BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.03.2022
DELIEVERD ON: 17.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.16744 of 2014 and 2331 of 2015
and
M.P.(MD).Nos.1 of 2014, 1 and 1 of 2015

W.P.(MD)No.16744 of 2014

T.Padmanaban ... Petitioner

Vs

The Executive Director,
Disciplinary Authority,
Life Insurance Corporation of India,
Central Office,
Yogakhesma,
Jeevan Bima Marg.,
Mumbai-400021. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in respect of the impugned order of dismissal dated 25.09.2014, in terms of regulation 39(1)(g) and recovery of Rs.3,03,128/- in terms of regulation 39(1)(g) of LIC of India Staff regulations, 1960 and quash the same as illegal and consequently direct the respondent to conduct re-enquiry by furnishing documents, schedule of cheque and the requisition letter given by the customer, cheque issued control register, copy of the original voucher, stock book register, cheque movement register and Document No.9, listed in charge sheet and other documents.

W.P.(MD)No.2331 of 2015

T.Padmanaban ... Petitioner

Vs

1.The Executive Director,
Disciplinary Authority,
Life Insurance Corporation of India,
Central Office,
Yogakhesma,
Jeevan Bima Marg.,
Mumbai-400021.

2.The Manager,
Life Insurance Corporation of India,
Unit I,
9A, Punithavathiar Street,
Palayamkottai,
Tirunelveli - 627002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the second respondent in respect of the impugned recovery order passed by the second respondent dated 02.02.2015 and quash the same as illegal.

(In both Writ Petitions)

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.G.Prabhu Rajadurai

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COMMON ORDER

There are two Writ Petitions. The Writ Petition in W.P.(MD).No.16447 of 2014 is filed for issuance of a Certiorarified Mandamus to quash the impugned order of dismissal dated 25.09.2014, with a consequential prayer to direct the respondent to conduct a re-enquiry by furnishing necessary documents. The Writ Petition in W.P.(MD) No.2331 of 2015 is filed for issuance of Certiorari to quash the impugned recovery order, dated 02.02.2015.

2.The brief facts of the case are that the petitioner belongs to ST Community and was appointed as an Assistant in Life Insurance Corporation of India on 24.03.1984. Initially, the petitioner was appointed in Krishnagiri branch Office, then transferred to various places and has put in 25 years of service. On 15.09.1991, the petitioner was promoted to the post of Higher Grade Assistant and further promoted as Assistant Administrative Officer in the year 1995, then as Administrative Officer, then on 24.03.2009 promoted as Assistant Division Manager and transferred to various places.

3.The contention of the petitioner is that the General Secretary, Life Insurance Corporation of India SC/ST Employees Welfare Association, Tirunelveli Division, insisted the petitioner to join in their association as a member. Since the petitioner refused to join in the Association, the Association started giving complaints against the petitioner. One such complaint was that the petitioner does not belong to Schedule Tribe Community. Thereafter, the said complaint was forwarded to the District Collector and an enquiry was conducted by the Revenue Divisional

Officer and the District Collector has passed an order in Letter No.PA.MU.E2/6428/88 dated 07.07.1989, wherein it is stated that the petitioner belongs to Konda Reddy Community. The SC/ST Association gave a complaint to the respondent on 02.12.2009 and the same was enquired into by the respondent and the respondent had passed an order dated 28.08.2010 imposing a penalty of censure. Therefore, on 23.11.2010, the petitioner submitted a representation to the respondent through the Branch Manager alleging harassment and torture by the SC/ST Employees Welfare Association. But no action was taken. Again, the Association gave a complaint to the respondent and based on the same, the respondent vide proceedings, dated 09.03.2012 passed an order of suspension with a malafide intention. Then a charge memo was issued and the petitioner submitted his detailed explanation on 14.05.2012 requesting the Branch Manager to reinstate the petitioner into service. The petitioner filed W.P.No.8748 of 2012, challenging the suspension order. On 28.06.2012, the Hon'ble High Court has directed the respondents to consider the representation of the petitioner and pass appropriate orders. Based on the same, the respondent passed an order, dated 14.08.2012, wherein, it has been stated that the respondents contemplated to initiate departmental proceedings based on the available records and there is no merit in the petitioner's claim to reinstate him into service by revocation of suspension, at this stage. The said order was communicated through Fax. Thereafter, the petitioner filed yet another Writ Petition in W.P. (MD) No. 1491 of 2013 and the same is pending.

