



W.P.(MD)No.4152 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4152 of 2020

M.Muthukaruppan

: Petitioner

Vs.

1.The Zonal Manager,
Life Insurance Corporation of India,
Anna Salai,
Chennai - 2

2.The Senior Divisional Manager,
Life Insurance Corporation of India,
Sellur,
Madurai - 2

: Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, Calling for the records relating to the impugned order passed by the 1st Respondent in his proceedings SZ/P&IR/IRDD/18-19 dated 19.01.2019 and consequential order passed by the 2nd respondent in his proceedings P&IR, dated



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22.02.2019 and quash the same as illegal and consequentially direct the respondents to regularize the period of removal from service i.e., 10.06.2009 to 15.06.2014 and disburse the back wages.

For Petitioner : Mr.V.P.Rajan
For Respondents : Mr.G.Prabhu Rajadurai
Standing Counsel

ORDER

This writ petition has been filed to quash the impugned order passed by the 1st Respondent in his proceedings SZ/P&IR/IRDD/18-19 dated 19.01.2019 and consequential order passed by the 2nd respondent in his proceedings P&IR, dated 22.02.2019 and consequentially direct the respondents to regularize the period of removal from service i.e., 10.06.2009 to 15.06.2014 and disburse the back wages.

2. The learned counsel appearing for the petitioner submitted that the petitioner appointed as Peon in Life Insurance Corporation of India in the year 1999 and simultaneously promoted as Record Clerk in the year



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2003. The petitioner married one Sumathi on 09.02.2005 and out of the wedlock he blessed with a child. On 12.11.2005, due to wordy quarrel between the petitioner and his wife, which resulted his wife committed suicide, thereby, a criminal case was registered against the petitioner in Crime No.874 of 2005 and he was placed under suspension by the second respondent from 17.11.2005 to 29.12.2005 citing the criminal case registered against the petitioner. The charge sheet also filed under Section 306 IPC alleged that the petitioner committed abutment for committing suicide of his wife. At the end of the trial, the petitioner was convicted and to undergo three years sentence. Against which, the petitioner preferred appeal before this Court in CrI.A.No.107 of 2009 along with suspension of sentence petition and this Court granted bail and suspended the sentence on 29.04.2009. Thereafter, immediately after conviction, the second respondent issued a show cause notice, dated 30.04.2009 as to why the major punishment of removal from service can be imposed against the petitioner on the ground of conviction in the criminal case. The petitioner submitted explanation on 05.05.2009 stating that the petitioner obtained bail on 29.04.2009 as such the proposed penalty of removal from service may be



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dropped. The second respondent passed an order dated 10.06.2009 removing from service. The appellate Court set aside the conviction by order, dated 23.09.2013. Thereafter, the petitioner was reinstated into service on 07.06.2014. Thereafter, the petitioner made representations dated 13.07.2015 and 20.07.2017 requesting the second respondent to regularise his service and pay back wages for the period from 10.06.2009 to 15.06.2014 on the ground that the registration of criminal case ended in acquittal and thereafter, the petitioner was directed to prefer appeal before the first respondent under 42(2) of the LIC of India Staff Regulation, 1960. Accordingly, the petitioner preferred an appeal to the first respondent, through representation dated 24.08.2018 requesting him for payment of monetary benefit for the period for which he was removed from service. However, the said representation was rejected on 14.10.2014 on the ground that 'no work no pay'. However, even the petitioner is not entitled for back wages, however, the other benefits like continuity of service for the purpose of pension, he is entitled, but without considering the same in toto rejected the petitioner's representation is not sustainable one. Accordingly, he prayed for allowing the writ petition.



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3. The learned Standing counsel appearing for the respondents would submit that though the petitioner is not entitled for any back wages for non employment period, however, he is entitled for other benefits, which is admissible one and the said aspect was not considered in the impugned order and hence, this Court may set aside the impugned order and remand the matter back to the first respondent for passing appropriate orders.

4. Heard, Mr.V.P.Rajan, learned counsel appearing for the petitioner and Mr.G.Prabhu Rajadurai, learned standing counsel appearing for the respondents.

5. The facts in the present case are not in dispute. Admittedly, the petitioner involved in criminal case for committing suicide of his wife thereby, a criminal case was registered in Crime No.874 of 2005 under Section 306 IPC. Later on charge sheet was filed in S.C.No.593 of 2006 on the file of Sessions Judge, Mahalir Neethimandram, Madurai and the said criminal case was ended in conviction. Against which, the petitioner preferred appeal before this Court in CrI.A.(MD) No.107 of 2009 and the



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same was ended in acquittal. However, the grievance of the petitioner is that the period of suspension and dismissal and they failed to count service for the purpose pension, they simply rejected the petitioner's representation on the ground that the petitioner is not entitled for back wages on the ground no work no pay. However, for better appreciation the Life Insurance Corporation of India Staff Regulations, 1960, clause 38, reads as follows :

" Treatment of the Period of Suspension:

38. When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee who has been dismissed, removed or suspended is reinstated, the disciplinary, appellate, or reviewing authority, as the case may be whose decision shall be final, [under these regulations]* may grant to him for the period of his absence from duty

(a) if he is honourably acquitted, the full pay and allowances which he would have been entitled to if he had not been dismissed, removed or suspended. less the subsistence allowance;

(b) if otherwise, such proportion of pay and allowance as the disciplinary, appellate or reviewing authority may prescribe.



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In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. (In a case falling under clause(b). the period of absence shall not be treated as a period spent on duty, but the disciplinary, appellate or the reviewing authority may, at its discretion, grant leave for the period to the extent admissible to the employee wider the rules; any period of absence which has not been treated as not constitute break in service period spent on duty or on leave shall not count as service for any purpose under these Regulations but will not constitute break in service.])**

No order passed under this regulation shall have the effect of compelling any employee to refund the subsistence allowance payable under regulation 37."

6. On a perusal of the above said provisions makes it clear that the suspension of an employee is held to be unjustified or not wholly justified; or when an employee who has been dismissed, removed or suspended is reinstated, the disciplinary, appellate, or reviewing authority, as the case may be whose decision shall be final may grant to him for the



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period of his absence from duty, if he honourably acquitted, the full pay and allowances which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance; if otherwise, such proportion of pay and allowance as the disciplinary, appellate or reviewing authority may prescribe.

7. In the present case, though the petitioner is not in employment applying the rule no work no pay, the petitioner is not entitled for back wages. However, as per the above said clause, the petitioner is entitled for continuity of service and other benefits except back wages. Hence the said provisions was not considered by the first respondent and he mechanically passed the impugned order, which is not sustainable one and hence, the impugned order is liable to be interfered with.

8. Accordingly, the impugned order is set aside and the matter is remanded back to the first respondent and the first respondents directed to consider the petitioner's representation dated 11.02.2019, in terms of clause 38 of Life Insurance Corporation of India Staff Regulations, 1960, and pass



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appropriate orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ petition is allowed. No costs.

16.12.2022

Index : Yes / No

Speaking Order : Yes / No

RM

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M.DHANDAPANI,J.

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