IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15032 of 2018
and
W.M.P.No.17798 of 2018

R.Kavitha ... Petitioner

Vs.

1.The Life Insurance Corporation of India,
Rep. by the Chairman / the Executive Director,
(Marketing / PD),
"Yougakshema" Bldg, West Wing,
Jeevan Beema Marg,
Mumbai – 400 021.

2.The Zonal Manager,
Southern Zonal Office,
P.B.No.2450, LIC Building,
153, Anna Salai,
Chennai – 2.

3.The Senior Divisional Manager
Life Insurance Corporation of India,
Salem Divisional Office,
No.776, Johnsonpet Road,
Johnsonpet
Salem – 636 007. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the 3rd respondent in connection with the orders passed by the 3rd respondent in Annexure III dated 26.04.2018 and Annexure IIIB dated 24.05.2018 and quash the same by holding that the interpretation of the Rules 7 to 8 of the Life Insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Rules 2009 and Life Insurance Corporation of India Development Officer (Revision of Certain Terms and Conditions of Service) Amendment Rules 2016 notified by the respondent 1 and 2 for straight termination without enquiry as unconstitutional and ultravires.

For Petitioner	: Ms.Ramapriya Gopala Krishnan
For Respondents	: Mr.S.Silambanan Senior Counsel For M/s.Kaaviya Silambanan Associates

<u>O R D E R</u>

The show cause notice issued by the 3rd respondent is sought to be quashed in the present writ petition.

2. The petitioner states that she was selected for appointment to the post of Apprentice Development Officer and her services were confirmed as

Development Officer by an order dated 24.06.2010. As per the Rule 7 and 8 of the Life Insurance Corporation Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 2009, every Development Officer has to maintain the cost ratio of 20% to 21% while discharging their duties. Periodical assessments were made by the L.I.C. Management and in the event of any short fall, actions are taken in accordance with the rules in force.

3. The issues raised in the present writ petition with reference to the Rules were elaborately considered by this Court in a batch of Writ petitions in ***W.P.Nos.35411 of 2016, etc. and batch*** and the judgment delivered on 15.09.2017and the relevant paragraphs are as under:

> *"**33.** Considering the arguments advanced both by the respective Senior Counsel appearing on behalf of the writ petitioners as well as the respondents, this Court is of the view that the challenge in these writ petitions is only a show cause notice. In normal circumstances, no writ can be entertained against the show cause notice. A show cause notice can be challenged and a writ can be entertained only on exceptional circumstances. If any show cause notice was issued by an authority having no jurisdiction or*

incompetency or on the ground of mala fides, the same can be entertained. If a show cause notice is in violation of the statutory Rules, then also a writ can be entertained.

34. *In the absence of any of these grounds, no writ can be entertained against a show cause notice and it is left open to the writ petitioners to submit his explanations/objections and to prove his case before the Authorities Competent. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as a party respondent in the writ proceedings in his personal capacity.*

35*. Such being the legal precedents laid down by the Honourable Supreme Court of India, in the matter of entertaining a writ against the show cause notice, the Courts are to be cautious while exercising the powers of judicial review under Article 226 of the Constitution of India, more specifically, in relation to the cases of show cause notices.*

36*. In the case on hand, no doubt, the* *punishment of termination is a major penalty and the same is proposed to be imposed by virtue of the show cause notice on the ground of under-performance of business of the Life Insurance Corporation of India by the Development Officers. The Life Insurance Corporation of India, being a Corporation, performing varieties of business activities are bound to develop the business activities through its staff members. In order to develop the business activities, various schemes are published to solicit the public in general and to develop the business activities.*

37*. Under these circumstances, a separate condition was imposed in respect of the post of Development Officer and the very name of the post itself carries the word #Development Officer# and it defines the nature of the job to be performed by these Officers in respect of the business development.*

38*. It is the primary duty of the Development Officer to actively participate in the business development of the Corporation. They are not mere Ministerial staff like other employees. These*

Officers are meant for the business development of the Corporation and keeping this in mind, the Management of the Life Insurance Corporation of India has decided to issue the Special Rules covering the business performances of the Development Officers and those Rules cannot be said to be unconstitutional and the Rules were issued for the development of the business activities of the Corporation, which is in conformity with the nature of the business to be carried out by the Corporation.

