IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

504

CWP-13106-2007 (O&M)
Date of decision: 16.02.2024

Shamsher Singh

...Petitioner

VERSUS

The Life Insurance Corporation of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. D.S. Virk, Advocate for the petitioner

Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the Show Cause Notice dated 15.12.2004 as well as the order dated 06.01.2005 and the subsequent consequential orders, whereby the agency of the petitioner was terminated and the renewal commission due to the petitioner has been ordered to be forfeited.

2. Learned counsel for the petitioner contends that the petitioner was appointed as LIC Agent in the Branch Office, Amritsar-I with agency Code 3569-143 and that the petitioner had been carrying on the business as an agent and procuring the insurance policies for the respondent. More than 1800 policies were sold by the petitioner, out of which 1600 polices were in

force as on the date when the present writ petition was filed. It is claimed that even though the petitioner worked as an honest Agent with highest integrity and work ethics, however, he was served with the Show Cause Notice dated 15.12.2004 under Rule 16(1)(a) & (b) of the Life Insurance Corporation of India (Agents) Rules, 1972 (hereinafter referred to as 'the Rules of 1972') by respondent No.2 as to why his agency be not terminated with the forfeiture of renewal commission on the ground that one Harjinder Singh Sandhu was insured by him against Policy bearing No.470724935 for a sum of Rs. 3.00 lakhs on 31.03.2000 at the age of 28 years and his policy had lapsed on account of non-payment of premium during the period from 28.03.2001 to 28.09.2001. The renewal premium for the said period was received only on 06.11.2001 alongwith submission of a form of declaration of good health on 05.11.2001 and the medical examination conducted by a Doctor-Anil Khanna, who was on the panel of the Life Insurance Corporation (hereinafter referred to as 'the Corporation'). The declaration of good health form No.680 and medical report was witnessed by the petitioner and the same bears the signatures of the insured which were alleged to have been forged for getting a revival of the policy in question. It was thus conveyed that by the above said acts, the petitioner had failed to maintain an absolute integrity and acted to the prejudice of interest of the respondent-Life Insurance Corporation.

3. On receipt of the SCN, the petitioner submitted his reply and also produced the death certificate (Annexure P-3) confirming the date of death of insured-Harjinder Singh to be on 03.12.2001 and submitted that the

declaration of good health form was only a statement by the insured declaring his good health and does not require any introduction or signature of the Agent and he also referred to the physical medical examination of the insured carried out by the Panel Doctor of the Corporation on 05.11.2001 showing that all requisite tests and precautions had been taken by the concerned petitioner before revival of the policy.

4. The explanation was however not found satisfactory and respondent No.2-Senior Divisional Manager, Amritsar, terminated the agency of the petitioner and further directed forfeiture of renewal commission vide order dated 06.01.2005. Aggrieved thereof, an appeal was preferred before respondent No.3-Zonal Manager being the Appellate Authority, who confirmed the decision of respondent No.2 insofar as the termination of the agency of the petitioner is concerned, however, he restored the renewal commission payable to the petitioner by taking into consideration his outstanding performance and achievements during the last 15 years, vide his order dated 14.07.2005.

5. The petitioner further preferred a memorial against the said order of respondent No.3 under Rule 24 of the Rules of 1972 against upholding of termination of the agency. Vide order dated 12.04.2006, respondent No.1 dismissed the memorial and confirmed the order of respondent No.2 whereby not only the punishment of termination of the agency of the petitioner was upheld but also the punishment of forfeiture of the renewal commission was revived. Resultantly, the order of the Appellate Authority restoring the renewal commission was also set aside. Aggrieved

thereof, the present writ petition has been filed.

6. A written statement on behalf of the respondents-Corporation has been filed wherein it has been stated that relationship between the petitioner and Corporation was that of Principal and Agent and not of Master and Servant, hence, the writ petition would not be maintainable as the nature of employment was contractual in nature and that such contractual obligation cannot be enforced through a writ petition. It is further averred that even otherwise, the issue would give rise to serious disputed questions of fact for which a writ jurisdiction is not an appropriate forum.

