



W.P.(MD)No.14260 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 17.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.14260 of 2020
and W.M.P(MD).Nos.11917 of 2020 and 13211 of 2021

M.Poomari

... Petitioner

Vs

1.The Chairman,
Life Insurance Corporation of India,
Yogakshema Jeevan Bheema Marg,
Mumbai -21.

2.The Zonal Manager,
Life Insurance Corporation of India,
South Zone, LIC Building,
153, Annasalai, Chennai 600 002.

3.The Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office"Jeevan Prakash"
Bridge Station Road, Sellur,
Madurai 625 002.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 20.03.2020 vide the ERD/SZ/M/19-20/02 confirming the order of the second respondent dated 11.02.2019 vide the SZ/IR/DATED modifying the order dated 11.05.2018 passed by the third respondent vide the P&IR and quash the same and consequently direct the third respondent to instate the petitioner with all monetary benefits within a time fixed by this Court.



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For Petitioner : Ms.J.Anandhavalli

For Respondents : Mr.G.Prabhu Rajadurai
Standing Counsel

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Sub-Staff in LIC on 24.08.1993 and he was posted at Rajapalayam. He was promoted as Record Clerk and then as Assistant. He was working as Cashier at Rajapalayam from 01.07.2009 to 22.01.2014.

3.The writ petitioner was served with charge memo dated 05.03.2015. It contained three articles of charge. The petitioner offered his reply. Enquiry was conducted and the enquiry report was adverse to the writ petitioner. After obtaining the writ petitioner's further representation, show cause notice dated 02.03.2016 was issued proposing punishment of dismissal from service and also recovery of the misappropriated amount. After receiving the writ petitioner's reply dated 30.03.2016, on 31.03.2016, the petitioner was dismissed from service. Aggrieved by the same, the petitioner filed appeal before the second respondent.



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4. The second respondent vide order dated 07.12.2016 set aside the punishment imposed on the petitioner and remitted the case back to the the Disciplinary Authority with a direction to hold *de novo* enquiry. Thereafter, the enquiry was once again conducted and the enquiry officer submitted report dated 10.11.2017 holding that all the charges framed against the writ petitioner have been proved. The writ petitioner submitted his objection to the enquiry report. After issuing show cause notice and getting the writ petitioner's explanation, he was once again visited with the punishment of dismissal from service on 11.05.2018. Challenging the same, the petitioner filed an appeal before the second respondent. The second respondent vide order dated 11.02.2019 confirmed the punishment of dismissal. However, modification was made in respect of the amount to be recovered from the writ petitioner. The recovery amount was reduced from Rs.1,18,116/- to a sum of Rs.1,707/-. Questioning the same, the petitioner moved the first respondent. The first respondent by the impugned order, dated 20.03.2020 confirmed the order passed by the appellate authority. Challenging the same, the present writ petition has been filed.



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5.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. She also filed notes on submission and took me through the same. She pointed out that even though three articles of charge were framed against the writ petitioner, eventually he was found guilty only in respect of charge Nos.1-A to 1-D and charge No.2-A. Charge Nos.1-A to 1-D pertain to temporary misappropriation. She demonstrated that there was absolutely no time gap between the date on which the writ petitioner's cheque was presented and the date on which it was 'honoured'.

6.The charge of the employer was that the writ petitioner received premium amount in cash and inspite of remitting the same, offered his cheque for collection. The employer has proceeded on the premise that there was time gap between the date on which the amount was received from the customer/policy holder and the date on which the writ petitioner's cheque was 'honoured'.

7.The petitioner's counsel submitted that during the enquiry, if the policy holders had been examined to show that they had paid the amount earlier to the date which the writ petitioner's cheque bears, then there



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would be substance in the allegation of temporary misappropriation.

Since the policy holder/customer had not been examined, the charge of temporary misappropriation could not be substantiated. As regards the charge No.2-A, the petitioner had pointed out that a sum of Rs.5,121/- was received from one Vellaichamy by his relative Kasirajan, who was also an office colleague. The said Kasirajan had handed over the cheque to the writ petitioner and believing the said Kasirajan, the petitioner had presented the same in respect of the policy of Vellaichamy. The said cheque actually was drawn in the name of one Sathyababu and it was eventually dis-honoured.

8. The petitioner counsel would state that the petitioner had not received any money from the said Vellaichamy and that therefore, there was no material to prove the allegation that he had misappropriated the amount in question. According to the learned counsel for the writ petitioner, it was the said Kasirajan, who had misappropriated the amount and suggestion to that effect had also been put during the enquiry. The petitioner had in response to the question from the enquiry officer, specifically answered that the petitioner had received the cheque only from Kasirajan in respect of policy of Vellaichamy and that he did not receive any cash from him. A letter dated 04.04.2016 issued by Thiru.



