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

Date of decision: 02nd November, 2023

IN THE MATTER OF:

\+ **W.P.(C) 9977/2022 & CM APPL. 30707/2022**

VINAY KUMAR UPADHYAY ..... Petitioner

Through:

versus

LIFE INSURANCE CORPORATION OF INDIA & ORS.

..... Respondent

Through: Mr. Kamal Mehta, Advocate for LIC.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has filed the present Writ Petition with the following prayers:

> *"i) issue a writ in the nature of mandamus directing Respondent Corporation to :-*
>
> *(a) to restore all benefits arising from Petitioner's said agency code No. 70874-IIA or available thereunder to the Petitioner with retrospective effect including any performance awards, prizes etc. won by the Petitioner and to forthwith release the same to the Petitioner;*
>
> *AND*
>
> *(b) to compensate the Petitioner for all losses, costs, expenses, mental agony etc. of every kind undergone, incurred, suffered or to be undergone, incurred or suffered by the Petitioner caused by the acts of omission and commission of the Respondents and as a consequence of such stoppage of payment of the commission earned by the Petitioner till its effective restoration, as may be fixed by this Hon'ble Court in the facts and circumstances of the case,*

AND FURTHER

> *(c) to detach the Petitioner's PAN from their organization and restore the same to the Petitioner for its use for the purpose of Tax Deducted at Source for any other permissible purpose.*
>
> *(ii) To issue any other Writ, or pass any other Order against or give such other directions to the Respondents as this Hon'ble Court may deem fit and proper and just and reasonable in the facts and circumstances of this case."*

2. Facts, in brief, leading to the present Writ Petition are as under:

   a. It is stated that on 19.09.2008, the Petitioner was appointed as an agent by the Life Insurance Corporation (*hereinafter referred to as 'the LIC'*)for selling life insurance.

   b. It is stated that on 05.07.2021 the Petitioner herein applied for a job with the HDFC Ergo General Insurance Company Limited (*hereinafter referred to as "the HDFC Ergo"*) and he was offered the post of Deputy Manager (Customer Experience Management).

   c. It is stated that the Petitioner gave his resignation on 07.07.2021 by approaching the Branch Manager, LIC/Respondent No.4 herein. It is stated that along with the resignation letter, the Petitioner also gave a letter to the Respondent No.4 herein stating that he is not involved in selling of life insurance directly or indirectly with the HDFC Ergo.

   d. It is stated that since the Respondents stopped the renewal and other commissions of the Petitioner, the Petitioner has approached this Court by invoking Article 226 of the

Constitution of India praying for a writ/order/direction to the Respondents herein to release the commissions and other benefits that are due and payable to the Petitioner.

3. It is the contention of the learned Counsel for the Petitioner that the Petitioner has performed his job as Insurance Agent diligently and has won several prizes and awards. He states that the Petitioner has qualified for Million Dollar Round Table, which is an internationally recognized status of a life insurance agent, in 2010 and 2013. He states that in recognition of his performance, the Petitioner was also bestowed with the Membership of the "Chairman's Club for Agents" on 12.03.2014. He states that the Petitioner joined HDFC Ergo and resigned from LIC. He further states that since the Petitioner had already informed LIC that he is not involved in selling of life insurance directly or indirectly with the HDFC Ergo, the commissions and other benefits of the Petitioner ought not to have been stopped by the Respondents.

4. The matter came up for hearing on 05.07.2022 and the learned Counsel for the Respondents was directed to file a Status Report. The Status Report has been filed.

5. As per the Status Report, under Regulation 19 of the Life Insurance Corporation of India (Agents) Regulations, 2017 (*hereinafter referred to as 'the LIC Regulations'*) in the event of termination of appointment of an agent, the commission on the premiums received in respect of the business secured by him shall be paid to him, if an agent has fulfilled the minimum business required under Regulation 9 for at least five years since his appointment and twenty five policies on different lives effected through him were in full force on a date one year before his termination/resignation and has fulfilled the minimum business required under regulation 9 for at least

ten years since his appointment provided that such an agent does not directly or indirectly solicit or procure or promote life insurance business in any capacity for any other person or company or organisation, which includes broker or intermediary or a life insurance company or a health insurance company for two years thereafter. It is stated in the Status Report that since the Petitioner herein joined HDFC Ergo as a Deputy Manager, and is presently handling their Mediclaim business, he is not entitled to the benefit of Regulation 19 of the LIC Regulations.