4. The respondent issued a charge memo, dated 07.03.2012 and the petitioner replied by denying the allegations. Thereafter, an enquiry officer was appointed. The documents contained in the charge memo were furnished to the petitioner, except the Document No.9. Therefore, the petitioner requested to furnish the Document No.9 and thereafter to proceed with the enquiry. But the respondents have not furnished such documents. Totally, five charges were levelled against the petitioner. The petitioner submitted a letter to the enquiry officer to serve the copies of the schedule of cheque and the requisition letter given by the customer, cheque issued control register, copy of the original voucher, stock book register, cheque movement register and other documents. According to the petitioner, the said documents are essential to the enquiry proceedings. These documents have been relied by the presiding officer, in one way or the other. On 22.07.2013, the petitioner submitted a detailed representation to the respondents to furnish the relevant documents as mentioned above. On 14.08.2013, the petitioner received a reply denying the said documents under Section 8(1)(h) of RTI Act. Then the petitioner made representations on 27.02.2014 and 21.03.2014 seeking for providing the documents to

face the enquiry proceedings. Without furnishing those documents, the respondents completed the enquiry and a show cause notice dated 26.06.2014 was issued without conducting a proper enquiry and by affording sufficient opportunity of hearing to the petitioner. Hence the said Show Cause Notice was challenged in W.P.No.13158 of 2014 and this Court by order dated 11.08.2014, directed the respondent to give sufficient opportunity to the petitioner. The petitioner again submitted a detailed representation dated 27.08.2014 along with a copy of the order with a request to conduct a re-enquiry. But the respondents without considering the order passed by this Court, has passed the impugned order of dismissal, dated 25.09.2014, in terms of Regulation 39 (1)(g) and recovery of Rs.3,03,128/- in terms of regulation 39(1)(g) of LIC of India Staff Regulations, 1960. The petitioner has filed the present Writ Petition in W.P.(MD). No.16744 of 2014 challenging the order of dismissal. While the writ petition was pending before this Court, on 06.07.2014, the second respondent sent a letter to the petitioner with regard to the Provident Fund No.1-Form P.F.No.29 and directed the petitioner to submit the form with proper entry. Subsequently, on 28.01.2015, the second respondent sent another communication to the petitioner stating that the excess payment of Medical Benefit of Rs.6000/- was paid to the petitioner along with the subsistence allowance for the month of July 2014. To close the audit recoveries, the second respondent directed the petitioner to remit back the amount of Rs.6000/- at the Branch Office. In the meanwhile, on 02.02.2015, the second respondent passed an impugned recovery of Rs.2,21,639/- from the provident fund. The petitioner submitted before the second respondent about the pendency of the Writ Petition with regard to dismissal order. But the respondent directed the petitioner to sign Form 29 or otherwise, he will deduct the said amount from the Provident Fund. Hence the petitioner has filed the present Writ Petition in W.P.(MD).No.2331 of 2015.

5.The contention of the petitioner is that the respondents have relied on certain documents but the copy of the documents were not served to the writ petitioner. Without supplying the relevant documents, the enquiry was conducted. The enquiry officer himself has stated that the documents could not be traced out. Failure to provide such documents is in violation of the principles of natural justice, especially, the schedule of cheque and the requisition letter given by the customer, cheque issued control register, copy of the original voucher, stock book register, cheque movement register etc., were not served to the petitioner. The respondent in the impugned order admits that the following documents were not provided him to defend the case:

i) Bank reconciliation of Bima plus and future plus for February 2007

ii) Cheque cancelled schedule of Bima plus and future plus of March 2007 and March 2008.

iii) Supporting vouchers and supporting bills for charge no.2

iv) Supporting documents and requisition letter from R.Balamurugan regarding charge no.1

v) Cheque controlled register for Bima plus and future plus just like PE4 and PE7 submitted by the presenting office.

vi) Stock of saleable literature schedule for March 2005.

But the respondents simply concluded that the contention raised by the petitioner to furnish the above documents is not tenable.

