IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2021

PRONOUNCED ON : 26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.28249 OF 2017
AND
W.M.P.NOS.30364 & 30365 OF 2017

K.Anand ... Petitioner

.Vs.

1. The Chief (Personnel),
   Life Insurance Corporation of India,
   Personnel Department, Central Office,
   5th Floor (West Wing), Yogakshema,
   Jeevan Bima Marg, Mumbai-400 021.

2. The Manager (Legal),
   Life Insurance Corporation of India,
   Divisional Office,
   Vellore. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent made in Ref: PER/MPR/CLI/L5215 dated 10.02.2017 and that of the proceedings of the first respondent made in Ref: PER/MPR/CLI/344 dated 23.09.2017, to quash the same and to consequently direct the respondents to reinstate the petitioner with all consequential service and monetary benefits including backwages arising thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.R.S.Anandan
Standing Counsel

ORDER

The present Writ Petition is heard through Video Conferencing on 20.07.2021.

2. Heard Mr.L.Chandrakumar, learned counsel appearing for the petitioners and Mr.R.S.Anandan, learned counsel appearing on behalf of the respondents.

3. By an order dated 10.02.2017, the petitioner herein was discharged from the services of the respondent/Life Insurance Corporation of India (LIC), on the ground that he had suppressed his previous employment with Union Bank of India, wherein he was dismissed from the services by the bank on 23.10.2015. The respondents had also claimed liquidated damages of Rs.2 lakhs from the petitioner for failing to complete four years of service from the date of joining the Corporation.

4. On an appeal filed before the Appellate Authority of Union Bank of India, the original punishment of dismissal from service was modified into removal from the services of the bank without disqualification from future employment together with censure for the minor misconduct, through an order dated 23.05.2017.

5. The learned counsel for the petitioner submitted that prior to joining the LIC, his immediate prior employment was with IBM India Private Ltd., which employment he had disclosed in his application for appointment to LIC. It is his further submission that there is no necessity for the petitioner to disclose all his erstwhile employments and therefore submitted that there was no suppression of facts.

6. Though various grounds have been raised in the present Writ Petition challenging the order of punishment of discharging the petitioner from the services of LIC, the learned counsel for the petitioner submitted that they are not pressing the grounds seeking reinstatement, but the petitioner would be satisfied if the portion of the impugned order, imposing liquidated damages of Rs.2 lakhs, is set aside.

7. The learned Standing counsel for the LIC, on the other hand submitted that, the terms of appointment requires the petitioner to serve for four full years from the date of joining the Corporation and in case, if he is terminated before that, he is liable to pay a sum of Rs.2 lakhs as liquidated damages. It is also his submission that the petitioner had willfully suppressed his previous employment with Union Bank of India, wherein his services were terminated.

8. In view of the submissions made by the learned counsel for the petitioner that they are now concerned with the levy of the sum of Rs.2 lakhs as liquidated damages, the facts relating to the petitioner's misconduct before the LIC was looked into.

9. It is not in dispute that immediately prior to the petitioner joining the LIC, he had served under IBM India Private Ltd. It is also not in dispute that the petitioner herein had disclosed this previous employment in his application. What was not disclosed is his employment with Union Bank of India, prior to his employment with IBM Private India Ltd.

10. With regard to the claim that the petitioner herein was dismissed from the services of the Union Bank of India is concerned, it is found from the records that the petitioner was originally dismissed from the services on 23.10.2015. The petitioner was appointed to LIC on 17.10.2016 and discharged from the services of LIC on 10.02.2017. After his discharge, the petitioner had preferred an appeal to the Union Bank of India on 13.02.2017, challenging the original order of dismissal from service and the appeal came to be partially allowed on 23.05.2017, by modifying the punishment from one of removal from service into a lesser punishment which would enable him to apply for future employment. In view of the modification of the punishment, the petitioner came to be entitled for taking up any future employments, including the employment which he had taken with LIC. It is in this background that the petitioner had made a representation on 04.09.2017 to the respondents with a request to reinstate him back into services. However, his request was rejected on 23.09.2017, without consideration of the modification of the petitioner's punishment, which was not an impediment for the petitioner to continue in the services of the LIC. However, LIC had demanded its earlier claim of Rs.2 lakhs.