7. On merits, it was not disputed that the petitioner was the Agent of the Corporation and that the insurance policy in question had been issued. It is contended that Smt. Kulwinder Kaur wife of assured-Harjinder Singh had intimated the respondent-Corporation on 06.03.2002 that her husband had died on 03.12.2001. While examining the claim papers, it was found that Harjinder Singh had died on 02.10.2001 and the policy was lying lapsed as on the date of his death due to non-payment of renewal premium on 28.03.2001. However, the petitioner got a fraudulent revival of the policy on 06.11.2001 i.e. after the death of Harjinder Singh. It was also noticed that the signatures of the assured on the personal statement regarding health/declaration of good health dated 05.11.2001 for revival of the lapsed policy were forged and that the petitioner had produced some person, other than the life assured, before medical examination on 05.11.2001 by the empanelled Doctor. The policy was thus revived by impersonation and forging the signatures of the deceased notwithstanding that he had passed

away on 02.10.2001. A report was also obtained from the Handwriting and Fingerprint Expert who opined that the signatures on the proposal form of policy and those on the personal statement regarding health and medical report dated 05.11.2001, have not been signed by one and the same person. The Show Cause Notice dated 15.12.2004 was accordingly served upon the petitioner and the subsequent orders were passed after following the due process of law as per the Rules and that the respondent-employer has decided not to continue with the agency of the petitioner and the same has been rightly terminated.

8. Learned counsel for the petitioner, while advancing the arguments has re-iterated the submissions noticed above and contended that the order of termination of agency of the petitioner and also forfeiture of renewal commission payable to the petitioner is based on a presumption that the life assured died on 02.10.2001 whereas the death certificate issued by the competent authority demonstrates that he had passed away on 03.12.2001. It is further submitted by the learned counsel for the petitioner that the wife of the deceased-Harjinder Singh had filed a petition before the District Consumer Disputes Redressal Forum, which was dismissed vide order dated 21.07.2005. Against dismissal of the said complaint, she had preferred an appeal before the State Consumer Disputes Redressal Commission, Punjab. The said appeal was allowed vide order dated 04.12.2006 and the Insurance Company was directed to remit the insured amount to the nominee of deceased Harjinder Singh i.e. Kulwinder Kaur. The Corporation had preferred an appeal before the National Consumer

Disputes Redressal Commission against the said order which was also dismissed vide order dated 27.04.2007. The SLP(C) bearing No. 22535 of 2008 filed against the said order was also dismissed vide order dated 19.09.2008. It is contended that the State Consumer Disputes Redressal Commission as well as National Consumer Disputes Redressal Commission had accepted the contentions of the respondent-Kulwinder Kaur to the effect that the date of death of Harjinder Singh occurred on 03.12.2001 and not on 02.10.2001, as claimed by the Corporation and that the direction to release the amount was issued thereafter.

9. It is argued that once the fact as regards the date of death on 03.12.2001 had been accepted by the Consumer Courts and the said findings had become final and binding, the contentions of the respondent-Corporation that the date of death was infact other than what was reflected in their record is unworthy of any acceptance.

10. In response to the above, learned counsel for the respondent-Corporation contends that the petitioner cannot draw any benefit from the above judgment of the State Consumer Disputes Redressal Commission as well as the National Consumer Disputes Redressal Commission and the subsequent dismissal of the SLP(Civil) since only a benefit was extended to the petitioner for the reason that two views were possible. There was no finding recorded as regards the actual date of death of Harjinder Singh since deceased. It is averred by him that at the stage of preferring a memorial before the authorities, the petitioner had himself stated that he may have committed some mistake and that he undertook to be more careful, in future

which has also been recorded in the order passed by the competent authority. It is thus suggested that the aforesaid statement made by the petitioner at the stage of consideration of his memorial amounts to an admission of a lapse by him and that no further concession ought to be extended to the petitioner.

11. I have heard the learned counsel for the parties and have gone through the documents appended with the present petition.

12. The issue which come up for consideration before this Court is as to Whether the deceased had passed away on 03.12.2001 or on 02.10.2001.

