BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.09.2021
CORAM:
THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
W.P.(MD) No.10465 of 2013
and
M.P.(MD) No.2 of 2013

A.Ashraf Ali ... Petitioner

vs.

1.The Senior Divisional Manager,
Life Insurance Corporation of India,
Jeevan Prakash Bridge station road,
Sellur, Madurai – 02.

2.The Manager, (P & IR)
Divisional Office,
Life Insurance Corporation of India,
Jeevan Prakash Bridge station road,
Sellur, Madurai – 02.

3.The Senior Branch Manager,
Life Insurance Corporation of India,
Uthamapalayam Branch Office,
Uthamapalayam, Theni District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings on the file of the first respondent bearing Ref: Sales/Appraisals/SP dated 26.03.2013 and the consequential impugned proceedings bearing Ref: Sales/Appraisals/SP dated 12.04.2013 passed by the first respondent and quash the same and consequently to direct the first respondent to re-pay the recovered amount from the salary of the petitioner in pursuant to the impugned orders.

For Petitioner : Mr.M.Gnanagurunathan
For Respondents : Mr.S.Karthik
for M/s.Profexs Associates

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned orders passed by the first respondent, dated 26.03.2013 and 12.04.2013 and to direct the first respondent to re-pay the recovered amount from the salary of the petitioner pursuant to the impugned orders.

2.Heard Mr.M.Gnanagurunathan, learned Counsel for the petitioner and Mr.S.Karthick, learned Counsel for the respondents.

3.Brief facts, that are necessary for the purpose of disposal of this Writ Petition, are as follows:

3.1.The petitioner was working as Development Officer in the third respondent branch of Life Insurance Corporation of India. It is not in dispute that the petitioner was appointed as Development Officer in the year 1987 and completed 25 years of service as Development Officer in the respondent Corporation.

3.2.When the petitioner was working at Tirunelveli division, he was transferred to the third respondent branch at his request. It is admitted that the petitioner is governed by Life Insurance Corporation of India Development Officers (Revision of certain terms and conditions of Service) Rules, 1989 (hereinafter referred to as “1989 rules”) and subsequent Rules, which came into force with effect from November 2009 (hereinafter referred as “2009 rules”).

3.3.The duties and obligations of Development Officer are even listed in the order of appointment under the caption “Duties and Obligations”. It is the duty of the Development Officer to increase the production of life insurance business in a planned way in the area that is allotted to the Development Officer through agents. It is stated that the duty and obligation of the Development Officer is to bring in from insurable person, new proposals along with a deposit equal to the amount needed for issuing respective policies through the agency force placed under his supervision for the Corporation, so that the Corporation may underwrite the proposals thus brought in and convert them into policies and simultaneously the deposits into first premium.

3.4.It is also admitted that the annual remuneration including the pay and allowances that form part of the salary and other allowances and perks paid to the Development Officer in any year shall be at a prescribed ratio, called as expense ratio, expressed as a percentage of the eligible premium thus collected in that year from those proponents brought in by the Development Officer through the agents placed under his supervision by the Corporation. If the expense ratio of the Development Officer is less than the prescribed limit, the Development officer will be awarded with incentive bonus and additional conveyance allowance over and above his salary, perks and the fixed conveyance allowance. If the expense ratio exceeds the prescribed limit, Rule 7 of the 1989 rules is attracted and disincentives are imposed accordingly.

3.5.The respondent Corporation is appraising the performance of the Development Officers every year. The period of appraisal is termed as “the appraisal year”. The definition of the term “appraisal year” and the manner in which the assessment is made as per 1989 rules are not in dispute. The petitioner himself has admitted in his affidavit that the performance of the Development Officer is appraised on the basis of expense limit or cost ratio. The cost ratio or the expense limit is calculated by taking into consideration of eligible premium and annual remuneration of Development Officer. As per the table of disincentives annexed with 1989 rules, whenever, it is found that the *ad hoc* annual remuneration of a Development Officer is in excess of the prescribed expense limit or cost ratio in the appraisal year, there will be a disincentive to the Development Officer, as prescribed in the table of disincentives annexed to the rule.

3.6.By the impugned notice, dated 26.03.2013, the petitioner was asked to confirm by a representation in case, the petitioner has objection relating to his performance, as indicated in the said communication. It is also informed to the petitioner that if no representation in writing is received within 15 days, final order fixing the basic pay and conveyance allowance admissible as per 1989 rules with effect from 01.04.2009 will be issued to the petitioner. It is relevant to mention that the petitioner in his reply, dated 04.04.2013, did not question the facts and figures that were found in the impugned notice. However, in the reply, the petitioner has only stated that his work in the third respondent branch was started with zero and that he is struggling for survival. Though the petitioner should realize that this kind of hollow reply will only yield negative results, the petitioner cautiously submitted this reply, as if the respondents can condone the lapses on the part of petitioner or his deficiency in performance on compassionate grounds.