11. In the instant case, the petitioner had disclosed his immediate previous employment with IBM India Private Ltd. The decision of LIC to discharge the petitioner from the services was on the basis of discrete enquiry conducted by the LIC against the petitioner and he was summarily discharged from service on 10.02.2017. Such a statement of discrete enquiry is made in para 5 of the counter affidavit filed by the respondents.

12. In service jurisprudence, one of the guiding principles for imposing a punishment is the proportionality of the punishment to the misconduct levelled against the employees. In the backdrop of this proposition, it is seen that, when the punishment imposed by the Union Bank of India was modified by its Appellate Authority on 23.05.2017, by removing his disqualification for future employment, the petitioner was very

much entitled to continue his employment with the LIC. This aspect could have been considered by the first respondent at the time when the order dated 23.09.2017 was passed, wherein the petitioner has sought for reinstatement of his services in view of the modification of the punishment, removing the disqualification of future employment.

13. When the petitioner had disclosed his immediate previous employment in his application and the punishment imposed by Union Bank of India did not disqualify him for future employment, the decision of the LIC to discharge his services on the ground that he had suppressed his employment prior to his immediate previous employment, cannot be termed as a 'major or gross' misconduct

14. Insofar as the claim for liquidated damages is concerned, the learned counsel for the respondent relies on Clause 7 of the terms of appointment of the petitioner which states that in case, if the services of the petitioner are terminated before completion of a period of four years from the date of joining, he is liable to pay to the respondent Corporation by way of liquidated damages, a sum of Rs.2 lakhs immediately. Though the above condition imposes the liability on the petitioner to pay the liquidated damages, the decision to make such a claim by LIC, is only directory and not mandatory. While exercising such a discretion, the respondents, ought to have considered that the petitioner herein had not suppressed his immediate employment, but only his erstwhile employment prior to his services with IBM India Private Ltd. Likewise, when the order dated 23.09.2017 was passed, the original punishment imposed by Union Bank of India was modified, thereby enabling him to continue in his future employments. While considering these two aspects, the respondents ought not to have subjected the petitioner to two punishments of discharging him from duty, as well as imposing a penalty of Rs.2 lakhs. This Court is of the view that since the misconduct alleged cannot be termed as a 'gross misconduct' and also since the punishment imposed against the petitioner by Union Bank of India was subsequently modified, after the original order of 'discharge from services' dated 10.02.2017 was passed by LIC, the penalty by way of liquidated damages, apart from the punishment of discharge from services, is grossly disproportionate to the misconduct. When that being so, this Court may be justified in interfering with the quantum of punishment, on the ground of disproportionateness, insofar as it relates to levy of penalty is concerned.

15. In the light of the above observations, the impugned orders passed by the first respondent herein, in Ref: PER/MPR/CLI/L5215, dated 10.02.2017 and in Ref: PER/MPR/CLI/344,

dated 23.09.2017, is modified to the effect that these orders, imposing a condition to deposit a sum of Rs.2 lakhs by way of liquidated damages is concerned, is quashed. However, the impugned orders dated 10.02.2017 and 23.09.2017, insofar as it relates to discharging the petitioner from the services of LIC is concerned, is upheld.

16. The Writ Petition stands partially allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Chief (Personnel),
Life Insurance Corporation of India,
Personnel Department, Central Office,
5th Floor (West Wing), Yogakshema,
Jeevan Bima Marg, Mumbai-400 021.

2. The Manager (Legal),
Life Insurance Corporation of India,
Divisional Office, Vellore.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.35390
+1cc to Mr.R.S.Anandan, Advocate, S.R.No.35503
+1cc to the Government Pleader, S.R.No.36267 | (31/08/2021)

W.P.NO.28249 OF 2017 AND
W.M.P.NOS.30364 & 30365 OF 2017

SSV(CO)
PBS/18/08/2021