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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 09.04.2024***

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LPA 746/2022**LIFE INSURANCE CORPORATION OF INDIA AND ANR.****..... Appellants****Through: Mr. Vinay Kumar Garg, Sr. Adv. with
Mr. Soumyajit Pani and Mr. Aishwary
Bajpai and Mr. K.S. Rekhi, Adv.****Versus****MS. ERINA MICHAEL****..... Respondent****Through: Mr. R.K Saini and Mr. Ravi Kumar,
Adv.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE GIRISH KATHPALIA****REKHA PALLI, J (ORAL)****CM APPL. 56552/2022 -Delay 61 days.**

1. This is an application filed by the appellant seeking condonation of 61 days delay in filing the appeal.
2. The application is, for the reasons stated therein, allowed and consequently the delay of 61 days in filing the appeal stands condoned.
3. The application stands disposed of.

LPA 746/2022, CM APPL. 56553/2022 -Stay.

4. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 22.09.2022 passed by the learned Single Judge in W.P.(C) 1617/2013. Vide the impugned order, the learned Single Judge has



allowed the writ petition preferred by the respondent by holding that the respondent was entitled to be considered for promotion to the post of Assistant Administrative Officer (AAO) from the due date when her result was kept in a sealed cover. Consequently, the appellant has been directed to consider her for grant of all consequential benefits with effect from the date when the result of the DPC for her promotion to the post of AAO was kept in a sealed cover.

5. We find that the learned Single Judge has allowed the writ petition after holding that the appellants had wrongly kept the result of the respondent in a sealed cover in 2010. The learned Single Judge was of the view that the case of the respondent was wrongly considered as that falling within the ambit of sealed cover procedure as the appellants had belatedly imposed the penalty of censure on the respondent without conducting any inquiry against her or giving her an opportunity to put forward her defence.
6. The primary submission of learned senior counsel for the appellant is that the impugned order is wholly perverse. The learned Single Judge, he submits has, without their being any challenge to the penalty order by the respondent, has directed that the said order was illegal and ought to be ignored for considering her case for promotion. By drawing our attention to para 44 of the impugned order, he contends that once the learned Single Judge himself observed that there was no challenge to the disciplinary proceedings, no such orders for ignoring the penalty or the sealed cover procedure adopted against the respondent in 2010 could have been issued. His plea thus being that once the respondent was found guilty of misconduct and awarded a minor penalty of censure, the



appellants were justified in adopting the sealed cover procedure against her on account of the pendency of disciplinary proceedings. He, therefore, prays that the impugned order be set aside.

7. On the other hand, Mr. R.K. Saini, learned counsel for the respondent, supports the impugned order and submits that since the respondent was never issued any show cause notice and was in fact merely issued a one line letter dated 06.12.2006 seeking her explanation, the learned Single Judge was correct in holding that when the DPC was held in 2010, no disciplinary proceedings were pending against her. Furthermore, the learned Single Judge was also justified in holding that the penalty order passed on 02.08.2013 was liable to be set aside as the said penalty had been issued without following the laid down procedure and that too after a delay of almost seven years. The learned Single Judge was, therefore, justified in directing that since no departmental proceedings were pending against the respondent when the DPC gave its recommendations in 2010, the result of the DPC qua the respondent could not have been kept in a sealed cover.
8. After some arguments, Mr. Saini concedes that the respondent had preferred an appeal as also a memorial against the penalty order dated 02.08.2013, which appeal and memorial were both rejected. Though the respondent has not challenged any of these orders, he seeks to explain that since the order was passed after the respondent had already filed the writ petition, she did not deem it necessary to challenge the said order, especially, when the same was, on the face of it, illegal and *non est*. He further fairly concedes that a minor penalty can be imposed merely on the basis of a show cause notice without holding any departmental inquiry.



He, therefore, does not dispute that the learned Single Judge was incorrect in holding that no minor penalty could have been imposed on the respondent without issuing her a charge sheet and holding an inquiry.

9. Having considered the submissions of the parties and perused the record, we are inclined to agree with the appellant that the learned Single Judge has despite holding that he was not examining the validity of disciplinary proceedings, directed that the minor penalty imposed on her as a result of those disciplinary proceedings must be ignored. In our considered view, this course of action was not permissible. We are of the opinion that even if the learned Single Judge considered the penalty of censure imposed on the respondent on 02.08.2013 to be vitiated on any ground, the said finding and any consequential directions could have been given only after pleadings in this regard were exchanged between the parties.
10. In the light of the aforesaid, the impugned order setting aside the sealed cover procedure adopted by the DPC held in 2010 and directing the appellant to grant promotion to the respondent to the post of AAO by ignoring the penalty order is unsustainable and is, accordingly, quashed. However, taking into account the respondent's plea that the penalty order dated 02.08.2013 was passed after the writ petition was filed and therefore she was deprived of the opportunity to challenge the same, we remand the writ petition back to the learned Single Judge for fresh adjudication on merits after taking into account the respondent's challenge to the penalty order as also the disciplinary proceedings. Taking into account that no such challenge to the penalty order and the disciplinary proceedings was laid while filing the writ petition, we grant liberty to the respondent to seek amendment of the writ petition within a



period of four weeks. As and when such an application for amendment is moved by the respondent, the same will be duly considered by the learned Single Judge in terms of this order by permitting the respondent to raise additional grounds. Once the writ petition is permitted to be amended, the appellant herein will be entitled to file an amended counter affidavit and similarly, the respondent will be entitled to file an amended rejoinder to the amended counter affidavit.

11.The appeal alongwith all pending applications is, accordingly, disposed of, making it clear that this Court has not expressed any opinion on the rival submissions of parties on merits. It will, therefore, be open for both sides to raise all pleas before the learned Single Judge who will after completion of pleadings determine whether the penalty imposed on the respondent was justified or not and thereafter pass consequential order(s), as may be deemed appropriate.

12.List the matter before the learned Single Judge on 15.05.2024.

REKHA PALLI, J

GIRISH KATHPALIA, J

APRIL 9, 2024

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