6.The respondents have filed a counter stating that the respondent is completely unaware of the dispute between the petitioner and the employee's Union. However, as far as the case status for the petitioner is concerned, the District Collector vide letter, dated 06.09.1997 informed the petitioner that the verification report in respect of the petitioner is called for and the same is awaited from the Revenue Divisional Officer. However, as per G.O.2(D) 108 dated 12.09.2007, the State Level Scrutiny Committee is the proper authority to decide the community status of the ST and the respondents are not in a position to confirm the caste status of the petitioner. On the complaint received against the petitioner, on misappropriating corporation funds to the tune of Rs.30,000/-, an investigation was conducted on the basis of the report dated 04.01.2010 stating that the petitioner resorted to wrong procedure which is in violation of the Rules and caused a loss of Rs.30,982/- to the respondent Corporation. Though, at that stage, negligence was contributed by the petitioner for causing such loss and he was imposed with a minor punishment of censure vide letter, dated 28.08.2010. The petitioner appealed against the said penalty vide representation, dated 23.11.2010, wherein, he has submitted certain information about the refunds made and on the perusal of such information, it was decided to reopen the case and. On further investigation, it was found that the petitioner indulged in the intentional fraud of misappropriating the respondents money for his personal gains. The modus operandi adopted by the petitioner for carrying out the fraud revealed tampering and manipulation of office records. Thereafter, the petitioner was placed under suspension and disciplinary proceedings were initiated. The petitioner challenged the suspension in W.P.(MD).No.1491 of 2013 but interim orders were passed. A charge memo, dated 27.02.2012 and corrigendum, dated 03.09.2013 were issued. The petitioner submitted his reply on 14.03.2013. Thereafter, an enquiry was instituted on 25.07.2013. The petitioner filed another writ petition in W.P.(MD).No.13158 of 2014 to quash the disciplinary proceedings. In the meanwhile, an enquiry was conducted and the enquiry officer submitted his report on 10.03.2014 upholding the charges are proved. The copy of the report was issued to the petitioner and the petitioner had submitted his explanation on 21.03.2014. On perusing the enquiry report as well as the comments on the report, the respondent was satisfied that the petitioner as guilty of charges. Accordingly, a show cause notice calling upon the petitioner to submit his reply to the proposed punishment of dismissal from service and the recovery of money to the tune of Rs.3,34,170/- was issued on 26.06.2014. The petitioner submitted his reply on 19.07.2014 and on considering the same by order dated 25.09.2014, the petitioner was imposed with a punishment of dismissal from service with recovery of amount. With reference to the allegations that a copy of Document No.9 was not furnished to the petitioner, the respondents submitted that the said document was only a passbook pertaining to a Joint SB account number held by the petitioner along with his brother-in-law namely, Balamurugan in Indian Overseas Bank, Palayamkottai. As the original was with the petitioner, providing a copy was not possible and in order to sustain the charge, a statement of account of the joint account was obtained from the Indian Overseas Bank and the said statement had the names of the account holders and the details of all the transactions. The said statement of account produced as a documentary evidence (PE 8) and the same was relied upon and the petitioner had inspected the said Document No.8 and the same was adequately explained to the petitioner during the course of enquiry and that only to make out a case, the petitioner is harping on the same, though the original passbook is in the hands of the petitioner. The respondents state that as far as the copies of the documents are concerned, except few other documents, other documents are furnished to the petitioner and the charges levelled against the petitioner were established based on the available documents and that the non furnishing of the documents which were not available with the respondent office would not in any way prejudice the case of the petitioner. The petitioner's request for the production of certain documents was considered but it was found that the certain documents were either sent to CBI or not available due to lapse of long time and such inability to produce those documents was expressed to the petitioner during the course of enquiry. However, the copies of the documents relied on by the enquiry officer were produced and those available documents are sufficient to prove the involvement of fraudulent transactions. The respondent is involved in the business of life insurance and has the responsibility of keeping custody of public money involving thousands of crores. It is expected that its officers to exhibit utmost trust and honesty towards public and public money. The petitioner is found to be involved in the fraudulent conduct by diverting the funds of the respondent Corporation to the Joint account held by himself and his brother one R.Balamurugan and his wife Sudha under the guise of refund. The petitioner cannot be shown any leniency, particularly, when he acted in such a manner as an employee of the Life Insurance Corporation of India. The petitioner was paid Rs.6,000/- as medical benefit during 2014-2015. Thereafter, the final order was passed directing the petitioner to pay Rs.3,03,128/- based on the disciplinary proceedings which is the loss incurred to the Corporation and Rs.87,489/- was due to the petitioner under an insurance scheme and the same was adjusted, the balance of Rs.2,21,639/- is to be recovered from the petitioner which is legally valid. Therefore, the petitioner cannot state that the recovery is illegal and prayed to dismiss the writ petition.

