

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 8939 of 2020

Sri Anirban Kumar Ghosh

Vs.

The Union of India & Ors.

For the writ petitioner	:-	Mr. Bhaskar Ghosh, Sr. Adv. Mr. Siddhartha Paul, Adv.
For LIC	:-	Mr. Avishek Guha, Adv.
Heard on	:-	10-12-2020
Judgment on	:-	18-12-2020

Amrita Sinha, J.:-

The petitioner challenges the communication dated 26th August, 2020 issued by his employer Life Insurance Corporation of India (LIC) whereby he has been requested to refund a sum of Rs. 1,67,109.25/- (rupees one lac sixty seven thousand one hundred nine and twenty five paisa only) within a period of seven days of receipt of the letter.

The petitioner was appointed as an Apprentice Development Officer of LIC by a letter of appointment dated 28th November, 2018. After obtaining training the petitioner was appointed as Probationary Development Officer on and from 1st February, 2020. The initial probationary period was twelve months from the date of joining as probationer.

A Development Officer has to serve LIC for a minimum period of four years, in default, liquidated damages of rupees twenty five thousand is to be paid.

The headquarters of the petitioner was at Krishnanagar and he was supposed to confine his operations during the probationary period in the entire area of Krishnanagar-II Branch. The service of the petitioner as Probationary Development Officer is governed by the terms and conditions as mentioned in his letter of appointment and by the Life Insurance Corporation of India (Staff) Regulations, 1960 as amended from time to time.

On the imposition of lockdown in the State of West Bengal on and from 23rd March, 2020 the petitioner returned to his residence at Barrackpore and he claims to have performed his duty online. The petitioner contends that he was actively involved in his duties and as part of his job he recruited prospective agents who have duly been registered by LIC.

By an e-mail dated 18th July, 2020 the Branch Manager of LIC, Krishnanagar-II asked the petitioner to report physically before the Branch Manager of Krishnanagar-II Branch. In the said letter it was mentioned that he was absenting from office since 18th March, 2020 and he was advised to resume his duties at Krishnanagar but he failed to do so. Personal visits to his residential address at Krishnanagar revealed that he was absent in his headquarter.

In response to the aforesaid letter dated 18th July, 2020 the petitioner by an e-mail dated 24th July, 2020 informed the Branch

Manager that due to urgent official work regarding recruitment of agents at the Barrackpore LIC Branch office he visited the Barrackpore Branch on 21st March, 2020 and he intended to join office on and from 23rd March, 2020 but due to sudden imposition of lockdown he was prevented from doing so. In the said letter he further mentioned that during the lockdown period he was involved in grooming the prospective agents through the online mode. Though he was willing to join his office but in view of the risk involved in travelling from Barrackpore to Krishnanagar he did not do so. He prayed for condoning his physical absence in the office.

By an e-mail dated 28th July, 2020 the petitioner prayed for transfer of his service from Krishnanagar to Barrackpore. Along with the said letter the petitioner forwarded the particulars of the prospective agents recruited by him in Barrackpore.

The prayer of the petitioner for request of transfer was rejected by LIC. His explanation for leaving his headquarter at Krishnanagar was also not acceptable by the office. By a further e-mail dated 3rd August, 2020 the petitioner reiterated his difficulty to join the Krishnanagar office physically. By an e-mail dated 3rd August, 2020 the petitioner was requested to attend a performance meeting on 4th August, 2020 at the Divisional Office Conference Hall. The petitioner refrained from attending the same citing COVID-19 as an excuse. By an e-mail dated 14th August, 2020 a final reminder was given to the petitioner to resume service immediately on 17th August, 2020 failing which appropriate action would be taken against him.

The petitioner by an e-mail dated 17th August, 2020 submitted his resignation mentioning that in view of the pandemic it was not possible for him to proceed to Krishnanagar for joining his duties. The impugned communication dated 26th August, 2020 was given to the petitioner for refunding the amount indicated therein which was paid to him as remuneration for the period during which he was absent from duty along with the amount indicated in the service bond of Rs. 25,000/- (rupees twenty five thousand only).