***39**. It is the prerogative of the employer to prescribe the conditions of service. However, the test would be the principles of reasonableness and fairness. If any Rule is arbitrary, unreasonable or unconstitutional, then the Courts have to interfere with such Rules. However, on perusal of the entire Rule and its object, this Court is of the firm opinion that the Rules were issued in order to protect the business interest of the Corporation and for the development of the same.*

***40**. The Life Insurance Corporation of India, being a business development Organisation, any* *compromise on business activities will certainly harmful to the very existence of the Corporation. Thus, the Special Rules prescribed for the post of Development Officers, cannot be said to be arbitrary or unreasonable.*

***41**. In respect of penalty, this Court is of the view that the termination in the case on hand, has not been imposed by way of penalty under the Staff Regulation. In the event of committing a misconduct, then the Corporation can initiate disciplinary action under the Staff Regulations. However, in the case on hand, it is purely relating to the business development performance of the Development Officers and it is something relates to the official performance and relating to the record of performance of the Development Officers.*

***42**. Actions are initiated under these Rules based on the continuous performances of the respective Development Officers recorded by the Competent Authorities. Thus, the penalty of termination prescribed in these Rules, cannot be compared with the penalty prescribed under the*

Staff Regulation. The penalty of termination is simplicitor in nature in respect of the Development Officers in relation to the allegation of under-performance. Thus, the concept of the Special Rules and its nature, cannot be compared with the Staff Regulation which is applicable to all staff of the Life Insurance Corporation of India.

***43**. The very purpose of issuing the Development Officers (Revision of Certain Terms and Conditions of Service) Rules, is for regulating the terms and conditions of service relating to the business performance of Development Officers. Thus, it is necessary for the respondent-Corporation to monitor the business performance as well as the efficiency level of the Development Officers for the growth of the Organisation. When, at the time of appointment, these writ petitioners, while accepting the conditions of service, had accepted the terms and conditions. The terms and conditions of service are part and parcel of the offer of appointment and once the same is accepted by the petitioners, then they are bound by the same.*

44. *The Rules are specifically issued as Special Rules in order to regulate the business performance of the Development Officers in the Life Insurance Corporation of India, the Corporation is meeting out huge expenditure by way of establishment costs, salary to the staff etc. Therefore, as a public institution, it is duty mandatory on the part of the respondent to regulate the service conditions of such Officers and other staffs.*

45. *The development of business is the prime object sought to be achieved by Life Insurance Corporation of India. Such being the nature of the Organisation, certainly the Special Rules issued in respect of the terms and conditions of service for the business performance of the Development Officers, are in order and there is no legal infirmity, in invoking such Special Rules for a particular cadre.*

46. *The Special Rules relating to the Development Officers are unambiguous with regard to the termination of services of these Development Officers in certain cases. It is a* *termination simplicitor. Thus, the penalty of termination in this context with reference to the Special Rules, cannot be construed as a major penalty as contemplated under the General Staff Regulations. A fine distinction is to be drawn between the General Rules governing the service conditions and the Special Rules governing the service conditions. General Rule is applicable to the entire staff of the Organisation in respect of certain misconducts committed and by invoking General Staff Regulations, a charge memo is to be framed, a domestic enquiry is to be conducted and thereafter by following the procedures on the principles of natural justice, a final order in the disciplinary proceedings shall be passed.*

***47**. However, in the case of termination simplicitor, the assessment of performance as per the Special Rules are sufficient to invoke the provisions of termination. The very object of the Rule is to assess the business performance of the Development Officers and take a decision. A show cause notice has been issued in order to provide an opportunity to the Development Officers to express their grievances/ explanations/objections* *for invoking the provisions of termination simplicitor. In the event of getting a convincing reply from the Development Officers concerned, then the Competent Authorities may consider the explanation and grant extension of service or continuance of service as per their decision in this regard.*

***48**. Even there is a provision under the Special Rules for re-appointment of a terminated Development Officer, the re-appointment of Development Officer arises only after issuing the order of termination under the Special Rules. This apart, the Special Rules contemplate an appeal against the order passed before the Managing Director and in relation to the appeal, Rules 41, 42, 43, 44 and 45 of the Staff Rules shall, so far as may be, applied to any such appeal. The said appeal shall lie against an order passed under sub-Rule (1) of Rule 7. In case of an appeal under Sub-Rule (2) of Rule 7, the Managing Director shall consider the records of the case and pass orders on merits having regard to the circumstances of the case.*

49. *Therefore, it is clear that the show cause notice was issued to the Development Officers, an opportunity to submit their explanations/objections was given and on receipt of the same, an order can be passed by the original authority and thereafter an appeal lies to the Managing Director and the Managing Director on receipt of any such appeal shall decide the same in accordance with the Rules on the circumstances of the case.*

50. *On looking into the provisions of the Special Rules, this Court is of the clear opinion that the principles of natural justice have been complied with. This apart, the appraisal year assessments are provided to the Development Officers and a chance for improvement is also provided to the Development Officers and after continuous assessment for certain years, then the Competent Authorities are invoking the powers under the Special Rules in order to impose the penalty of termination.*

