IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.76 of 2013
and
M.P.No.1 of 2013, M.P.No.1 of 2015
& W.M.P.No.38061 of 2017

T.Palani

..... Petitioner

-Versus-

1.The Deputy General Manager,
Regional Office,
United India Insurance Company Limited,
Marketing Department,
Siling Building,
No.40-42, Greams Road,
Chennai 600006.

2.The Regional Manager,
Regional Office,
United India Insurance Company Limited,
Marketing Department,
Siling Building,
No.40-42, Greams Road,
Chennai 600006.

3.The Divisional Manager,
United India Insurance Company Limited,
7A, Varadhanar Street,
Vedhachala Nagar,
Chengalpattu-603001.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the the records in Ref.: No.MRO:MKTG:265:2012 dated 04.09.2012 issued by the 1st respondent and to quash the same and further directing the respondents to forbear from resorting to any recovery from the petitioner's salary and pay and by directing them to repay the sum of Rs.2,37,815/- together with additional recovery if any to the petitioner along with interest @ 24$ p.a. On each amount due thereon and further directing the respondents to pay the full eligible revision pay to the petitioner.

For Petitioner : *Mr.K.Hariharan*

For Respondents : *Mr.T.S.Baskaran for RR1 to 3*

ORDER

This Writ Petition challenges the order of 1st respondent dated 04.09.2012 in Ref: No.MRO:MKTG:265:2012 reducing the non-core benefits effecting decrements in the salary of the petitioner and seeks for a mandamus forbearing the respondents from resorting to any recovery from the petitioner's salary and also a consequential direction for repayment of Rs.2,37,815/- together with additional recovery, if any, to the petitioner along with interest @ 24% p.a. and for payment of full eligible revision pay to the petitioner.

2. The petitioner was appointed as an Inspector in Development and Marketing Division of United India Insurance Company Limited on

11.01.1984. He was posted at Kancheepuram of Vellore Division and subsequently on the opening of a new branch office at Chengalpattu he was transferred and posted at Chengalpattu in 1995. At the time of filing of the present writ petition he was working as Development Officer Grade-I after 29 years of service. The scheme, which was evolved by the respondents which applies across the bar to all general insurance companies, deals with pay scale and allowance, core and non-core benefits as well as cost control measures initiated by the respondents.

3. For the purpose of this case, it is necessary to deal with what is meant by core benefits and non-core benefits. The core benefits mean and include Basic Pay, Dearness Allowance (DA), House Rent Allowance (HRA), City Compensatory Allowance (CCA), Special allowance in lieu of computer increment and special allowances which attracts PF and other benefits. Non-core benefits are expenses on vehicles, insurance premium, tax, reimbursement towards tyre, tube, batteries, telephone charges, bonus, ex gratia, travelling expenses on tours undertaken to procure insurance business, during the performance year. The performance year is the year previous to the application of decrement/termination cost control measures. For example, if the drawing of non-core benefits is for the year 2022/23, then, the decrement/ termination cost

control measure would be applied for financial year 2023-24. There is no dispute with respect to the employment, the core benefits that the petitioner is entitled to receive and the non-core benefits that have been paid.. The dispute is with respect to the application of decrement/termination cost control measure.

4. With Effect From 01.04.2003, the cost control measure were made applicable only to the post of Development Officers (Marketing). There are two streams in the respondent company, one is general and the other is marketing. Cost control measures were applied to the marketing personnel alone because, as seen from the scheme, the Development Officers were spending money for the procurement of business and development thereof. As there was an excess claim of more than 10% then, the respondents came up with the scheme for recovery of the same from the concerned officers. The manner of recovery is given as follows:-

> **<u>Decrement/Termination:- Cost Control.</u>**
>
> Every Development Officer shall work with cost as to maintain his cost ratio within the stipulated limit.
>
> If the cost ration of a Development Officer exceeds the stipulated cost limits, the non-core allowances payable to him in the following performance year shall be reduced to the extent of the amount by which his cost ratio exceeded the

stipulated limits.

During the second year if it may continue, he may be issued a letter of warning and third or subsequent years in succession, his non-core allowances shall continue to be reduced in the following years to the extent necessary to bring his cost-ratio within stipulated limits, and there are non-core allowances to be reduced, he shall be liable to decrements in basic pay as follows:-

Actual cost ratio over stipulated limits By not more than 1%	1st occasion	2nd successive occasion	3rd successive occasion	4th successive occasion	5th and subsequent successive occasion
By not more than 1%	1	1	1	1	1
By margin exceeding 1% but not exceeding 3%	1	1	2	2	2
By margin exceeding 3% but not exceeding 5%	2	2	3	3	4
Exceeding 5%	2	3	3	4	4

5. A perusal of the rules would go to show that at the first instance, if a Development Control Officer, like the petitioner, exceeds the stipulated costs, non-core allowances payable to him in the year following the performance year would be reduced to an extent of the amount by which his cost ratio exceeded the stipulated limit. Taking forward the aforesaid example given, if for the financial year 2022-23, the cost ratio that had been availed by the concerned officer was 17%, and he was working in a 'C' category area, like the petitioner

the remaining 7% would be adjusted against his non-core benefits for the subsequent year 2023-24. The scheme is extremely clear and is not confusing. However, at the time of implementing the same, the respondent company had given a go by to the "following year stipulation" and started making recovery from the year 2006-07 onwards. This exuberance of recovery has resulted in the present writ petition.

