



Writ Petition No.14192 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2024

PRONOUNCED ON : 03.06.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

Writ Petition No.14192 of 2017
and WMP.No.15387 of 2017

P.Ganesh

..Petitioner

vs.

1. The Chairman,
Life Insurance Corporation of India,
Central Office,
“Yogakshema”
Jeevan Bhima Marg,
Nariman Point,
Mumbai 400 021.
- 2.The Zonal Manager,
Appellate Authority,
Life Insurance Corporation of India,
Southern Zonal Office,
LIC Building,
153, Anna Salai,
Chennai 600 002.

3. The Regional Manager,



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- (Employees & Office Services),
Disciplinary Authority,
Life Insurance Corporation of India,
Southern Zonal Office,
LIC Building,
153, Anna Salai,
Chennai 600 002.
4. The Regional Manager
(Finance & Accounts)
Life Insurance Corporation of India,
Southern Zonal Office,
LIC Building,
153, Anna Salai,
Chennai 600 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records from the office of the first respondent and quash the impugned order passed by the first respondent herein dated 22.10.2014 vide ERD/SZ/M14-15/2 proceedings under Regulation 49 of the Life Insurance Corporation of India (Staff) Regulations, 1960 against the petitioner, SR.No.501864, Typist F & A Department, Z.O. Chennai.

For Petitioner : Mr.N.Kumar Rajan

For Respondents : Mr.C.K.Chandrasekar



ORDER

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2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

3. The learned counsel for the petitioner would submit that the petitioner joined the fourth respondent office as typist on 29.12.1993 and have been working there without any adverse remarks. However, the petitioner was issued with a show cause notice and he also submitted his reply. Subsequently, a charge sheet was filed on 23.01.2012 by the third respondent stating that the petitioner refused to work as officiating cashier on 23.02.2011, 01.03.2011 and 10.03.2011 in the absence of permanent cashier as per the empanelment in the office order dated 05.07.2010 issued in accordance with the Central Office Circular No.ZD/1132/ASP/2009,



dated 16.05.2009.

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4. The learned counsel submits that disciplinary proceedings were conducted against the petitioner and final order was passed on 08.05.2013 imposing penalty of “Reduction in basic pay by one stage in the time scale applicable to the petitioner's cadre” in terms of Regulation 39(1)(d) of LIC of India (Staff) Regulation, 1960 by the third respondent being the Disciplinary Authority.

5. The learned counsel for the petitioner submits that the officer order dated 05.07.2010 is nothing but the Cashier Panel. In the said order, it is clarified that the panel of Officiating Cashiers will include all confirmed Class-III employees, i.e. Assistants, MPOs, Typists, Telephone Operators, HGAs and Record Clerks in that order.

6. The learned counsel would submit that the petitioner should not be included in the Cashier Panel dated 05.07.2010 because there are already 4 Assistants in the Department. If there are 3 Assistants means then the next preference for the Cashier Panel would be MPOs, Typists, Telephone



Operators, HGAs and Record Clerks in that order, subject to a maximum of 3 employees for the Cashier Panel in each category. The petitioner is the only Typist in the Department. For the RTI application submitted by the petitioner, the Central Public Information Officer under the RTI Act in LIC of India and in his reply dated 27.01.2012 to query No.3 agrees as “Not all the class III employees of F&A Department have been included in the Cashier Panel”. As such, the office order/Cashier Panel issued by the fourth respondent is not in conformity with the Central Office Circular No.16.05.2009.

7. The learned counsel for the petitioner submits that the petitioner preferred an appeal before the second respondent on 05.08.2013 against the order dated 08.05.2013 issued by the third respondent. But the Appellate Authority without considering the grounds raised by the petitioner in the appeal simply toed the line of the Enquiry Officer and passed order on 06.11.2013 dismissing the appeal. Thereafter, the petitioner preferred final memorial before the first respondent on 06.05.2014 against the order of the Appellate Authority. Unfortunately, the first respondent also confirmed the order of the second respondent. The said order is impugned in this Writ



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8. The learned counsel for the petitioner would contend that the impugned order passed by the first respondent is contrary to law and erroneous. The first respondent without considering the issue in proper perspective confirmed the order of the Appellate Authority.

