

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.07.2020

CORAM

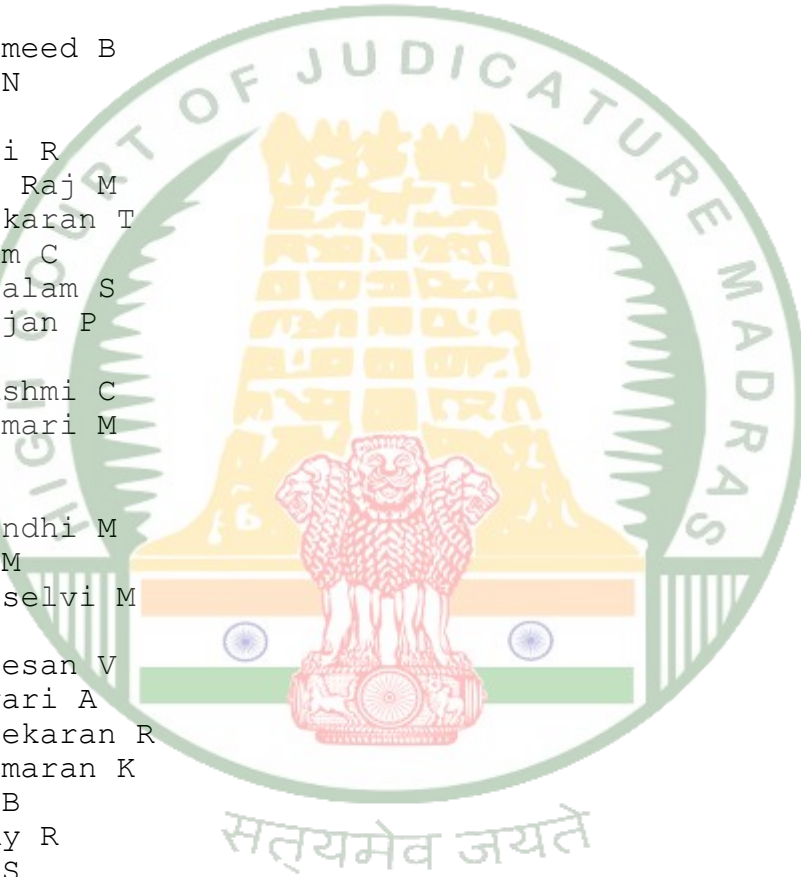
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 33654 OF 2017

AND

W.M.P. NOS. 37242 & 37243 OF 2017

1. Manoharan
2. Shahul Hameed B
3. Gnanavel N
4. Suresh K
5. Jothi Rani R
6. Kuzhandai Raj M
7. Chandrasekaran T
8. Kasilingam C
9. Venkatachalam S
10. Soundarajan P
11. Saleem S
12. Muthulakshmi C
13. Vijayakumari M
14. Geetha S
15. Sivaji C
16. Indiragandhi M
17. Gomathy M
18. Thamaraiselvi M
19. Mani V
20. Selvaganesan V
21. Parameswari A
22. Chandrasekaran R
23. Vijayakumaran K
24. Eswaran B
25. Muthusamy R
26. Anandan S
27. Bharathimohan M
28. Sathiyamurthy M
29. Ponnalagu K
30. Niraimathi K
31. Valarmathy R
32. Saroja K
33. Jaffar Sathik A
34. Kalaimurugan P
35. Ramalakshmi P
36. Muniammal @ Muniswari V
37. Anusuya M
38. Rajeswari S



WEB COPY

39. Nagalakshmi M
40. Palanichamy S
41. Munisamy S
42. Ramasamy R M
43. Saraswathy S
44. South Zone Insurance Employees
(Affiliated to All India Insurance Employees Association)
Federation, rep. By its General Secretary
133, Bharat Insurance Building
Anna Salai, Chennai 600 002. ... Petitioners

- Vs -

1. Life Insurance Corporation of India
rep. By its Chairman
Central Office, Jeevan Bhima Marg
Yogakshema, Nariman Point
Mumbai 400 021.
2. Executive Director (Personnel)
Life Insurance Corporation of India
Central Office, Jeevan Bhima Marg
Yogakshema, Nariman Point
Mumbai 400 021.
3. The Zonal Manager
Life Insurance Corporation of India
Southern Zone, LIC Building
Anna Salai, Chennai 600 002.
4. The Senior Divisional Manager
LIC of India, Divisional Office
Jeevan Prakash, Johnsonpet
Opp: ATC Depot, PB No.776
Salem 636 007.
5. The Senior Divisional Manager
LIC of India, Divisional Office
Jeevan Prakash, Punithavathiar Street
Palayamkottai, Tirunelveli 627 002.
6. The Senior Divisional Manager
LIC of India, Divisional Office
Jeevan Prakash, Gandhiji Road
Thanjavur 613 001.

