$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 01st May, 2023*

\+ W.P.(C) 4564/2020

MADHU BANSAL ..... Petitioner

Through: Mr. Akshat Gupta, Dr. Swaroop George, Mr. Sarthak Gupta and Mr. Tanmay Cheema, Advocates

versus

LIFE INSURANCE CORPORATION OF INDIA & ANR. ..... Respondents

Through: Mr. Kamal Mehta, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed seeking the following reliefs:-

> *"A) To issue a writ in the nature of Mandamus directing the officials of Respondent no. 1 to immediately release the Gratuity amount due to the Petitioner or in case the Gratuity amount due to the Petitioner can't be calculated then maximum permissible gratuity amount should be paid to the Petitioner with interest at the rate of 18% per annum from the date on which she became eligible for payment of Gratuity without any delay, so that the Petitioner can realise her Gratuity which is her hard earned benefit; AND*
>
> *B) Pass any other orders/ directions as this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interests of equity, justice and good conscience."*

2. Facts are in a narrow compass. Petitioner was appointed as an LIC Agent under Life Insurance Corporation of India (Agents) Regulations, 1972 (hereinafter referred to as the 'Regulations 1972'). Her agency was terminated with Life Insurance Corporation of

India/Respondent No. 1 w.e.f. 01.11.1994. According to the Petitioner, she remained an active agent for close to 19 years and therefore became eligible for payment of gratuity when she attained the age of 60 years on 15.08.2011 under Regulations 1972, as she fulfilled the criteria of working continually for fifteen or more qualifying years between 29.10.1975 and 01.11.1994.

3. It is averred that a Notification was issued by the Department of Financial Services, Ministry of Finance, Government of India on 23.01.2008, whereby maximum amount of gratuity permissible to an agent of LIC was enhanced to Rs.2 lacs. As per Regulations 1972, the amount of gratuity payable to the Petitioner by Respondent No. 1 is to be calculated as per eligible rate i.e. it is directly linked to the renewal commission earned by the Petitioner in fifteen agency years immediately preceding the relevant date i.e. 15.08.2011. Therefore, the amount of renewal commission earned by the Petitioner is to be looked into starting from 01.11.1979 till 31.10.1994, which information is readily available with Respondent No. 1, as they are legally bound to maintain and keep all accounts being a Statutory Body.

4. Petitioner was asked to submit TDS Forms ('Form-16') by a letter dated 24.12.2010, issued by Branch Manager of the concerned Branch, for the years 1978-1994 towards her claim for gratuity, even though there was no such requirement. Being a housewife, Petitioner had not retained the old records and was unable to submit the required Form. Number of RTI applications have been filed by the Petitioner seeking information on the status of her application for release of gratuity over the years, the last one being an appeal under the Right to Information Act, 2005 in 2019, however, till date Respondent No.1 has not released gratuity in favour of the Petitioner.

5. Contention of learned counsel appearing on behalf of the Petitioner is that the action of Respondent No. 1 in not releasing the gratuity amount to the Petitioner is illegal and arbitrary as it is a settled law that terminal benefits cannot be withheld by an employer. Petitioner is entitled to receive gratuity under Regulations 1972 having served as an agent of Respondent No. 1 continually for over fifteen qualifying years. If Respondent No. 1 has not retained the relevant records for calculation of the amount payable, Petitioner cannot be faulted and/or deprived of her gratuity.

6. Mr. Kamal Mehta, learned counsel appearing on behalf of Respondent No. 1 takes a preliminary objection to the maintainability of the writ petition on ground of delay and laches. It is submitted that Petitioner worked as LIC Agent with Respondent No. 1 from 29.10.1975 till 31.10.1994. Agency of the Petitioner has been twice terminated during the said period but was reinstated. Since Petitioner could not attain the minimum business guarantee, her agency was again terminated w.e.f. 01.11.1994. Petitioner at that time was 43 years old and could have continued working as an agent by getting the agency reinstated till the age of 60 years, however, she did not apply for reinstatement and was, therefore, eligible for gratuity in 1994 itself and for the maximum amount payable at that time.

7. It is further submitted that being eligible for gratuity in 1994, Petitioner ought to have applied in the same year or at least within a reasonable time thereafter but no application was made by her. Gratuity payable to an agent is calculated on the basis of eligible rate and number of qualifying years. For calculating the eligible rate in case of an agent who has worked for fifteen years or more, figures of the qualifying yearly renewal commission in the qualifying years out of the fifteen agency years immediately preceding the relevant date on

which the agent becomes eligible for payment of gratuity, is necessary. Having slept over her entitlement/claim, Petitioner is responsible for the situation where records for the years 1978-1994 which are in the reckoning for calculation of gratuity, have been weeded out and cannot be restored or restituted.

8. Mr. Mehta further submits that despite the laxity of the Petitioner, Respondent No. 1 on its own volition wrote to the Petitioner on 24.12.2010, asking her to submit the TDS Certificates, which would have enabled Respondent No. 1 to ascertain the figures of the qualifying yearly renewal commission. Petitioner did not submit any document and again kept quiet for eight long years till she filed an RTI application in 2018 demanding documents for calculation of the gratuity. The writ petition is therefore barred by delay and laches having been filed in 2020 i.e. after 24 years of the right to receive gratuity having accrued in favour of the Petitioner.