The petitioner submits that due to the lockdown imposed to combat the pandemic it was not possible for him to attend the office physically but he continued with his duties online and he recruited agents and provided business to the employer. It has been submitted that the service rules of the petitioner do not provide for refunding the remuneration that has been paid and accordingly the action of the respondents directing the petitioner to refund the remuneration is bad in law and liable to be set aside.

The petitioner prays for setting aside the impugned communication and a further direction upon the employer to immediately release his arrear salary till the period he was in service and to issue the No Objection Certificate in his favour.

The learned advocate representing the employer LIC vehemently opposes the prayer of the petitioner. It has been submitted that the appointment letter of the petitioner clearly lays down that his area of operation is entire Krishnanagar-II Branch. The petitioner did not have any authority to recruit agents from any other area apart from

Krishnanagar-II Branch. It has been strenuously contended that the petitioner left his headquarters without any prior intimation or permission of his superior authority. No permission was either sought for from the superior authority for recruiting agents outside his appointed area of operation.

As per the letter of appointment the petitioner was obliged to secure minimum business but he failed to do so. The petitioner was repeatedly requested to resume duties personally in the Krishnanagar office which the petitioner intentionally failed. All the other Development Officers personally attended the office on rotation basis and there is no special reason to carve an exception for the petitioner.

The respondents submit that the petitioner has tried to mislead the court by relying upon the tabular sheet mentioning the names of the agents recruited by him during the pandemic. It has been pointed out that out of the six agents relied upon by the petitioner, three of them were recruited prior to the pandemic.

It has been argued that LIC is not bound to pay an employee who absented himself from duty for a considerable period of time without any plausible reason.

However, it has been fairly submitted by the learned advocate representing LIC that there is no provision in the service regulation for refund of salary which had been paid to an employee. It has been submitted that the employer did not intend to hold back the salary of his employees during the pandemic and as such, salary of all the employees were directly transferred to their bank accounts without

physical verification of the documents relating to attendance. As the petitioner himself admitted that he did not attend office on and from 21st March, 2020 he is not entitled to enjoy the remuneration that has been wrongly credited in his bank account. The respondents pray for refund of the amount paid on account of salary as well as the amount of the service bond.

I have heard the submissions made on behalf of both the parties.

From the letter of appointment of the petitioner it is clear that his area of operation was the entire Krishnanagar-II Branch. The petitioner has not been able to produce any document to show that he was either entitled or permitted to operate outside his prescribed area of operation. That being so, the submission of the petitioner that though he remained physically absent from office, he recruited agents online in the Barrackpore area, does not help him in any manner. He simply did not have the authority to do so. The fact that the Company utilised the services of the persons recruited by the petitioner will not come to his aid.

The petitioner indicated in his letter dated 24th July, 2020 that due to some urgent official work he went to Barrackpore on 21st March, 2020 with the hope that he would join office from 23rd March, 2020. It is strange that between 21st March, 2020 and 14th July, 2020 the petitioner did not make any communication with the Company either regarding his absence or regarding performing his duties in a location, other than his prescribed area of operation. By an e-mail dated 15th July, 2020 the petitioner intimated the Company that he was making

considerable efforts in his business but he remained silent with regard to the shift in his area of operation. He did not even seek permission from the Company to operate or conduct business outside his prescribed zone of operation.

It is only when the petitioner was questioned about his absence from office by an e-mail dated 18th July, 2020, did he disclose for the first time by his e-mail dated 24th July, 2020, that he was engaged in teaching and monitoring all the prospective agents on the online mode. He prayed for condoning his absence from office by a further e-mail as late as on 28th July, 2020.

The petitioner made a request for transfer from Krishnanagar to Barrackpore/Sodepur Branch. In the said letter the petitioner indicated that he was working online from his Barrackpore residence and he provided a list of prospective agents whom he had recruited. A close perusal of the receipts issued in favour of the said prospective agents reveal that out of the six candidates at least three of them deposited their registration fees prior to the declaration of the lockdown. This indicates that even though the petitioner was very much aware that his area of operation was Barrackpore, he merrily went on recruiting agents outside his prescribed area of operation.