7. The Senior Divisional Manager,
LIC of India, Divisional Office,
Jeevan Prakash, Bridge Station Road,
Sellur, Madurai 625 002.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of

(i) certiorari for quashing the circular pertaining to the Employment of Temporary Staff Instructions vide Cir. No.ZD/792/ASP/93 dated 28.6.1993 and its consequential circular dated 28.6.1993 vide Cir. No.ZD/793/ASP/93 issued by the 2nd respondent in respect of these petitioners as illegal and unconstitutional;

(ii) certiorari for quashing the examination held on 31.08.08 in pursuant to employment notice dated 28.6.08 for the post of Assistant conducted by the 3rd respondent in respect of these petitioners; and

(iii) mandamus directing the respondents for regularisation of the services of the petitioners with retrospective date that is from the date of appointment of respective petitioners along with all consequential benefits including that of increment for every year of service with back wages.

For Petitioners : Dr. P.Ravishankar

For Respondents : Mr. R.S.Anandan

ORDER

It is the case of the petitioners that they are working in various branches of the respondent Corporation under the territorial jurisdiction of the 3rd respondent. The petitioners are in temporary employment since 1993 on the basis of the LIC of India (Employment of Temporary) Staff Instructions, 1993. However, on and from the decision of the Hon'ble Supreme Court in Uma Devi's case, the scheme was no longer valid. The above instructions was upheld by the Hon'ble Supreme Court and direction was given to the respondent Corporation to regularise the services. In pursuant to the said directions, the petitioners appeared in the recruitment process, which was conducted in the year 2008. In spite of publication of results of the examination, the petitioners continue to be in the temporary post as Assistants for more than 9 years since. It is the case of the petitioners that they have been sponsored by the Employment Exchange following roster points and reservation policy and interview was held and that their entry into the

service of the Corporation was neither illegal or illegal. Further, the petitioners are holding regular sanctioned posts and are in employment even today and they have been employment for more than 20 years. It is the further case of the petitioners that similarly situated persons, their services have been regularised in different parts of the country. Since their services have not been regularised in tune with the above instructions, the petitioners were constrained to move this Court by filing the present petition.

2. Learned counsel appearing for the petitioners submit that the petitioners were sponsored by the employment exchange in accordance with law and, their service has also been directed to be regularised by the Hon'ble Supreme Court and, therefore, the action of the respondents in not regularising the service of the petitioners till date is wholly unsustainable. In support of his contention, learned counsel placed reliance on the decision of the Hon'ble Apex Court in Hashmuddin & Ors. - Vs - LIC & Ors. (CA No.2268/2011).

3. Learned counsel appearing for the respondents, while fairly conceded that the decision of the Hon'ble Apex Court in Hashmuddin's case (supra), however, submitted that as per the directions of the Hon'ble Supreme Court, the respondents would hold a limited competitive examination for the petitioners and those persons coming out successful, their services would be regularised.

4. This Court heard the learned counsel appearing on either side and perused the materials available on record as also the decision of the Hon'ble Supreme Court in Hashmuddin's case (supra).

5. The Hon'ble Supreme Court, in Hashmuddin's case (supra) had occasion to consider the issue raised in the present petition and through a series of orders, the last of which dates back to 15.1.2020, passed the following order :-

"5. It is in the view of the aforesaid observations, we find that a scheme ought to have been devised by the respondent-Corporation within a period of six months as set out in the aforesaid judgment. It would naturally require some time to carry out the scheme and thus learned senior counsel for the respondent-Corporation contends that such process does take about year and a half. This is being the position, we are of the view that atleast from the date of initial appointment in the temporary status, a period of twelve years could be set to suffice for purposes of carrying out the

necessary process of the absorption of such persons on a permanent basis. However, that did not happen and a longer period of time has been taken on account of various proceedings filed and orders passed by different courts from time to time. It is thus the contention of the learned senior counsel for the respondent-Corporation that the respondent should not be burdened with giving the appellants a permanent status from their original date of appointment on a temporary basis.

6. Learned counsels for the appellants have taken a reasonable stand before us. They have confined their contention to the benefits being available on a basis of a requirement that the temporary status should have been converted into a permanent status after twelve years from the initial date of appointment and it is on the expiry of the said period that the time period should be computed for fixation of their pay on permanent status. They have also stated that they are not claiming any backwages, that is an aspect not even noted by us to be examined as per our last order.