9. The learned counsel further submits that the petitioner was deliberately targeted by the authorities for filing RTI application, which resulted in his reduction in basic pay by one stage in the time scale. The respondents failed to consider the Central Office Circular dated 03.11.2007 and 16.05.2009, which were issued by the Executive Director (Personnel) pertaining to officiating cashiers in which the petitioner was not at all included. Therefore, the learned counsel submits that the question of refusing to be a cashier does not arise. The respondents without considering all these aspects passed the order of punishment and it was erroneously confirmed by the respondents 1 and 2 and hence, sought to set aside the same.

10. On behalf of the respondents a counter affidavit has been filed,



wherein it is stated that whenever the petitioner was instructed to act as Officiating Cashier, he refused to obey the orders citing flimsy reasons like typists need not sit as cashier and also citing other personal reasons. It is the prerogative of the office to choose the person who has to act as Officiating Cashier for the day, according to the panel and availability of staff on that particular day. The duty of the employee is to comply with the orders made to him for the smooth functioning of the office. It is submitted that the petitioner's contention has no basis.

11. The learned Standing Counsel for the respondents would submit that the contention of the petitioner is out of context as the relevant Circular No.ZD/1132/ASP/2009, dated 16.05.2009 clearly states that the panel of Officiating Cashiers will include all confirmed Class III employees, i.e., Assistants, MPOs, Typists, Telephone Operators, HGA's and Record Clerks in that order.

12. The learned counsel further submits that the penalty had been imposed on the petitioner after fully following the enquiry procedure and affording him sufficient opportunities to put up his defense. All documents



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were furnished to the petitioner and sufficient time was granted to the petitioner to submit his comments and to participate in the disciplinary proceedings. The findings of the enquiry officer was based on the depositions made by the petitioner during the course of the enquiry and after analysing the documents adduced in the enquiry and all relevant records. The Enquiry Officer has submitted his report. The Disciplinary Authority after considering the enquiry report independently, and other records imposed the penalty of “Reduction in basic pay by one stage” as proposed in the show cause notice. Hence, the contention of the petitioner that the Disciplinary Authority towed in line with the enquiry officer is not tenable. The charges leveled against the petitioner was proved on the basis of evidence adduced during the enquiry. The conclusion drawn by the Appellate Authority was not based on presumptions but after considering the facts independently, hence the penalty imposed by the Disciplinary Authority was confirmed by the Appellate Authority.

13. The learned Standing Counsel further submits that the Memorial dated 06.05.2014 preferred by the petitioner against the order dated 06.11.2013 of the Appellate Authority was considered by the Competent



Authority independently and after perusal of the relevant records and looking into the merits of the case decided to uphold the penalty by order dated 22.10.2014.

14. The learned Standing Counsel states that the statement made by the petitioner that the first respondent had simply confirmed the order of the second respondent is not true. Finally, the learned Standing Counsel submits that the orders of the respective respondents were passed as per the Service Regulations and after affording due opportunity and considering the matter on its own merits and as such nothing survives in this Writ Petition and sought to dismiss the same.

15. In the reply rejoinder affidavit filed by the petitioner it is stated that the officers may select the Assistant with good work records to work as Officiating Cashier in the leave or replacement vacancies in the sanctioned post of Cashier and the Officer prepared the panel for the same. The first and main charge against the petitioner is that he refused to work as Officiating Cashier on the days in the absence of permanent cashier as per the empanelment in the office order dated 05.07.2010. As per the Central Office



Circular dated 16.05.2009, the Cashier Panel strength would consist of 3 employees if the cashier's strength is one. In the Zonal Office, F & A Department, cashier's sanctioned strength is one. It can be proved by seeing the F & A Department attendance register of 05.07.2010, because in that month only the office order dated 05.07.2010 was prepared and issued to the employees by the fourth respondent. The presenting Officer has also agreed in the minutes of Disciplinary Proceedings held on 12.06.2012, which are as follows:

i) CSE (Charge Sheeted Employees): ... Zonal Office has only one Permanent Cashier. Do you agree?

ii) PO (Presenting Officer): Yes, Zonal Office has only one Permanent Cashier.