9. Without prejudice to this contention, it is further submitted that even on merits, Petitioner is not entitled to enhanced gratuity of Rs.2 lacs, as sought in the present petition. As per Regulations 1972, Schedule VI, an agent is eligible for gratuity if he has worked continually and for fifteen or more qualifying years and is not below sixty years of age or his agency ceases or stands terminated under any of the provisions of the said Regulations. The eligible rate applicable to the Petitioner will be as on the date of termination under Clause 2(1)(i)(b), which in this case is 31.10.1994 and on the said date, the maximum gratuity payable was Rs.50,000/-. Petitioner, on the other hand, seeks to claim the enhanced gratuity of Rs.2 lacs, which was enhanced by a Notification issued on 23.01.2008, which cannot be permitted as the enhancement is prospective. Petitioner has been paid Rs.16,045/- towards gratuity in terms of the relaxation under Circular

dated 29.08.1986 on 04.08.2020 and no further amount is due to her.

10. Mr. Mehta contends that the claim of the Petitioner for eligibility on attaining the age of 60 years on 15.08.2011 is erroneous. It is clear from a reading of Clause 2 of Schedule VI of Regulations 1972 that the eligibility for gratuity has to be ascertained either on attaining the age of 60 years or termination of agency, whichever is earlier and both clauses are mutually exclusive and alternate in their application.

11. I have heard the learned counsels for the parties and examined their contentions.

12. There is merit in the contention of Respondent No. 1 that the writ petition is barred by delay and laches. Admittedly, the agency of the Petitioner was terminated on 01.11.1994 after she had worked continually for fifteen qualifying years. Petitioner had the option to seek reinstatement of the agency, however, this choice was not exercised by her. It is at that stage that the entitlement of the Petitioner accrued for claiming gratuity, but no steps were taken to make an application for release of the amount. After a long silence of 24 years, for the first time, Petitioner filed an RTI application, demanding the documents for calculating her gratuity, etc. It is not denied that Petitioner received a letter dated 24.12.2010 from Respondent No. 1 asking her to produce TDS Certificates, to enable Respondent No. 1 to calculate the gratuity, but the certificates were never furnished. Therefore, clearly there is a delay of over two decades in approaching this Court and writ petition is barred by delay and laches. Ordinarily, in matters of retiral benefits, Courts have been liberal in condoning delay and laches, however, in this case the said principle cannot be invoked as the gratuity was a one-time payment for which the entitlement accrued in 1994 and delay becomes pronounced and

significant since the relevant records for the period 1978-1994 have been weeded out. This situation is not on account of any fault of Respondent No. 1 but is a creation of the laxity of the Petitioner in sleeping over her rights.

13. Mr. Mehta has explained that the amount of gratuity payable to an agent is calculated on the basis of eligible rate and number of qualifying years and the eligible rate, in turn, for an agent who has worked for fifteen years or more, is calculated by taking the figures of the qualifying yearly renewal commission out of the fifteen agency years immediately preceding the date on which the agent becomes eligible for payment of gratuity. Therefore, this calculation would entail looking into records for the period 1978-1994. A categorical stand has been taken on an affidavit by Respondent No. 1 that records for this period have been weeded out and cannot be restituted. In the given situation, no writ can be issued to Respondent No. 1 to make further calculations on the gratuity amounts allegedly due to the Petitioner.

14. There is also merit in the contention of Mr. Mehta that the maximum amount of gratuity payable to an agent has to be decided on the date of eligibility, which in this case is 31.10.1994, when the agency was terminated. At that stage, the maximum ceiling limit was Rs.50,000/- and even though Respondent No. 1 was unable to calculate the exact gratuity on account of the records having been weeded out, a sum of Rs.16,045/- was paid to the Petitioner on 04.08.2020 and nothing further is outstanding. Respondent No. 1 is right in urging that enhanced gratuity of Rs.2 lacs is not payable to the Petitioner for two-fold reasons, viz. (a) the writ petition is barred by delay and laches and the right, if any, has extinguished; and (b) maximum limit of gratuity was enhanced by a Notification issued in

2008 which can only have a prospective effect. Claim to enhanced gratuity based on completion of 60 years of age on 15.08.2011 is also wholly misplaced. Rule 2 of Schedule VI of Regulations 1972 provides eligibility for gratuity on completion of fifteen years or more qualifying years and on completion of 60 years of age or termination of agency, whichever is earlier. As the termination was duly effected in 1994 and was never reinstated, right of the Petitioner to claim gratuity crystallized in the said year and therefore, no claim can be laid on the basis of attaining the age of 60 years, as Clauses (a) and (b) under Rule 2(1)(i) are disjunctive and mutually exclusive. Thus, the writ petition also fails on merit.

15. For all the aforesaid reasons, the writ petition is dismissed. However, considering that the Petitioner has been litigating for the last three years for seeking gratuity, which in her perception and understanding was payable, in my view, it would be appropriate to award cost of Rs.20,000/- in favour of the Petitioner as litigation cost. The said amount shall be paid to the Petitioner by Respondent No. 1 within six weeks from today, making it clear that the order pertaining to cost will not be taken as a precedent in any other case and is passed in the peculiar facts of the present case.

JYOTI SINGH, J

MAY 01, 2023/kks/shivam