7. We are thus of the view that the appellants should be entitled to the counting of their period spent in temporary status post twelve years from their initial date of appointment on the temporary basis towards the fixation of their pay on a permanent basis with all consequential benefits without any backwages (the benefit will accrue from 31st December, 2016). On aspect of gratuity, contributory pension, etc., we are not specifically dealing with as that will depend in turn on the provisions of the Scheme, provisions of the Act and Regulation concerned and that can be worked out on that basis."

6. Following the steps of the above order, the Hon'ble Supreme Court, in the case of The Chairman, LIC of India - Vs - Jagadevi & Ors. (CA Nos.4703-4735 of 2016 - Dated 6.3.2020) held as under :-

"Learned senior counsel for the appellant-Corporation submits that he has obtained instructions to an amicable resolution and thus, requests that the course of action followed in Hashmuddin & Ors. - Vs - LIC & Ors. - Civil Appeal No.2268/2011 in terms of order dated 20.10.2016 as confirmed by the order dated

15.1.2020 can be adopted even in the present case. The effect of this would be that a limited departmental examination would be held for the candidates in question as was proposed in our order dated 31.01.2020 in the present matter. Such a departmental examination would not include the candidates from open market and would be applicable only in as temporary Class III employees in accordance with instructions. Naturally, this examination would have to be cleared by such temporary Class III employees for seeking regularisation.

The position which will emerge on their qualifying would be as per para 7 of the order dated 15.01.2020 in Hashmuddin (supra) and for convenience of reference, the same is reproduced as under :-

"We are thus of the view that the appellants should be entitled to the counting of their period spent in temporary status post twelve years from their initial date of appointment on the temporary basis towards the fixation of their pay on a permanent basis with all consequential benefits without any backwages (the benefit will accrue from 31st December, 2016). On aspect of gratuity, contributory pension, etc., we are not specifically dealing with as that will depend in turn on the provisions of the Scheme, provisions of the Act and Regulation concerned and that can be worked out on that basis."

The aforesaid process be commenced with the examination to be held within three months and the process be completed within three months thereafter.

The appeals stand disposed of.

At this stage learned counsel for the appellant-Corporation points out that there are cases pending in different High Courts by parties similarly situated and it would be appropriate to put a quietus to the matter even in those cases.

We feel that appropriate course of action would be to file an application for those proceedings based on the order passed today so that those claimants can also get the benefit of our order."

7. In the above circumstances, learned counsel appearing on either side submit that the orders in tune with the orders passed by the Hon'ble Supreme Court in Hashmuddin's case and Jagadevi's case (supra) be passed in the present case as well so that the respondent-Corporation can conduct the limited competitive examination for the petitioners and other similarly situated persons within the time frame fixed by this Court.

8. In view of the consent expressed by the learned counsel appearing on either side, this Court directs the respondent-Corporation to hold limited competitive examination for the petitioners and other similarly situated persons in line with the orders passed by the Hon'ble Supreme Court in Hashmuddin's case and Jagadevi's case (supra) within a period of three months from the date of receipt of a copy of this order. The further directions as issued by the Hon'ble Supreme Court in Hashmuddin's case and Jagadevi's case (supra) shall be followed in the present case as well.

9. This writ petition is disposed of with the aforesaid observation and direction. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman
Life Insurance Corporation of India,
Central Office, Jeevan Bhima Marg
Yogakshema, Nariman Point, Mumbai 400 021.
2. Executive Director (Personnel)
Life Insurance Corporation of India,
Central Office, Jeevan Bhima Marg
Yogakshema, Nariman Point, Mumbai 400 021.
3. The Zonal Manager,
Life Insurance Corporation of India,
Southern Zone, LIC Building,
Anna Salai, Chennai 600 002.

4. The Senior Divisional Manager,
LIC of India, Divisional Office,
Jeevan Prakash, Johansonpet,
Opp: ATC Depot, PB No.776
Salem 636 007.
5. The Senior Divisional Manager,
LIC of India, Divisional Office,
Jeevan Prakash, Punithavathiar Street,
Palayamkottai, Tirunelveli 627 002.
6. The Senior Divisional Manager,
LIC of India, Divisional Office,
Jeevan Prakash, Gandhiji Road,
Thanjavur 613 001.
7. The Senior Divisional Manager,
LIC of India, Divisional Office,
Jeevan Prakash, Bridge Station Road,
Sellur, Madurai 625 002.

W.P. NO. 33654 OF 2017

spd[col]
srg 07/10/2020



WEB COPY