BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.02.2022
PRONOUNCED ON : 10.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.9328 of 2015
and
M.P.(MD)No.1 of 2015

S.Mabu Batcha ... Petitioner

vs.

1.The Zonal Manager,
Appellate Authority, Southern Zonal Office,
LIC Building, 153,Anna Salai,
Chennai-2.

2.The Senior Divisional Manager,
Divisional Office,
Leevan Prakash Bride Station,
P.B. No. 16, Sellur,
Madurai-625 002.

3.The Branch Manager,
LIC of India, Sivakasi,
Virudhunagar 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 order of dismissal from the service by the 2nd respondent, dated 10.12.2014 and consequent order confirming the order by the 1st Respondent through Ref.SZ/1R/DD, dated 18.04.2015 and to quash the same and consequently to direct the respondents to reinstate the petitioner into service with all attendants benefits.

For Petitioner : Mr.Ajmal Khan
Senior Advocate
for Mr.S.M.A.Jinnah
For Respondents : Mr.J,Prabhu Rajadurai

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**O R D E R**

The petitioner has challenged the impugned order, dated 10.12.2014 and the consequential order, dated 18.04.2015 and consequently to direct the respondents to reinstate the petitioner into service with all attendant benefits.

2.The brief facts of the case are that the petitioner was appointed as Cashier in the third respondent branch on 08.08.2013. The petitioner was suspended for certain financial misconduct. On 28.02.2014, a charge memo was issued for his imputations. The allegation against the petitioner is that the petitioner collected cash payments of the premium / proposal deposits / renewal premium, on various dates from the policy holders but issued personal cheques drawn on IDBI Bank. The petitioner received the cash amount and deposited in his account and issued 167 such cheques from three Banks after two days, thereby, temporarily misappropriated Rs.47,01,156/-. The petitioner submitted a reply on 14.03.2014. An Enquiry Officer was appointed on 20.03.2014. The enquiry report was served on the petitioner on 30.08.2014 and the petitioner submitted an explanation on 05.09.2014. However, the second respondent without considering the same has dismissed the petitioner from service on 10.12.2014 as per Regulation 39 (1) (g) of LIC of India (Staff) Regulations, 1960. The petitioner preferred an appeal and the same was dismissed by a cryptic order stating that the petitioner has accepted the charges. Aggrieved over the same, the petitioner has preferred this Writ Petition.

3. The respondents have filed a counter affidavit stating that the enquiry was conducted after giving ample opportunity to the petitioner and after providing all the documents to the petitioner. Therefore, there is no violation of principles of natural justice. The petitioner was found substituting his personal cheques against the premium collected in cash from the policy holders. The said misconduct was found after receiving an email complaint against the petitioner involving financial irregularities in collection of cash from the policy holders. A discreet enquiry was conducted and it was found that the petitioner collected premium amounts in cash and substituting all premiums by producing is own 167 self cheques amounting to Rs.47,01,156/-. In addition to the above, 346 self cheques pertaining to agent namely, S.Radhakrishnan, involving a total sum of Rs.1.02 Crores were also submitted by the petitioner during the period 2011-2013. The conduct of the petitioner substituting cheques as against the cash received from the policy holders is a serious violation of norms affecting the trust which the Corporation reposes upon the petitioner. It is the case of temporary misappropriation of LIC funds around Rs.1.5 Crores. Hence, the charge memo was issued and after proper enquiry, the petitioner was imposed with a punishment of removal from service.

4. Heard Mr.Ajmal Khan, learned Senior Advocate appearing for the petitioner and Mr.J.Prabhu Rajadurai, learned Counsel appearing for the respondents and perused the materials on record.

5. The learned Senior Counsel appearing for the petitioner contended that the Enquiry Officer's report is cryptic and it

appears to be a preliminary enquiry and the charge memo was issued for three imputations but the enquiry report states only one imputation. On perusing the enquiry report, it is seen that under the heading "preliminary enquiry" the enquiry report narrated about the preliminary enquiry conducted and hence the contention of the petitioner that it is only preliminary enquiry is rejected.



6. The respondents contended that the petitioner has accepted the charge. The contention of the petitioner is that he had never accepted the charge. The petitioner has submitted he has collected cash and has deposited in the account and has issued his cheques, with a helping tendency he has carried out such a transaction. He was not having any intention to defraud the LIC and he has regretted for following such procedure and has given an undertaking that he will not carry out such procedures in future and would strictly adhere to the rules and regulations as per LIC.

7. The petitioner submitted that he was not given the documents for perusal. But the respondents contended that the enquiry report states that the documents received for consideration are the details of the IDBI Bank account and Allahabad Bank accounts of the delinquent. The said documents are available with the petitioner himself because these cheques are issued by the petitioner from his own IDBI account and Allahabad Bank account.

8.The petitioner relied on the judgments of the Supreme Court rendered in ***Union Bank of India vs Biswanath Bhattacharjee*** in ***Civil Appeal No.8258 of 2009***, wherein it has been stated that in a departmental proceedings, when the enquiry was based on the contention, statement made to the police cannot be taken into account. More over, the petitioner contended that there was no intention to defraud the LIC. The petitioner was under a bonafide impression that he was helping the policy holders and in turn improving the business of the first respondent.

9. The contention of the respondents that if a premium is paid, the coverage would be from the date of payment of premium. Since the petitioner has paid the amount after 2 days, if anything happened in between the said period then, the insurance company is liable but LIC would be responsible without any contract. Fortunately, that situation was not created but the same cannot be entertained.

10. On perusing the entire facts and records this Court is convinced that the petitioner has no intention to defraud the LIC. However, the entire transaction is violative of the rules as per the LIC. Hence this Court is intended to modify the punishment of dismissal from service to compulsory retirement. Therefore, this Court is directing the respondent to modify the punishment as compulsory retirement and to disburse all service and monetary benefits as applicable as per the rules of the first respondent.

11.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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**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

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Virudhunagar District

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate ( SR-11444[F] dated 11/03/2022 )

Order made in
W.P.(MD)No.9328 of 2015
10.03.2022

IMS(CO)
GC(04.04.2022) 4P 5C