7.Heard Mr.J.Jeyakumaran, learned counsel for the petitioner and Mr.G.Prabhu Rajadurai, learned counsel for the respondents and perused the records.

8.The learned counsel for the petitioner submitted that he has submitted a petition under the Right to Information Act seeking for the copies of the documents and the respondents have given inconsistent reply. The petitioner relied on the RTI application and reply, dated 06.12.2014 where, the petitioner sought for information about the amount of Rs.36,400/- which was the payment made to Sudha vide cheque number 900666, dated 30.03.2005. For the said transaction, the petitioner sought to provide the copy of the payment voucher, copy of party's requisition letter and the copy of supporting bills or receipt for the payment made and copy of sub-ledger for payment. The respondents have replied that the said documents are not available. Likewise, the petitioner has sought for series of information for all the documents and the respondents have replied that the documents requested are not available. Again, the petitioner submitted an application under RTI Act dated 29.12.2019 wherein, the respondents have replied vide letter, dated 22.01.2015 stating that the Vouchers pertaining to the period up to 31.03.2005 have been destroyed vide office note, dated 08.06.2009, by the competent authority at the Divisional Office. Likewise, it has been stated that all the vouchers pertaining to different periods were destroyed. However, for one document, the respondents have replied that the documents requested under 4(e) was handed over to the CBI authorities vide letter, dated 20.03.2013. The learned counsel for the respondents submitted that all these documents were destroyed by the petitioner himself.

This allegation was vehemently refuted by the petitioner's counsel stating that as per the procedure of LIC, after five years, normally all the documents will be destroyed. Following the said procedure only, it was destroyed and destruction was carried out based on the orders of the higher authority or the competent authority. The learned counsel for the petitioner submitted that the respondents have filed criminal case in C.C.No.1 of 2014, on the file of II Additional District Court for CBI Cases, Madurai. After going through all the records, the CBI Court has acquitted the petitioner. The reason for acquittal is that the documents are not available and the documents were destroyed. The prosecution was lodged against the petitioner's wife as Accused No.2 and the petitioner wife was also acquitted. The learned counsel for the petitioner relied on the criminal case judgment and the relevant portion is extracted hereunder:

> *34. The P.W.7, Shri.N. Mahendravarman, Legal Manager of LIC, Divisional Office is only sending the documents as per the request made by the CBI. The P.W.8, Shri.R. Saravana Murugesh is the Manager of LIC, Tirunelveli. He is narrated that the cheque for Rs.36,400/- and Rs.9,000/- are debited from the Suspense A/c and while he was in cross stated that Accounts Department* பாலிசிதாரர்களுக்கு பணம் கொடுக்க வேண்டும் என்றால் *Accounts Department*-லிருந்துதான் பணம் கொடுக்க வேண்டும். *Vouchers* அந்த அந்த துறையில் தயார் செய்து *Accounts Department* அனுப்பி விடுவார்கள் என்றால் சரிதான். *Vouchers* தயார் செய்யும் போது, தயார் செய்தவர் பதவி பெயர் மற்றும் பணி எண் குறிப்பிடப்பட்டுத்தான் *Voucher* அனுப்பப்படும் என்றால் சரிதான். அந்த *Vouchers* ஒருவர் தயாரித்து ஒருவர் *Check* செய்து மற்றொரு அதிகாரியால் ஒப்புதல் அளிக்கப்பட வேண்டும். அதன்பிறகு தான் *Voucher*-ல் கண்ட தொகைக்கு காசோலை வழங்கப்படும். அந்த காசோலைகளில் 2 *authorized* நபர்கள் கையெழுத்து போட வேண்டும் என்றால் சரிதான். *Voucher* உடன் அந்த *claim*-க்குண்டான ஆவணங்கள் இணைக்கப்பட்டிருக்கும் என்றால் சரிதான். *Voucher*-யும் அதனுடன் இணைக்கப்பட்ட ஆவணங்களையும் பார்த்தால்தான் அந்த *Claim* உண்மையானதா? பொய்யானதா? என்று சொல்ல முடியும் என்றால் சரிதான். *He further said that he doesn't know whether a separate Server is available for the policy of Bima Plus and Future Plus. His rest of the evidence is not pertaining to this case. So, the evidence of PW.2. PW3.P.W.4. PW.5. PW.7 and P.W.8 are disclosed and admitted that the voucher to be prepared with supporting documents of claim then only the preparing process, checking process, issuing process and in end of Signatories of the cheque and admitted that there are two signatories are must to sign the cheque.*
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> *35. If it is so, the 1st accused alone cannot issue the cheque in favour of his wife namely, the 2nd accused. It is admitted fact that the records of vouchers prior to*

