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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1326 OF 2020

Shri Mahesh S/o Madhukar Thombre,
Age : 33 years, Occu. Service,
R/o Row House No.A/23, Atharva Classic,
Opp. MIT College, Behind Randazvous Hotel,
Beed Bypass Road, Aurangabad,
Tq. & Dist. Aurangabad

..PETITIONER

VERSUS

1. The Chairman,
Life Insurance Corporation of India,
"Yogkshema", Nariman Point,
Bhima Marg, Mumbai
2. The Zonal Manager,
Life Insurance Corporation of India,
Western Zone, "Yogkshema", West Wing,
Nariman Point, Bima Marg, Mumbai
3. The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, "Jeevan-Prakash" Building,
Adalat Road, Aurangabad Division,
Aurangabad
4. The Marketing Manager,
Life Insurance Corporation of India,
Divisional Office, "Jeevan-Prakash" Building,
Adalat Road,
Aurangabad
5. The Manager (Sales),
Life Insurance Corporation of India,
Divisional Office, "Jeevan-Prakash" Building,
Adalat Road, Aurangabad Division,
Aurangabad
6. The Chief Manager,
Life Insurance Corporation of India,
982 Branch, "Jeevan-Prakash" Building,
Adalat Road, Aurangabad

..RESPONDENTS

Mr B.V. Thombre, Advocate for petitioner;
Mr A.D. Kasliwal, Advocate for respondents

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**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 9th September, 2021

ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put-forth prayer clause (B) as under:-

“(B) By issuing Writ in the nature of Certiorari or any other appropriate Writ, like nature or any of the direction or order the impugned letter dated 30.09.2019 issued by the respondent No. may kindly be quashed and set aside.”

3. The petitioner joined duties with the respondent Life Insurance Corporation at it's office at Aurangabad as a Development Officer on 22.11.2020. On 31.08.2019, the petitioner tendered a resignation clearly stating therein that the same would be effective from 30.09.2019. Pursuant to the same, he attended the exit interview session conducted by the Corporation. He inter-acted with the Marketing Manager in the said interview. Being convinced, the petitioner immediately submitted an application dated 20.09.2019 with the subject “*withdrawal of my resignation letter dated 31.08.2019*”. In the said application, the petitioner has specifically mentioned as under:-

“Dear Sir,

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As per the instruction, I attended Exit interview. After the discussion with Shree Kulkarni Sir, Marketing Manager, I decided to surrender my application of resignation.

Kindly do the needful & allow me to work in field. I will do my best.

Thanking you.”

4. The grievance of the petitioner is that, though the petitioner was on duty with the Corporation, a letter was issued on 30.09.2019 by the Corporation which is an acceptance of his resignation. There is no mention about the application filed by the petitioner declaring that the resignation is withdrawn and he wanted to work with the establishment. The remark below the said communication indicates that the petitioner refused to accept the said letter dated 30.09.2019 in view of he being relieved on the basis of his resignation letter which he had already withdrawn.

5. The petitioner then tendered a grievance letter dated 04.10.2019 to the Chief Manager of the L.I.C. at Aurangabad stating clearly that he had tendered the resignation after he was denied the L.T.C. facility. In the exit interview session, on 19.09.2019, he interacted with the Marketing Manager and realized that he had taken an emotional decision. He, therefore, immediately tendered the application declaring withdrawal of resignation, on 20.09.2019. He requested the Chief Manager that he should initiate corrective steps.

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6. The petitioner submits that he received a letter under the signature of the Marketing Manager, dated 25.10.2019 in which the opening paragraph reads as under:-

“In your letter you have mentioned that you attended the exit interview. In the interview you told about the denial of LTC to you, to which the undersigned told you, that should not be the reason for resignation and asked you to convey your decision on next day.”

The Marketing Manager then mentions that his communication about withdrawal of resignation is a false statement. The L.I.C. has not received any such communication. Once the higher office takes the decision, it can never be retracted and hence, the issue is closed.