51. *Thus, it is clear that after the show cause notice, the Development Officers concerned have to submit their explanations and if any adverse* *order is passed, then they may prefer an appeal to the Managing Director and there are two avenues for redressing the grievances of the Development Officers in case the non-performance is on genuine grounds.*

52. *The genuinity or otherwise, placed before the Competent Authorities by the Development Officers concerned, shall be considered only by the Competent Authorities and the High Court cannot enter into the arena of the details of the reports relating to the business performances of the Organisation. The business performances are the expertise of the team of the Organisation concerned and the High Court in this regard, cannot exercise the power of Judicial Review, more specifically, under Article 226 of the Constitution of India.*

53. *Thus, the performance chart of the Organisation, cannot be gone into by this Court, at this stage, when these writ petitions are filed challenging the very issuance of the show cause notice. All such explanations in relation to the business performance of the Development Officers* *concerned and their personal grievances or otherwise, shall be placed before the Competent Authorities for consideration and for appropriate decision. Thus, the scope of entertaining the writ against such show cause notice prescribed under the Special Rules are certainly limited and the same cannot be entertained in a routine manner.*

***54**. This apart, another ground was raised that a format has been prescribed in the 2016 Amendment issued to the Rules by the respondents. The Amendment Rules 2016 was issued on 23.4.2016. The Rules prescribe certain formats to be adopted uniformly by all Competent Authorities. On perusal of the formats, it is clear that nothing irregular on the format and certain columns are provided in order to assess the business performance of the Development Officers concerned.*

***55**. It is always possible for human errors, while recording the business performances of the Development Officers, such formats and columns are provided in order to avoid such inconsistencies, discrepancies, omissions and* *commissions. By providing such formats, there will be a clear assessment in relation to the business performances of the Development Officers concerned. By prescribing the format, certain human errors in this regard shall be averted.*

56*. This apart, the respondent-Organisation is All India Level Corporation and certainly uniformity and consistency is required while initiating actions under these kind of Special Rules against the Development Officers. Thus the Management thought fit to enact and prescribe the format to maintain uniformity in respect of the assessment required to be made for the purpose of invoking the Special Rules for imposing the penalty of termination simplicitor.*

57. *Thus, this Court is of the firm opinion that prescribing a format, per se, cannot be said to be illegal. If any such prescription violates the principles of natural justice or unconstitutional, then the Courts can exercise the power of Judicial Review. However, on perusal of the format, certain columns are provided, to be filled up by the Competent Authorities providing details regarding* *the business performances of the Development Officers concerned.*

***58**. Therefore, that is not the final document for invoking the powers of termination under the Special Rules, and the other records also can be perused before issuing any such order by the Competent Authorities against the Development Officers concerned. Even otherwise the aggrieved Development Officer also can request for perusal of certain documents or produce certain documents along with the explanations to be submitted in response to the show cause notice issued against him.*

***59**. Such being the nature of principles contemplated under the Special Rules, there is no reason for this Court to intervene, at this juncture, against the show cause notices issued to these writ petitioners. It is left open to the writ petitioners to submit their explanations/objections and documents, if any, to the Competent Authorities and it is for the Authorities to consider all the materials available on record and take a final decision under the Rules and communicate the* *same to the writ petitioners.*

60. *The learned Senior Counsel Mr.R.Singharavelan, made a submission that personal hearing also to be provided to these Development Officers, to explain their position and to plead certain personal grievances for not achieving the business performances in the respective appraisal years in person. The said submission of the learned Senior Counsel is certainly reasonable and therefore, the respondents are directed to fix a date and provide an opportunity of personal hearing to the writ petitioners to plead their grievances and on receipt of explanations/objections/documents from the writ petitioners and thereafter, consider all the materials available on record and take a decision in this regard under the Rules.*

61. *In view of this, no further adjudication on the grounds raised in these writ petitions in respect of the merits of the case and business performances, need not be considered in view of the fact that the show cause notice is under challenge in these writ petitions.*

> ***62***. *With these observations, all these writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.”*

4. In view of the above judgement the issues are no more *res integra* and therefore, the writ petitioner has to submit her explanations in response to the show cause notice issued to her. Pursuant to the interim order granted in this writ petition, the petitioner is allowed to continue. Therefore, the petitioner is directed to submit her explanation within a period of two (2) weeks from the date of receipt of a copy of this order and on receipt of any reply from the petitioner, the respondents shall consider the same and pass orders on merits and in accordance with law as expeditiously as possible.

5. With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

15.11.2022

Jeni
Index : Yes
Speaking order

To

1.The Chairman / the Executive Director,
The Life Insurance Corporation of India,
(Marketing / PD),
"Yougakshema" Bldg, West Wing,
Jeevan Beema Marg,
Mumbai – 400 021.

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S.M.SUBRAMANIAM, J.

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