31.03.2008 were weed out. Since the Ex P.9 is confirmed that the records of vouchers were destroyed as per the rules of the LIC. It is admitted fact that under Ex P.39 queried by the CBI on 21.05.2013 but nothing replied by the LIC under ExP.14. It is also admitted that the 1st accused was placed under suspension on 09.03.2012. Later on, the complaint was lodged on 27.11.2012 after 8 months after mening of minds. The delay of lodging the complaint is not explained because the P.W.2 concretely deposed that the misappropriation was took place in the year 2009. When the periodical Statutory and Internal Audit were conducted by the LIC, then there was no remarks in passing of the vouchers against the 1st accused. It is found that Mr. P. Subbiah was not examined by the prosecution. The Perumal Janaki, Subramanian and Rajasekaran who are the participants while preparing vouchers and signatories. The reason for non-examination of Subbiah is not explained by the prosecution. The said Rajasekaran (P.W.10), Perumal Janaki (P.W.11) and Subramanian (P.W.12) who are not lower grade employees of the LIC. They are responsible persons since the P.W.11, Shri.S.Perumal Janaki was a person for preparing vouchers. The P.W.10 and P.W.12 who are the persons competent to sign the cheque. If it is so, the Court finds that the commissions of the case couldn't be made by 1st accused alone and played fraudulent transactions for preparation of vouchers, checking process and signed the cheques and the role of Signatories and issued the cheques in favour of the 2nd accused. Since the said process of issuing cheques were the team works, not a sole work. Because the above said witnesses are collectively told that the voucher cannot be prepared without supporting documents. If it is so, the Court can't be presumed that the vouchers were prepared without supporting documents. Further, a person who was prepared the voucher as per the prosecution was not cited as a witness in this case. The prosecution may be levelled any charge, but it would be proved beyond reasonable doubts. Since the main Principles of Evidence are,

1. *Evidence must be confined to the matter in issue.*

2. *Hearsay Evidence must not be admitted in issue.*

3. *The best evidence must be given in all cases.*

The object in adducing evidence is to find out the truth or otherwise of the disputed facts over all points in issue and that no evidence is adduced which is not *relevant to the issue, though evidence of collateral facts is admissible.*

36. If it is so, the prosecution not established by evidence and documents that the 1st accused was committed fraudulent transactions and issued the cheques in favour of the 2nd accused with agreement to cheat the LIC of India and committed the offence of criminal breach of trust and fabricated false documents and used as genuine and criminal misconduct. Since, it is admitted fact that the preparation of vouchers, checking process, put his signatures and Sign of two Signatories are the team works. So, the Court finds that the 1st accused could not be carried out the fraudulent transaction as per the charges of the prosecution.

37.The PW.13 is the Investigating Officer who issued Ex.P.13, Ex P.34, Ex.P.35, Ex.P.36, Ex.P.37. Ex.P.38, Ex.P.39, Ex.P.40 and Ex.P.41 for collection of records. The Ex.P.8. Ex.P.9, Ex P.10, Ex P.11. Ex P.14, Ex P.15, Ex.P. 16. Ex.P.21 and Ex.P.28 are the reply of department. The P.W.14 who laid the charge sheet against as against the accused. While the original vouchers are weed out a per the evidences of prosecution. So, the screen-shot not reflected that who prepared the vouchers who checked the vouchers who was approved the voucher to issue cheques and who are the signatories of cheques.

