IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20153-2012 (O&M)
Date of Decision: March 28, 2019

Murli Dhar **... Petitioner**

vs.

Life Insurance Corporation of India & Others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Akshay Jain, Advocate
for the respondents.

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ARUN MONGA, J

The present petition has been filed *inter alia* for issuance of a writ in the nature of *certiorari* to quash the impugned order dated 29.07.2009 (Annexure P5) passed by Senior Divisional Manager, LIC (respondent No.3), the impugned Appellate order dated 25.10.2010 (Annexure P7) passed by Zonal Manager (respondent No.2) and also the impugned order dated 23.01.2012 (Annexure P9) passed by the Chairman, LIC (respondent No.1), whereby, while dismissing the memorial of the petitioner, the orders passed by the punishing authority and appellate authority have been upheld.

2. Succinctly, the factual backdrop, as pleaded in the petition, is that the petitioner was served a show cause notice dated 16.06.2008 (Annexure P3), charging him for acting in a fraudulent manner. The petitioner was charged for procuring two life insurance proposals on the life of one Sh. Bhagwan Dass, for sums of Rs.5 lac and Rs.3 lac, which were later converted into policy Nos. 162847505 and 163065245, respectively. The delinquency

attributed to the petitioner is that even though the insured, proposed to be covered under the insurance policy, was suffering from Cerebro Vascular Accident (CVA) of right side Hemiparesis (paralysis of right side) and was also suffering from hypertension for the past 8/9 years to the knowledge of the petitioner, yet the petitioner misrepresented about the said background of the insured and misled the life insurance company to issue two policies, *(supra)*.

3. It is the case of the petitioner that while referring the case of the insured, he did not find anything adverse qua the health of the insured and neither anything adverse was found in the medical examination conducted by the panel doctor of the insurance company nor the Development Officer, who recommended the case of the insured, found anything untoward nor even the Assistant Branch Manager, who recorded his satisfaction note on the recommendation made by the Development Officer, found anything untoward.

4. In the written statement, filed by respondents No. 1 to 5, the assertions of the petitioner have been strongly controverted on the ground that the petitioner has not approached this Court with clean hands and has concealed vital facts and presented a distorted picture. It is stated in the written statement that after the receipt of the claim by the Corporation, it was investigated as per claim settlement procedure. The Corporation appointed an investigator to investigate the claim. It was revealed during the investigation that the deceased Life Assured was not keeping good health prior to the taking of the above insurance policy. He had deliberately and intentionally, with the active connivance of the petitioner, procured the policy, concealed and misrepresented the material facts, regarding his health, with intent to play fraud with the Corporation. The deceased Life Assured concealed the fact of suffering from CVA (Cerebro Vascular Accident) Rt. Side Hemiparesis. He

had also been suffering from Hypertension for the last 9 years. It was found during the investigation that the Medical Examination of the deceased Life Assured, was conducted in absentia through impersonation, with a view to hide the ill health of the life assured. The matter was referred to Forensic Experts for ascertaining whether the Medical Examination of the Deceased Life Assured was conducted in absentia, with a view to hide the ill health of the Deceased Life Assured. The Forensic Experts opined that the signatures on the medical reports were forged and the life assured had not signed the documents. Copy of Forensic Experts Report is attached as Annexure R-1. After receiving the report of Forensic Expert, the Corporation repudiated the claim. The petitioner had failed to discharge functions as an agent properly and acted in a manner prejudicial to the interests of the Corporation.

5. I have gone through the rival pleadings with the assistance of the learned counsels appearing for the parties and heard the matter at length.

6. Learned counsel for the respondents, at the outset, relied on Rule 16 of the Life Insurance Corporation of India, (Agents) Regulations, 1972 and submitted that the only protection provided to the agent, qua termination of the agency was that he was to be given a reasonable opportunity to show cause prior to contemplated termination. He further submitted that pursuant to the Rule, *ibid*, show cause notice dated 16.06.2008 (Annexure P3) was issued and having gone through the reply filed by it and also having gone through the report of the forensic experts, which in no uncertain terms, opined that not only the signatures of the insured on the application form while applying for the insurance policy, were forged but even the signatures on the medical reports, submitted qua the insured, were forged. Learned counsel for the respondents further submitted that accordingly, the agency of the petitioner

was rightly terminated and there is no violation of applicable regulations, *supra.*

7. Learned counsel for the petitioner, on the other hand, submitted that the impugned orders are not tenable in law and the same have been passed without conducting any inquiry prior to terminating the agency of the petitioner. He relied on a judgment rendered by High Court of Andhra Pradesh, in case titled ***G.Sreenivasa Reddy v. Zonal Manager, LIC of India, Hyderabad and others,*** reported as AIR, 2003, A.P., 126 and contended that as held in the said judgment, if no inquiry is conducted, then, all the subsequent proceedings stand vitiated and, accordingly, the agency of the petitioner is liable to be restored. In particular, he relied on the following paragraph of the judgment:-