3.7.Thereafter, on the basis of 1989 rules, the impugned order, dated 12.04.2013, came to be passed. By the impugned order, dated 12.04.2013, the basis pay of the petitioner was reduced to Rs.17,480/- and the conveyance allowance was also fixed at Rs.900/-. In the impugned order, it is also mentioned that recovery of excess pay, if any, will be made in full from the salary of the petitioner for the month of April 2013. Aggrieved by the same, the present Writ Petition is filed.

4.The petitioner challenges the impugned order mainly on the ground that the order of recovery was passed without even considering the explanation offered by the petitioner. Even though no valid explanation is seen from the reply of the petitioner, the learned Counsel for the petitioner submitted that the notice before recovery was issued only on 26.03.2013 for the deficiency upto 2009 and that therefore, the impugned order is liable to be quashed. The second point that was urged by the learned Counsel for the petitioner is that the respondents have followed 1989 rules even though new rule came into force in November 2009. The learned Counsel for the petitioner submitted that the appraisal year of 2009 ends with 31.03.2009 and that the increment cut and the reduction in conveyance allowance subsequent to the period of appraisal year is not warranted. In other words, it is contended by the learned Counsel for the petitioner that the first respondent had imposed a cut of 60% conveyance allowance from 2009 indefinitely and that the disincentive should be only for the preceding year of the relevant appraisal year, and it cannot be for the subsequent years. The learned Counsel for the petitioner also submitted that the impugned order is baseless and contrary to the Rules, as the basic pay of the petitioner was reduced to Rs.17,480/-, which is not permissible as per 1989 rules or 2009 rules.

5.The first respondent filed counter affidavit on behalf of all the respondents. In the counter affidavit, disincentive, which is calculated for the petitioner, is given with clarity and this Court is also of the view that the petitioner has tried to interpret the provisions of 1989 rules, just to confuse this Court. It is not in dispute that the petitioner has not performed well from 2008-09. It is also not in dispute that the salary and other allowances paid to the petitioner was in excess of the prescribed limit warranting imposition of disincentive. It is admitted by the petitioner as well as the respondents that a sum of Rs.61,988/- had already been recovered from the salary of the petitioner. It is to be noted that the appraisal year, which was taken into consideration for imposing disincentive, is long before the 2009 rules came into force (November 2009). Therefore, the contention of the learned Counsel for the petitioner that the assessment and imposition of disincentive ought to have been under 2009 rules has no legal force.

6.The petitioner is governed by the 1989 rules. There is no dispute with regard to the interpretation of the Rules. It is admitted that for the appraisal year falls before coming into force of 2009 Rules, the respondents have applied 1989 rules. For the subsequent appraisal years, 2009 rules was adopted, as seen from the records. The disincentive imposed on the petitioner is only as per the Rules and it is not demonstrated before this Court how the assessment or recovery based on the Rules is illegal or contrary to any rules or guidelines. The Life Insurance Corporation of India is a public Sector entity. It is the duty and obligation of every Development Officer to collect deposit or premium and do their best to promote the business of respondent Corporation. This Court can take judicial notice of the fact that many of the Development Officers are getting incentives based on their performance, which result in getting income a few times more than the salary paid to the top most Officer of the Life Insurance Corporation of India. When the petitioner suffered an order of recovery based on the Rules, which are attached to his service, he cannot blame the respondents for following the mandatory rules.

7.Under such circumstances, this Court is of the view that the Writ Petition is devoid of any merits and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Senior Divisional Manager,
Life Insurance Corporation of India,
Jeevan Prakash Bridge station road,
Sellur, Madurai – 02.

2.The Manager, (P & IR)
Divisional Office,
Life Insurance Corporation of India,
Jeevan Prakash Bridge station road,
Sellur, Madurai – 02.

3.The Senior Branch Manager,
Life Insurance Corporation of India,
Uthamapalayam Branch Office,
Uthamapalayam, Theni District.

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-28982[F] dated 14/09/2021)

+1 CC to M/s.S.KARTHIK, Advocate (SR-29230[F] dated 16/09/2021)

Order made in
W.P.(MD) No.10465 of 2013
14.09.2021

RS (22.09.2021) 5P 6C