13. Undisputedly, the award passed by the State Consumer Disputes Redressal Commission as affirmed by the National Consumer Disputes Redressal Commission and the subsequent dismissal of the SLP(C) had placed reliance upon the death certificate which recorded date of death as 03.12.2001.

14. To dispel the admissibility of the aforesaid evidence, the Corporation has placed reliance on an affidavit purportedly submitted by the Chowkidar of the village which is to the effect that the date of death is antedated and that the matter was reported on 15.12.2001.

15. Reliance is placed on the report submitted by the Handwriting Expert to corroborate the suspicion and prove its claim.

16. In so far as the above said aspect is concerned, the report of the Handwriting Expert can at best be a proof that the declaration of good health as furnished was infact not signed by the same person but the same does not *ipso facto* lead to an inference that the deceased had passed away. Even

otherwise, the petitioner has neither been confronted with the said report of Handwriting Expert nor has been extended any opportunity to respond to the same. The same may thus at best be a corroborative evidence to create a suspicion as regards the person who actually appeared before the empanelled Doctor for physical medical examination and as to whether the declaration form was duly signed by the said person or not. The second evidence relied upon by the respondent is the affidavit of the Chowkidar to the effect that the entry of date was made by him after receipt of intimation on 15.12.2001 and dated as 03.12.2001. The said affidavit cannot be read any further than the fact that the date of death was reported later in point of time and not that the date of death was different than what is recorded. Even otherwise, it is to the common knowledge that entry in the register of the Chowkidar would be made later, after the family members are free from their respective rituals, which are to be performed on account an exigency of death. The above said affidavit is at best a statement of a witness about the date of death having taken place at a time prior to its reporting.

17. There is nothing on record on the basis whereof it can be inferred that the above statement/affidavit can be read to contradict a record which is maintained in terms of the statute about declaration of death.

18. Further, upon a pointed query raised to the petitioner as to whether any criminal proceedings had been initiated by the Corporation for the alleged acts of fraud that had been played by the Agent in connivance with the beneficiaries or not, the response to it is negative. No satisfactory explanation has also been put forth as to why the Corporation chose not to

get a criminal case initiated, in the event it was so sanguine about the documents produced and the insured having died prior to the date of renewal.

19. Under the given circumstances, the version of the respondents about the date of death being 02.10.2001, as alleged, cannot *ipso facto* be accepted as gospel truth. The Consumer Courts had already proceeded with the date of death as 03.12.2001 and not 02.10.2001, which such order has already attained finality. One fact cannot be presumed differently in two separate proceedings and the date has to be presumed as 03.12.2001.

20. At the same time, it has also been taken in to consideration that the relationship of an Agent and Principal is more in the nature of a contractual engagement and that in a contractual engagement, direction to restore contractual relations would not be ordinarily issued. Under such circumstances, a person who is aggrieved can at best initiate appropriate proceedings before the competent Court for seeking compensation on account of an illegal termination of his status. There is no vested right on a person to claim continuation of an agency especially when the employer does not intend to continue so but can claim compensation. Moreover, the present petition has remained pending for nearly 17 years and the dispute is more than 22 years old. It may not even serve any purpose in restoring the agency at this stage.

21. Learned counsel for the respondent had also referred to the provisions of the Rules of 1972, to contend that the said Rules stipulate the termination of an agency on a notice of 30 days and that any relationship of

an Agent and Principal depends upon the reliance of the Principal on the integrity and honesty of an Agent and once such a doubt is created in the mind of the employer, direction to continue such a relation is likely to prejudice respective rights of the claimants.

22. However, it is noticed that the petitioner served the corporation honestly and diligently as an Agent for 15 years and was awarded merit certificates for outstanding performance and that the respondent-Corporation didn’t provide any satisfactory explanation behind not initiating any criminal proceedings against the petitioner. Its orders are based on a mere suspicion and not on any fact established.

23. Taking into consideration the facts and circumstances, the order passed by respondent No.1 dated 12.04.2006 is set aside and order dated 14.07.2005 passed by respondent No.3-Appellate Authority regarding release of the renewal commission, is restored, to balance the equities.

24. The writ petition is **partly allowed**.

(VINOD S. BHARDWAJ)
JUDGE

16.02.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No