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Kasirajan was also marked as Ex.D.1. The learned counsel for the writ petitioner would state that in the said branch there was a practice of accepting the premium amount remitted by the customers in the form of the employees' cheques and that the petitioner alone had been singled out for drastic punishment. According to the learned counsel for the petitioner, the punishment imposed on the petitioner is too harsh and that similarly placed colleagues had been let off with a lesser punishment. According to the petitioner, it is a clear act of discrimination warranting interference at the hands of this Court.

9.The respondents had filed a detailed counter affidavit and the learned Standing Counsel took me through its contents. According to the learned Standing Counsel, the petitioner had not challenged the core allegation made against him and that the management had lost confidence in the writ petitioner and they do not want to retain such an employee in their ranks. He relied on the decision reported in **2015 2 SCC 341 (Diwan Singh Vs., Life Insurance Corporation of India)**. He pressed for dismissal of the writ petition.

10.I carefully considered the rival contentions and went through the materials on record.



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11.The charge memo issued against the writ petitioner contains three articles of charge. Charge No.1 is in 4 parts. It alleges that the writ petitioner had indulged in temporary misappropriation. After carefully going through the entire materials on records, I am not persuaded to come to a conclusion that the charges of temporary misappropriation covered by Charge Nos.1-A to 1-D have been substantiated. As rightly pointed out by the learned counsel appearing for the petitioner, if during enquiry the policy holders had been examined to testify regarding the dates on which they remitted the premium amount in cash, then this charge could have been established. Such a course of action was not undertaken. I am therefore not persuaded to hold that the petitioner is guilty of misappropriation of the amounts covered by charge No.1-A to 1-D. But, breach of procedure is so apparent and evident. The writ petitioner was holding the post of cashier. When the customer or policy holder makes payment in cash, the petitioner's duty is to straight away remit the same and issue receipt, instead he chose to issue his own personal cheque. I fail to understand as to what motivated or impelled the writ petitioner to do so. The act committed by the writ petitioner is virtually unheard of. Therefore, the employer was justified in taking a very serious view of the matter. While I am giving the benefit of doubt



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regarding the charge of temporary misappropriation, the breach of procedure committed by the petitioner is so apparent and in fact the writ petitioner himself admits that he had done so by ignorance.

12.Coming to Charge No.2-A, the allegation is that a sum of Rs.5,000/- was collected from one Vellaichamy by an office colleague by name Kasirajan and that the said amount was misappropriated; instead of remitting the said amount of Rs.5,000/- to the account of Vellaichamy, a cheque drawn by one Sathiyababu was presented. The said cheque subsequently bounced.

13.The learned counsel appearing for the respondent corporation drew my attention to the letter dated 04.02.2014 sent by Thiru.Kasirajan. The said Kasirajan had categorically stated that he had handed over the entire sum of Rs.5,000/- to the writ petitioner and also taken a receipt from him and gave it to Thiru.Vellaichamy. To this charge No.2-A, the writ petitioner had not given any specific denial in his earlier explanation. Ofcourse during the enquiry, the writ petitioner had suggested that Thiru.Kasirajan gave only a cheque to him and did not hand-over any cash. But, it was only a suggestion and feeble defence put forth by the writ petitioner. He did not examine Kasirajan; ofcourse



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Ex.D.1 letter of the Kasirajan was marked. But this exhibit was subsequent to the order dated 31.03.2016, by which the management had dismissed Thiru.Kasirajan. Only after his dismissal, he issued Ex.D.1. No reliance can be placed on such letter.

14.I am more than satisfied that the petitioner had conducted himself in a most inappropriate manner. I fail to understand as to how the cheque signed by one Sathiyababu could have been presented towards the policy renewal of Vellaichamy. The employer was justified in coming to the conclusion that the premium amount paid by Vellaichamy had been misappropriated. The Hon'ble Supreme Court in the decision reported in **(2015) 2 SCC 341 (Diwan Singh Vs., Life Insurance Corporation of India)** had held that when the management of financial institution had lost confidence in its employee, the Court ought not to go by the amount of money misappropriated. The said decision applies fully to the case on hand. In fact, the management concluded that misappropriation was jointly committed. That is why the petitioner was not directed to pay the entire amount of Rs.5,000/-. The petitioner's share was quantified as Rs.1,707/-. Liability was evenly distributed. Kasirajan, the co-delinquent, was also dismissed.



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15. When the petitioner was originally dismissed from service, the appellate authority set aside the same and ordered *de novo* enquiry. In the fresh enquiry also, the petitioner could not succeed. As many as three authorities had considered the writ petitioner's case and come to a conclusion that the charges framed against him have been proved. In exercise of jurisdiction under Article 226 of the Constitution of India, I am not persuaded to interfere. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

Internet : Yes/No

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