> *"The instances of punishment being shocking the conscience of the Court or being disproportionate are too difficult to be defined. They can be understood only with reference to certain instances. The present case provides the best example for both the categories. The pleas of the respondents that the agency is based on trust and confidence and instance of dishonesty involving even trivial amounts cannot be tolerated is too spacious to be accepted. It is not understandable as to how the question of trust and confidence are involved in this case at all. In his explanation, the petitioner graphically explained the manner in which he travelled. No discussion was undertaken about it. The incriminating material in the possession of the 2nd respondent was not made available to the petitioner. No enquiry was held. The very fact that the petitioner claimed a II A/c fare for one way journey and non-A/c fare for the return journey demonstrates that he did not intend to make any false claims. In fact the petitioner was entitled to travel and claim A/c fares for*

> *both the journeys. It was not as if he has chosen the costliest mode of transport By any standard, the one chosen by the petitioner was the cheapest in the given set of circumstances."*

8. Having gone through the judgment relied upon by learned counsel for the petitioner, I find that it is only in passing that a reference to the peculiar facts of the case above, that the Court held that since no inquiry was conducted with regard to the financial irregularities alleged therein, therefore, the termination of agency on the ground of financial irregularities was found bad in law. The said judgment is not applicable in the present case.

9. I am in agreement with the contention of learned counsel for the respondents that the regulations, qua termination of agency, do not envisage any inquiry as it is not a relationship of employer and employee. The regulation merely envisages that a reasonable opportunity of being heard is to be granted, preceded by issuance of show cause notice. In the present case, both the requirements have been duly met with.

10. Apart from this, the respondents were not under any legal obligation to have the signatures of the insured as on the application form and on the medical reports, verified. Yet in order to compare the same, they were sent for forensic examination and based on the forensic reports the agency of the petitioner was terminated.

11. Learned counsel for the respondents also relied on a Division Bench judgment rendered by Patna High Court in the case of ***Life Insurance Corporation of India vs. Jay Kumar Pandey,*** reported as 2011 (4) PLJR 129. In particular, he layed emphasis on para 6 thereof, which is extracted herein below:

> *"In the present case, action has been taken in terms of*

Regulation 16(1)(b). The Corporation has come to the conclusion that the action of the respondent was prejudicial to the interest of the Corporation. The action was taken after affording reasonable opportunity to show-cause against such termination. The respondent had shown cause followed by the order of termination passed by the learned competent authority. The respondent also availed of the departmental appeal which has been dismissed by a reasoned order. In our view, the order of the competent authority conforms to the requirements of Regulation 16(1)(b), and further conforms to the requirements of Regulation 16(2) which provides that the order of termination shall be in writing and communicated to the agent concerned. Regulation 16 (3) enables the competent authority to pass an order in the nature of an order of suspension in contemplation of action against the agent. It is significant to observe from a plain reading of Regulation 16 that, in case the act attributable to the agent is covered by anyone of the clauses under Regulation 16(1), perhaps the only action that can be taken against him is termination of agency. On a perusal of Regulation 16, we get a clear impression that the only protection available to an agent against the proposed order of termination of agency is to be found in the proviso to Regulation 16(1) which is to the effect that the agent shall be given a reasonable opportunity to show cause against such termination. As indicated hereinabove, such an opportunity read with the requirements of Regulation 16(2), was afforded to the respondent. It, therefore, follows as a matter of corollary that the kind of relationship that exists between the Corporation and the agent, the respondent should be under no impression that he will be entitled to the exhaustive protection available to the holder of a civil post within the meaning of Article 311 of the

> *Constitution. He is entitled to the limited protection against arbitrary action of the Corporation. It should also be emphasized that the activities of the Corporation are a good deal commercial in nature, and is not engaged in discharge of sovereign and regal functions.*

Relying on the abovesaid judgment, learned counsel for the respondents submitted that the agency of the petitioner was terminated as the Corporation came to the conclusion that the action of the petitioner was prejudicial to the interest of Corporation.

12. I am in agreement with the contention of learned counsel for the respondents as also the reliance placed by him on the Patna High Court' judgment, *ibid*. The said judgment is applicable to the present case as well.

13. Confronted with the situation, learned counsel for the petitioner submitted that, regardless of the termination of the agency of the petitioner, the respondent-Corporation could not have forfeited the renewal commission payable to the petitioner, as per Rule 10 of the LIC, Regulation, *ibid*.

14. Per contra, learned counsel for the respondents submitted that the commission, as per Clause 19 of Life Insurance Corporation of India, (Agents) Regulations, 1972, *ibid,* envisages the situation where the commission can be withheld on the ground of fraud having been committed by an agent. The said argument of learned counsel for the respondents, if accepted, would essentially mean that a finding of fraud has to be given before withholding of the commission. Fraud has to be established based on cogent evidence and proper inquiry and trial thereof has to be conducted. In the impugned order, it is only mentioned that the petitioner had conducted himself in a fraudulent manner. Fraud cannot be established under such circumstances without giving any opportunity to the petitioner to meet the specific allegations, by way of a trial

or inquiry proceedings.

15. In this view of the matter, I am of the opinion that the petitioner is entitled to payment of the renewal commission, regardless of termination of his agency.

16. In view of my discussion above and the reasoning contained therein, the impugned order dated 29.07.2009, qua the termination of agency of the petitioner, is upheld, with a modification that regardless of the termination, he shall be paid the renewal commission in accordance with his entitlement, as per regulations.

17. Let the needful be done within a period of three months.

18. Disposed of.

March 28, 2019 **(ARUN MONGA)**
smriti **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No