38.If it is so, this Court is decided that the prosecution is not proved the charges as against the accused. Since, the prosecution is failed to prove that the accused had intention for deception of the LIC and had inducing any participants in travelling of vouchers to issue cheques with fraudulently a dishonestly, since dishonest intention starts with the very inception of the transaction. Further the prosecution is not established that the 1st accused had Entrustment of account of LIC for operation without other officer and failed to prove that the 2nd accused was made an agreement for the said transaction and further that the prosecution is failed to establish that the 1st accused was carried out the said transaction with falsification of records and used as genuine. While the said witnesses of prosecution disclosed that the 1st accused was one of the participants in travelling of voucher. If it is so, the allegation of prosecution that the 1st accused was abused his powers also not proved. The delay of lodging of compliant (Ex.P.2) also disclosed that there was meeting of mind. It is also doubtful about the prosecution case since it is brought about skillful.

39.Therefore this Court is come to conclusion that the accused are entitled to get benefits of doubts.

40.In result, that the 1st accused is found not guilty of the charges punishable u/s 120-B r/w 420, 409, 477-A IPC and Section 13(2) r/w 13(1)(b), 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988, u/s 420, 409, 477-A IPC and u/s 13(2) r/w 13(1)(b), 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988; and also the 2nd accusd found not guilty u/s 120-B r/w 420, 409, 477-A IPC and Section 13(2) r/w 13(1)(b), 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988, u/s 420, 409, 477-A IPC. Therefore, this court acquit the A-1 and A-2 u/s 235 (1) Cr.P.C. from the said charges. The bail bonds executed by them will be cancelled and the sureties will be discharged after expiry of appeal time.

9.While hearing this Writ Petition, the learned counsel for the respondents submitted that the petitioner had not produced the passport of the petitioner. If that is produced, through the number stated in the passport, the relevant records can be scrutinized but deliberately, the petitioner has not submitted the same. The learned counsel for the petitioner submitted that he is ready and willing to submit the passport and produced the same before this Court. Both the petitioner and his brother-in-law passport also produced. Both the learned counsels agreed that if any documents ought to be produced, both the petitioner and the respondent shall circulate the list of documents and shall produce the documents before this Court. Both the petitioner and respondents are ready and willing to produce the same before this Court. Hence, the petitioner's counsel submitted a memo, wherein, he sought for the list of documents and the respondents submitted certain documents. However, both are not tallying with each other and the documents sought for by the petitioner, the respondents were not able to produce the same, because the same was destroyed. Further, the learned counsel for the respondent submitted that based on the available records, it is sufficient to prove the petitioner's guilt. The criminal case judgment cannot be taken into account, since strict proof is necessary. In the department proceedings, it is only preponderance of the probability and based on that principle, the evidence available before this Court is sufficient to prove the petitioner's guilt.

10.The learned counsel for the petitioner relied on the deposition of the prosecution witness, where the prosecution witness PW-1 submits that voucher is prepared on the basis of the supporting documents. Sometimes, the officer in Accounts Department produces some bill or evidence mentioning about the account code of Debit/Credit with his initial. Based on such evidences and initial by the officer, vouchers are being prepared, whereas a specific question was put before PW-1 without producing any evidence, whether a voucher can be prepared and that was denied by PW-1. Even PW-2 has specifically stated that without evidence, he has never passed the voucher and also stated that two AOs were there at that time and the delinquent Padmanaban looked after ULIP Bank Reconciliation. On the basis of evidence, PW-2 checked and passed the voucher. The respondents submitted during the enquiry that the cheque No.529939 does not appear in the accounts book. However, the petitioner submitted that the cheque No.529029 should have been attached with the voucher; without the cancellation of that cheque, voucher for fresh payment will not be prepared. Therefore, he sought the copy of the voucher, but the same could not be produced by the respondents. The claim of the petitioner is that all the transactions were made based on the authorization letters from the party and the authorization letters were attached with the vouchers. Unless the entire documents are produced, the petitioner cannot and would not be in a position to prove his innocence. The claim of the respondent is that such documents are not available either it was destroyed or it was given to the CBI.