6. A reading of the scheme would go to show that reduction first must be on non-core allowance and if still, excess has been drawn by the Development Officer for the subsequent year, he would be issued a letter of warning and for the 3rd and subsequent years, the non-core benefits would continue to be reduced to the extent shown in the aforementioned tabular column. If after 5 years, the entire non-core allowances are reduced and not available for adjustment, he is liable for decrements in basic pay itself There is no dispute till June 2012, the petitioner's basic pay was Rs.30235/- and from July, 2012, it was reduced to Rs.23,675/-. To this, on a query made to Mr.T.S.Baskaran, learned counsel appearing for the respondents, the response was that there was an audit objection raised by the respondent's audit department and it found that there was non-performance from the year 2006-07 onwards and therefore, it was decided to adjust the amount from that period onwards from July 2012.

The idea behind giving a warning is to ensure that the development officer would rectify his business and also the expenses that he charges on the respondent company. By way of an audit objection for the first time, the petitioner was informed that his performance from 2006-07 was inadequate and he had drawn in excess of his scheduled premium income.

7. At the outset, I have to point out that audit objection cannot create a liability on a person. This is not far to see because, at the time of audit, neither the respondents nor the petitioner are heard and therefore there cannot be a civil liability fastened on a person without the basic principles of natural justice. In the present case, only on the basis of the audit objection, the entire recovery process has been done. This is the first ground on which the impugned order has to be set aside.

8. Additionally, if the scheme, as seen from under the sub-heading, decrement/termination cost control is applied, the petitioner would have been entitled to an opportunity of warning and thereafter, the respondents could have proceeded with respect to reduction of his non-core benefits first and even if he does not rectify it for a period of 5 years then, they could have proceeded with respect to the reduction in basic pay itself. Unfortunately for the respondents, they have not followed the scheme which has been notified by the Government

of India on 03.01.2003. Therefore, the recovery of the amount from the writ petitioner being contrary to the rules, the entire recovery proceedings would necessarily have to be set aside and the same is accordingly set aside.

9. The additional factor that has to be noted is that the petitioner had attained the age of superannuation on 28.02.2015. From February, 2010 onwards, he would be entitled to an additional 1% of increase in cost-ratio, i.e., from the age of 55 years. This is in tune with "the Administrative Instructions For Implementation of the Provision of General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff (Amendment) Scheme 2010". Under the said guidelines in sub clause (C) of Clause 5, it has been stated that in addition to the relaxations that were granted for the year of implementation of the scheme, i.e., 2003, 2008 & 2010, a Development Officer, who have completed the age of 55 years and has put in 15 years of service would be entitled to a special relaxation of 1% of the stipulated cost ratio. This 1% relaxation applies across the board from the year 2010-11 onwards. This is a measure which the administrative instructions itself says that 1% relaxation has been brought in, in order to specifically help a Development Officer, who had satisfied both the age as well as experience criteria.

10. The impugned order does not refer to the guidelines dated 18.10.2010 at all. It is unfortunate that the decrement of basic pay has been directly implemented within one month when the petitioner would have been entitled to reduction of non-core benefits first for a period of 5 years, preceded by a warning in the second year. None of the statutory steps have been followed. I am satisfied that this writ petition has to be allowed for more than one reason including fastening of liability on the basis of audit objection.

11. In the light of the above discussions, the matter is remitted to the 2nd respondent, Regional Manager, United India Insurance Company Limited who shall strictly implement the scheme. I make it very clear that the respondents are not entitled to take into consideration the period prior to 2010-11 for the purpose of fixation of liability. They shall consider 1% relaxation granted towards age and experience of the petitioner. They shall not straightaway fix the basic pay of Rs.23,675/-. The authority, if necessary, shall reduce the non-core allowances first and thereafter, give a warning, if it is permissible in law, and then proceed to calculate for the succeeding 3 years.

12. The learned counsel for the petitioner would submit that the intimation for pension has been given on the basis of the basic pay found from July, 2012 and not June 2012. The impugned order having been set aside, the

respondents shall rework the entire liability.

13. The learned counsel for the petitioner would submit that Cheyyur, where the petitioner was working is a 'C' category area and apart from that it is an hardship area. Whether it is an hardship area or not is not for this court to decide because it is the decision which has to be taken by the Chairman-cum-Managing Director of United India Insurance Company Limited. It is always open to the petitioner to approach the Chairman-cum-Managing Director, United India Insurance Company Limited for classifying Cheyyur as a hardship area and it is entirely upto the Chairman-cum-Managing Director to decide on that issue.

In the result, the writ petition is partly allowed with the above directions. No costs. Consequently, connected MPs are closed.

14..06..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

1.The Deputy General Manager, Regional Office, United India Insurance Company Limited, Marketing Department, Siling Building, No.40-42, Greams Road, Chennai 600006.

2.The Regional Manager, Regional Office, United India Insurance Company Limited, Marketing Department, Siling Building, No.40-42, Greams Road, Chennai 600006.

3.The Divisional Manager, United India Insurance Company Limited, 7A, Varadhanar Street, Vedhachala Nagar, Chengalpattu-603001.

V.LAKSHMINARAYANAN, J.

kmk

W.P.No.76 of 2013

14..06..2023

2/2