The petitioner has candidly admitted that he remained absent from his office on and from 21st March, 2020. The representatives of the Company contacted the petitioner over mobile phone on repeated occasions and requested him to resume his duties at Krishnanagar. It is the case of the petitioner that being a resident of Barrackpore travelling

to Krishnanagar, approximately 100 kms away, during the pandemic, would pose a threat to his health. The petitioner has neither averred nor annexed any document with the writ petition to show that he has any health issue(s) and travelling from Barrackpore to Krishnanagar would be risky in his case.

The learned advocate appearing for LIC has submitted before the Court that none else but the petitioner absented from his office during the entire period starting from 18th March, 2020.

It is true that one ought not to travel long distance unnecessarily during the pandemic, but at the same time it has to be kept in mind, that there are certain duties and responsibilities of a Development Officer in the Company. Conducting business in the online mode has been encouraged during the lockdown period but there may be occasions where the physical presence of the petitioner in the Company was required and necessary. It is the duty of the Company to follow a fixed set of rules to maintain discipline in the office. All employees are to be treated in a similar manner and the Company is not required to give any special preference to the petitioner. The petitioner could have visited his office in a personal or hired vehicle if he had genuine health issue(s). He could have sought permission from the Company for performing his duties in the online mode. He ought not to have sat back at Barrackpore and send e-mails to the Company citing pandemic as a reason for not joining his duties. After a couple of communications, the petitioner tendered his resignation on 17th August, 2020.

The petitioner relies upon an order dated 16th September, 2020 issued by the Executive Director (Marketing), LIC whereby the area of operation for Development Officers has been extended. The said order saw the light of the day long after the petitioner tendered his resignation and accordingly, the petitioner cannot take advantage of the same.

The petitioner by the impugned letter dated 26th August, 2020 was intimated that his request for resignation has been forwarded to the competent authority for acceptance. An amount of Rs. 1,67,109.24/- (rupees one lac sixty seven thousand one hundred nine and twenty four paisa only) was sought to be recovered on account of the remuneration paid to him for the period he remained absent from duty. The service regulation of the petitioner does not contain any such provision for recovery of remuneration for any reason whatsoever. In the absence of a codified regulation for recovery of the money paid to an employee the Company ought not to recover the same.

The world is passing through an unprecedented time. It is evident that had the pandemic not been there, the petitioner would not have absented from his duties and there would not have been any occasion for tendering resignation by him. The issue of refund of salary would not have arisen. It is exactly for this reason that there is no provision in the service regulation for refund of salary already paid to an employee. In these hard days of unemployment one hardly resigns from a job unless there is a genuine reason.

Under normal circumstances, unauthorised absence may be a good and valid ground to take appropriate steps against an erring

employee. The service regulation of the Company is in place to deal with such issue. Even in such a situation there is no provision for recovery of the salary once paid to an employee.

Accordingly, the impugned order directing the petitioner to refund the remuneration is bad in law and hence, set aside.

The submission of the petitioner that he is entitled to receive his salary till the date of acceptance of his resignation cannot be accepted in this case. Admittedly, the petitioner remained absent from his duties since 18th/20th March, 2020. Until and unless his absence is condoned or regularised by the Company, the same has to be treated as unauthorised. One cannot remain absent from duty and simultaneously pray for payment of his salary for that period. An employee is paid by the employer in lieu of the services rendered by him. The petitioner did not perform the duty as required to be done as per the service regulation and accordingly he cannot claim salary for the same.

The submission of the respondent that if salary is paid to the petitioner even though he did not attend office, then it will open a flood gate, does not hold good in the facts and circumstances of the instant case. The respondent has categorically submitted in Court that none but the petitioner remained absent in office. There can be no question of recovery of salary from an employee who attended office on regular basis. That being the position, this case will not lay down any precedent to follow.

As regards refund of the money indicated in the service bond along with GST, the petitioner is obliged to refund the same as he has

put in his resignation in the midst of his probationary service tenure. The petitioner is bound by the terms and conditions mentioned in the service bond and any deviation therefrom will entitle the employer to take appropriate steps against him, in accordance with law.

In view of the above, the instant writ petition is disposed of by directing the respondent Nos. 2 to 4 to accept the resignation of the petitioner and issue necessary No Objection Certificate in his favour within a fortnight from the date of refund of the amount mentioned in the service bond along with statutory tax.

WPA No 8939 of 2020 is disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)