6. Regulation 9 and Regulation 19 of the LIC Regulations reads as under:

> "*9. Minimum amount of business to be secured by agents.—*
>
> *(1) An agent shall bring in such minimum amount of business in his first and subsequent agency years as may be determined by the Corporation from time to time.*
>
> *(2) Notwithstanding anything contained in sub-regulation (1), an agent shall be exempt from bringing in the business required of him, if he fulfils such other conditions as may be laid down by the Corporation from time to time.*
>
> *****
>
> *19. Payment of commission on discontinuance of agency.—*
>
> *(1) In the event of termination of the appointment of an agent, the commission on the premiums received in respect of the business secured by him shall be paid to him, if such agent-*
>
> *(a) has fulfilled the minimum business required under regulation 9 for at least five years since his*

appointment and twenty five policies on different lives effected through him were in full force on a date one year before his ceasing to act as such agent; or

(b) has fulfilled the minimum business required under regulation 9 for at least ten years since his appointment; or

(c) being an agent whose appointment has been terminated under clause (m) of sub-regulation (1) of regulation 16 has fulfilled the minimum business required under regulation 9 for at least two years since his appointment and policies on twelve different lives effected through him were in full force on a date immediately prior to such termination:

Provided that after his ceasing to act as such agent he does not directly or indirectly solicit or procure or promote life insurance business in any capacity for any other person or company or organisation, which includes broker or intermediary or a life insurance company ***or a health insurance company for two years thereafter****.*

(2) Notwithstanding anything contained in clause (a) or (b) of sub-regulation (1), an agent terminated by an order passed under regulation 15 or under clause (b) or (h) of sub-regulation (1) of regulation 16 shall entail forfeiture of his entire commission in respect of all the policies effected under his agency.

(3) Any commission payable under the sub-regulation (1) shall not be paid if the agent commits breach of the proviso thereunder.

(4) Subject to other provisions of this regulation, any commission payable to an agent under sub-regulation (1) shall, notwithstanding his death, be payable to his nominee or nominees or, if no nomination is made or is

subsisting to his heirs, so long as such commission would have been payable had the agent been alive.

(5) In the event of the death of the agent while his agency subsists, any commission payable to him had he been alive, shall be paid to his nominee or, if no nomination is made or if subsisting to his heirs, so long as such commission would have been payable had the agent been alive, provided he had continually worked as an agent for not less than two years from the date of his appointment and policies on twelve different lives effected through him were in full force on a date immediately prior to his death.

(6) If the renewal commission payable under sub-regulation (1) or sub-regulation (4) or sub-regulation (5) is less than ten thousand rupees in any financial year (hereinafter referred to as the said financial year), the competent authority may, notwithstanding anything contained in the said sub-regulation, commute all commission payable in subsequent financial years for a lump sum which shall be three times the amount of renewal commission paid in the said financial year, and on the payment of such lump sum to the agent or his nominees or heirs, as the case may be, no commission on the business effected through the agent shall be payable in the financial years subsequent to the said financial year.

(7) Notwithstanding anything contained above, the payment of renewal commission or hereditary commission shall be as decided by the Corporation from time to time subject to any regulations made by the Authority in this regard." (emphasis supplied)

7. Petitioner has filed an e-mail dated 20.09.2021 sent by the HDFC Ergo stating that the Petitioner herein is working with the HDFC Ergo as Deputy Manager and his Department deals only in Mediclaim insurance and not life insurance policies. The said e-mail reads as under:

> "*Vinay Kumar Upadhyay is working with HDFC ERGO General Insurance Company as a Deputy Manager. His department deals only in Mediclaim insurance, and not life insurance policies.*"

8. Regulation 19 of the LIC Regulations categorically states that in the event of termination of appointment of an agent, the commission on the premiums received in respect of the business secured by him shall be paid to him if he has fulfilled the minimum business required under Regulation 9 subject to the condition that he/she does not directly or indirectly solicit or procure or promote life insurance business in any capacity for any other person or company or organisation, including a health insurance company for two years thereafter. The Petitioner has resigned on 07.07.2021 and has joined HDFC Ergo immediately thereafter.

9. The e-mail relied on by the Petitioner does not show that the Petitioner is not directly or indirectly soliciting or procuring or promoting life insurance business in HDFC Ergo.

10. In view of the above, this Court does not find any merit in the present Writ Petition.

11. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

NOVEMBER 02, 2023
Rahul