only in support of the present Office bearers of the Association viz., the complainant. Though it was brought to the notice of the first respondent / disciplinary authority, the first respondent did not consider the same. He would further submit that though the petitioner also gave a complaint against the third respondent on the next day to the complaint given by the third respondent, the petitioner alone was subjected to disciplinary proceedings and



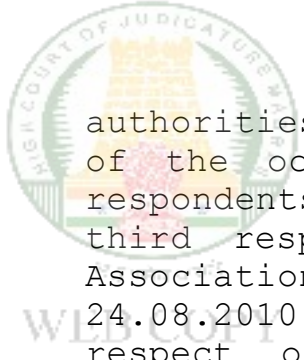
no action whatsoever was initiated as against the third respondent till date and the same prove that there is discrimination in the disciplinary proceedings and the same is liable to be set aside on the ground of bias.

5. The learned counsel for the petitioner would further submit that the enquiry officer examined three witnesses and PW1, who is the non member of the association, has fairly stated that there was scuffle between the petitioner and the third respondent and he did not know who first attacked. However, the enquiry officer, based on the evidence of the PW2, who is the present General Secretary of the Association and the complainant, who is the present Vice President of the Association, has held that the charges are proved. It would further strengthen the *mala fide* attitude of the enquiry officer. He would further submit that the incident had happened after office hours ie., at 5.15 p.m. and it was purely a union affair and therefore, the first respondent has no authority to initiate disciplinary proceedings. He would next submit that as the incident had happened after office hours, he gave the Police Complaint out of fear and it is his constitutional right and the said act in any event does not amount to any misconduct warranting initiation of disciplinary proceedings. Thus, he prayed to set aside the impugned order on the ground of bias and *mala fide*.

6. The learned counsel for the respondents in unison submitted that the third respondent has given a complaint that during the office hours at 4.45 p.m., the petitioner slapped him and therefore, the disciplinary proceedings has been initiated against the petitioner and on enquiry, it is confirmed that the petitioner slapped the third respondent and therefore, he is punished with reduction in basic pay by one stage. The second respondent / enquiry officer has strong association with the Association and therefore, the act of bias cannot be attributed against him. So far as the complaint given by the petitioner is concerned, it is still pending for consideration and therefore, the discrimination cannot be attributed. As there is no violation of any principles of natural justice, this Court has no jurisdiction to interfere with the impugned order. Thus, they prayed to dismiss this writ petition.

7. Heard the learned counsel for both sides and perused the records carefully.

8. According to the complaint given by the petitioner dated 30.06.2010, when he came down from upstairs of the Office on 29.06.2010 at 5.00 p.m., PW2 - Selveswaran and one Thiagarajan caught hold of him and the third respondent slapped him in drunken manner. According to the third respondent, since the petitioner slapped him during office hours at 4.45 p.m. on 29.06.2010, he gave complaint against the petitioner before the higher



authorities. The complaint given by the petitioner on the next day of the occurrence ie., on 30.06.2010 is not disputed by the respondents. However, only based on the complaint given by the third respondent, who is the present Vice President of the Association, the first respondent issued charge memo dated 24.08.2010. When there is a complaint and counter complaint in respect of one and the same incident, generally both the complaints would be taken together and considered. Here, in this case, though the petitioner has given his complaint to the higher authorities on the very next day of the incident, as it happened after office hours on the previous day, the said complaint has not at all been considered by the first respondent. As stated by the petitioner, it shows that the petitioner alone has been cornered, singled out and discriminated. The information received by the petitioner, dated 25.08.2011, under the Right to Information Act, would disclose that even after passing of the impugned order of punishment against the petitioner, no action has been taken against the third respondent based on the complaint of the petitioner. It would further strengthen the submission of the petitioner that there is a discrimination in taking action against the third respondent. Thus, the impugned order is bad on the ground of discrimination.

9. According to the petitioner, the enquiry officer is biased. The enquiry officer was the General Secretary of the Association for many years and the petitioner took charge of General Secretary of the Association subsequently and the enquiry officer has grudge against the petitioner and as the enquiry officer has been acting as strong member of the present Association, he would act only in support of the third respondent, who is the present Vice President of the Association. Though it was brought to the notice of the first respondent, he has not changed the enquiry officer. It is seen that the first respondent has rejected the said submission of the petitioner merely stating in the impugned order that the enquiry officer has strong association with the present Association. In fact, it would only support the version of the petitioner.

10. It is pertinent to note that the enquiry officer has come to the conclusion that the charges are proved only based on the evidence of the present General Secretary of the Association - PW2 - Selveswaran, against whom also the petitioner has given his complaint on 30.06.2010. More over, PW1, who is the non-member of the Association, has categorically stated in his evidence that both the petitioner and the third respondent were attacking each other and that he did not know who attacked first. PW1 also did not specifically state about the time at which time the occurrence had happened. Thus, PW1 did not support the version of PW2 and the conclusion arrived at by the enquiry officer based on such evidence would only further strengthen the version of the



petitioner. Without considering the above and without going into the merits of the submission of the petitioner, the disciplinary authority / first respondent has passed the impugned order.

11. It is not exaggeration to say that according to the third respondent (PW3) and PW2, the attack was made by the petitioner alone during office hours. Assuming for a movement that the version of PW2 and PW3 are true, then, the version of PW1 that both the petitioner and the third respondent attacked each other, would clearly show that the third respondent also attacked the petitioner during office hours. But, as stated by the petitioner, he was biased and the disciplinary proceedings has been initiated against him in arbitrary manner.

12. Though this Court is of the view that the matter may be remitted to the file of the first respondent with a direction to deal with both the complaints together and then, to decide the matter, considering the elongation of time, this Court is not inclined to do so.

13. In the result, this writ petition is allowed and the impugned order passed by the first respondent is set aside. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Senior Divisional Manager,
(Disciplinary Authority),
LIC Divisional Office,
Gandhiji Road,
Thanjavur.

+1 CC to M/s.N.BALAKRISHNAN, Advocate (SR-60879[F] dated 12/04/2019)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-61378[F] dated 16/04/2019)

gcb

Order made in
W.P(MD)No.8644 of 2011
12.04.2019

_KM/ (25.04.2019) 5P 4C