11.The respondents have filed an additional affidavit stating that the Bima plus account and future plus account, documents were destroyed based on the Central Office Guidelines. The same is evident from the copy of the letter dated 08.03.2022. With regard to the Purchase Committee Report/registered from March 2005 to 2007 in the sales department, such documents were not available as per the copy of the email, dated 18.03.2022. As per the records and data base of the Corporation, the petitioner's brother-in-law Balamurugan has taken endowment policy commenced from the year 1999 and Jeeva Sanjay policy commenced from the year 2002. The first mentioned policy matured in the year 2019 and the other policy would mature in the year 2027. Hence no money was payable under the said documents during the relevant point of time. As far as the claim of Rs.60,540/-, the petitioner is not supplying any saleable article to the Corporation. The LIC is not offering any medical policy. Therefore, the claim of the petitioner is absolutely incorrect. Even for the Mediclaim, for the purpose of spouse of the employee, the amount would be granted to the account of the employee and no cheques were issued to the spouses directly. Therefore, the respondents submitted that the petitioner is incorrect in stating or claiming that he is innocent.

12.On perusing the documents, this Court is of the considered opinion that all the documents are destroyed and only a few was handed over to the CBI and the CBI has initiated criminal case and the petitioner and his wife were acquitted and the judgment also states that there is no proper documents to prove the allegations against the delinquent. The claim of the petitioner for each and every transactions, a voucher is prepared along with the authorization letter or with the policy or with the relevant documents, as prescribed by the rules. Unless the entire papers are produced, each transaction cannot be proved and the petitioner is seeking for such documents, but the respondents submit that the documents are destroyed due to efflux of time. The documents would be preserved for five years and if it is more than five years, the documents would be destroyed. Even in the criminal case, the respondents have produced only the screen shots and not the original documents.

13.Taking all these factors into consideration, this Court is of the considered opinion that the benefit of doubt should be given to the petitioner. As rightly pointed out by the respondents counsel, the petitioner has not produced the passport and the pass book which is available with him. But the petitioner has submitted and produced the passport of his brother-in-law before this Court. Based on that passport, the respondents could not trace anything.

14.Therefore, this Court is of the considered opinion that the benefit should be granted to the petitioner. However, the petitioner cannot be reinstated and only the punishment of dismissal from service ought to be modified. Therefore, this Court modifies the punishment as compulsory retirement.

15.As far as the recovery of Rs. 3,03,128/- (Rupees Three Lakhs Three Thousand One Hundred and Twenty Eight only) is concerned, the respondents have deducted Rs.87,489/- (Rupees Eighty Seven Thousand Four Hundred and Eighty Nine only), which is due to the petitioner and the balance of Rs.2,21,639/- (Rupees Two Lakhs Twenty One Thousand Six Hundred and Thirty Nine only) is recoverable. Since the respondent is dealing with public money, the respondent institution shall not be allowed to incur financial loss. Since, the benefit of doubt is granted to the petitioner and the punishment is modified, as far as the amount is concerned, this Court is of the considered opinion that the petitioner is liable for Rs.2,00,000/- (Rupees Two Lakhs only) alone.

16.The respondents are directed to implement the modified punishment of compulsory retirement, the modified order of recovery and disburse the consequential monetary benefits. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

17.With the above modification, both the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Executive Director,
   Disciplinary Authority,
   Life Insurance Corporation of India,
   Central Office,
   Yogakhesma,
   Jeevan Bima Marg.,
   Mumbai-400021.

2. The Manager,
   Life Insurance Corporation of India,
   Unit I,
   9A, Punithavathiar Street,
   Palayamkottai,
   Tirunelveli - 627002.

+1 CC to M/s.J. JEYAKUMARAN, Advocate (SR-26798[F] dated 20/06/2022)

+1 CC to M/s.G. PRABHU RAJADUAI, Advocate (SR-26823[F] dated 20/06/2022)

W.P.(MD)Nos.16744 of 2014
and 2331 of 2015
17.06.2022

USK/27.06.2022/14P/5C