7. We find from the withdrawal application dated 20.09.2019 that the same was delivered to the Chief Manager, L.I.C. at Aurangabad and there is a clear acknowledgment stamp on the office copy (o.c.) of the petitioner, which reads as under:-

“प्राप्त किया दि. 12 SEP 2019 मुख्य प्रबंधक भा. जी. बी. निगम ९८२, शाखा, औरंगाबाद”

8. The petitioner then preferred an appeal on 12.11.2019 before the Marketing Manager and tendered a further appeal dated 21.11.2019 to the

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Senior Divisional Manager, L.I.C. This was followed by an appeal dated 18.12.2019 to the Chairman, L.I.C. of India, Mumbai and a copy to the Zonal Manager, L.I.C. of India, Western Zone, Mumbai. No decision has been taken on these appeals.

9. The learned Advocate for the Corporation has vehemently opposed the petition contending that the Staff Regulations do not provide for withdrawal of an application which is in the form of a resignation. It is then stated that the petitioner was continuously indulging in poor performance, was unable to recruit new agents, was unable to retain the number of agents and all his agents were terminated for non performance in terms of L.I.C. of India (Agents) Regulations, for non ful-filling the minimum business norms. It is further contended that once the resignation is accepted, the decision cannot be retracted. The petitioner may have withdrawn the resignation. However, as he had earlier submitted a resignation voluntarily, the subsequent withdrawal is meaningless.

10. On the point of acceptance of resignation after withdrawal of the same, the Honourable Apex Court has delivered the following judgments:-

- 1) **2000 AIR SCW 2577, Food Inspector, Ernakulam and another vs. P.S. Shenoy,**
- 2) **2003 II CLR 376 S.C., North Zone Cultural Centre and another vs. Vedpathi Dinesh Kumar,**
- 3) **2008 I CLR 353 S.C. Manubhai Chhaganbhai Thakore vs. Union of India & ors.**

11. It is, therefore, obvious that if a candidate does not resign with immediate effect thereby sacrificing one month's salary in lieu of notice period, the resignation cannot be made effective until the expiry of the

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notice period. It is beyond any debate in the light of the facts of this case that the petitioner had been given 30 days notice as prescribed. He participated in the exit interview session and after his interaction with the Marketing Manger, he was convinced that he had tendered his resignation under emotions as his prayer for L.T.C. was rejected. In less than 24 hours, he tendered a letter with the subject "withdrawal of resignation" and clearly intimated to the Corporation that he was withdrawing the resignation. In this backdrop, the resignation could not have been accepted by the Corporation after 10 days of it's withdrawal, on 30.09.2019.

12. Insofar as the scope of judicial review is concerned, in the light of the contention of the Corporation that once a decision is taken by the competent authority of the Corporation, the said decision cannot be retracted, the answer lies in the classic case delivered by the Kings Bench Division in 1948, which is famously known as *Wednesbury's Principles of Judicial Review*, **Associated Provincial Picture Houses Limited vs. Wednesbury Corporation, 1948 (1) K.B. 223.**

13. In view of the above, it would be far-fetched to say that neither the higher authorities of the Corporation upon realizing their mistake, could not have withdrawn the decision of acceptance of resignation, nor can the powers of judicial review of this Court be fettered, especially when the fact that the Corporation is covered by Article 12 of the Constitution of India.

14. Since we are allowing this petition by quashing and setting aside the communication dated 30.09.2019 accepting the resignation of the

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petitioner, we called upon the parties to canvass on the quantum of back wages. The learned Advocate for the petitioner prays for 100% back wages. The learned Advocate for the L.I.C. submits that as the petitioner has been relieved, it was a matter of circumspection as to whether there are any posts available or whether he could be reinstated and as he is not in employment, no back wages should be paid. Burdening the Corporation with back wages would amount to burdening the tax payers and the State Exchequer.

15. It is obvious from the above that the petitioner has suffered involuntary unemployment. The Honourable Apex Court has held in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324** that 100% back wages should be normally paid if it is established that the terminated employee is unemployed ever since the termination. Though there is no statement in the memo of the petition, the learned Advocate for the petitioner sought a pass-over and made a statement after lunch recess that the petitioner has been unemployed ever since his dis-engagement.

16. To balance the equities, we grant 75% back wages to the petitioner which shall be paid by the Corporation on or before 30.10.2021, failing which the said amount would carry interest at the rate of 4% per annum.

17. Rule is made absolute in the above terms. There shall be no order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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