16. The fourth respondent had wrongly put an office order/Cashier Panel on 05.07.2010, wherein 5 employees were included in the panel instead of 3 employees and the remaining employees, i.e., HGAs had kept as stock employees for Cashier Panel. Actually, the panel size is 3 employees and the remaining employees should be kept as stock employees for Cashier Panel. But the petitioner name had been included as 5th employee. The



petitioner should not have been included in the office order/Cashier Panel dated 05.07.2010 since there are already 4 Assistants in the Department. If there are no Assistants available, then the next preference would be MPOs, Typists, Telephone Operators, HGAs and Record Clerks in that order. Even by the counter affidavit, the panel of Officiating Cashier will include all class-III employees. But this procedure was not followed. In fact the petitioner had acted as Officiating Cashier on 3 occasions dated 21.07.2010, 30.09.2010 and 18.10.2010 and he was paid allowance for the same. Due to the accident of the petitioner, he was advised not to sit continuously as he had a hip fracture and the Doctor report was submitted to the respondents and also the Disciplinary Authority, but unfortunately, the said fact was not considered and punishment was imposed to the petitioner.

17. With regard to the second charge levelled against the petitioner, the petitioner states that he sent a letter to the LIC Management, due to the frustration as he was not provided with proper table, chair and good computer to work. As the table and chair provided to the petitioner was old and rusted, he made repeated request for the maintenance of furniture, office equipment, and to replace the same by several letters as well as in person,



which was not considered properly. As such, he brought the issue to the knowledge of the higher officers.

18. Having heard the submissions of the respective counsels and careful examination of the materials available on record, it is seen that 4 charges were levelled against the petitioner and a show cause notice was issued on 23.01.2012. The sum and substance of the allegation against the petitioner is that the petitioner refused to work as Officiating Cashier on 23.02.2011, 01.03.2011 and 10.03.2011 in the absence of permanent cashier. Admittedly, the petitioner has submitted his reply and thereafter enquiry officer appointed. Basing on the report of the enquiry officer, the third respondent passed final order dated 08.05.2013 imposing penalty of “Reduction in basic pay by one stage in the time scale applicable to his cadre”. Aggrieved by the punishment order, the petitioner preferred appeal before the Appellate Authority. The Appellate Authority rejected the appeal and against the same, the petitioner filed memorial before the first respondent and the same was also rejected on 22.10.2014. On careful perusal of the final order passed by the third respondent and subsequent orders passed by the respondents 1 and 2, this Court noticed that the main



contention of the petitioner, which was placed before the respondents by way of reply to the show cause notice and in the grounds of appeal, and in the grounds of memorial are that the empanelment of the petitioner name in the office order dated 05.07.2010 was not correct and it is against the Central Office circular dated 16.05.2009 in No.ZD/1132/ASP/2009 and the same was not considered and proper finding was not recorded in the order of the original authority or in the order of the Appellate Authority.

19. It appears that it is the opinion of the respondents that it is the primary obligation on the part of the employee is to obey all the orders which are given to them in the course of their official duties. It is the contention of the respondents that when the petitioner was asked to act as an Officiating Cashier by them, the petitioner should have done so, but he had exhibited willful disobedience. As and when the petitioner contending that the empanelment of the cashier, itself, is contrary to the Central Office Circular dated 16.05.2009, the first respondent ought to have examined the same and rectify the mistake crept in the cashier empanelment. Without doing so, the respondents came to the conclusion that the petitioner had exhibited willful disobedience.



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20. A bare reading of the circular in No.ZD/1132/ASP/2009 dated 16.05.2009, it appears that for selection to the post of cashier, the Central Office of the LIC has issued instructions for rotational tenure policy for permanent cashiers, which was introduced with effect from 03.11.2007. In point No.4, criteria of selection was provided, wherein it is clearly stated that the panel containing the names of eligible employees who have applied for selection as cashiers in the area of selection will be prepared, marks will be allotted for seniority, qualification and work record. The first 5 employees in the order of merit in this panel will be considered by the competent authority and the actual selection will be made based on the work record for the past 3 years and suitability.

21. On perusal of this criteria of selection, it is clear that basing on the application submitted by the eligible employees for selection as cashiers, panel will be prepared and to include in the panel of cashier from the eligible employees, marks will be allotted for their seniority, qualifications and work record. Under this factual position, this Court is unable to accept why the respondents insisting the petitioner to work as Officiating Cashier when he is not interested due to personal reasons or health grounds as the case may



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be. It is also clear that the panel of Officiating Cashier will include all confirmed Class-III employees i.e., Assistants, MPOs, Typists, Telephone Operators, HGA's and Record Clerks in that order. The petitioner contends that in their office, there is only 1 cashier post and there are 4 Assistants to prepare the panel of officiating cashier and the panel has to be prepared with 3 Assistants. Thereafter, they have to include MPOs and after MPOs only inclusion of persons working as Typist will arise. Though it is the specific contention of the petitioner that 4 Assistants are there and panel has to be prepared with 3 employees and the empanelment of officiating cashier itself is not in accordance with the Central Government circular, the respondents 1 to 3 without considering that aspect, it appears, they made the petitioner as scape goat to satisfy their ego feelings.

22. The specific contention of the petitioner is that the above said facts were not considered while passing the impugned order or by the Appellate Authority or by the original authority. The health ground raised by the petitioner and on production of Doctor certificate also, it was not taken into consideration by the respondents 1 to 3. It is an admitted fact that earlier the petitioner worked as officiating cashier on 21.07.2010, 30.09.2010 and



18.10.2010.

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23. In the year 2011, due to the hip fracture substantiated, and as per the Doctor report, it is satisfied that the petitioner was not in a position to act as officiating cashier. However, it appears that the third respondent has taken it as insubordination and initiated proceedings against the petitioner.

24. The respondent Nos.1 to 3 being the Chairman, Zonal Manager, and Regional Manager of the Life Insurance Corporation of India, which is established for the public interest and being run by public money, ought to have shown some generosity and empathy towards the petitioner, who is a small employee working in their organisation.

25. The grievance of the petitioner was that he was not provided a good table, chair and computer also cannot be brushed aside. No employee can work without proper basic facilities. If it is not provided, definitely it will frustrate them. The respondent officers ought to have taken appropriate steps to resolve the grievance of the employees to extract efficient work from them. Instead of doing so, to satisfy their ego feelings, if the employers proceed against the employees with vindictive nature, it will damage the interest of the Institution itself. Every employer has to keep the same in their



mind.

26. In view of the facts and circumstances of the case, this Court is of the considered view that the respondent Nos.1 to 3 passed orders imposing punishment to the petitioner without considering the specific grounds raised by the petitioner in his explanation and grounds of appeal and grounds of memorial in proper perspective and they have passed the orders without assigning any reason which will not sustain in the eye of law.

27. For the reasons stated above, this Writ Petition is allowed and the order issued by the first respondent in ERD/SZ/M14-15/2 dated 22.10.2014 is hereby set aside.

No costs.

Consequently, connected miscellaneous petition is closed.

03.06.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs

To

1. The Chairman,
Life Insurance Corporation of India,
Central Office,
“Yogakshema”

17/19



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- Jeevan Bhima Marg,
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BATTU DEVANAND.J.,
pvs

Pre-delivery order in

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