IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2866 of 2019

Rewnath Narayan Barsagade Vs. Life Insurance Corporation of India and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Mr. Y.R.Kinkhede, Advocate a/w Mr.A.B.Tikale, Advocate for petitioner.
Mr. R.N. Badhe, Advocate for respondent nos.1 to 3.

CORAM : NITIN W. SAMBRE & MRS. VRUSHALI V. JOSHI, JJ.
DATE : JANUARY 13, 2025.

1. Heard.

2. In 1992, the petitioner was appointed as an Insurance Agent with the respondent no.1 bearing Agency Code No.0003199V.

3. The petitioner accordingly served with the respondent no.1 upto 2008 and after having been selected as Unit Manager with the SBI Life Insurance, he submitted his resignation on 8th May, 2008.

4. Subsequent thereto, the petitioner started working for SBI Life Insurance from 30th April, 2008 as Unit Manager and such services were confirmed on 25th November, 2008.

5. In this background, the petitioner has approached this Court with a prayer for direction to the respondents to release the remaining commission for the insurance policies procured by the petitioner till 8th May, 2008 that is the date on which he submitted his resignation with the respondent no.1.

6. The contentions of the Counsel for the petitioner are that till 8th May, 2008 i.e. the date of submission of his resignation, the petitioner has actively acted as an Insurance Agent for the respondent no.1 and has given the business of more than one thousand policies. It is claimed that the petitioner thereafter was appointed with SBI Life Insurance from 30th April 2008 on the post of Unit Manager.

7. In the aforesaid background, it is claimed that till the date he resigned from the post of the Insurance Agent i.e. 8th May, 2008 the petitioner served with the respondent no.1 as an Insurance Agent and accordingly was paid commission on the policies or the business that he has provided to the respondent no.1.The counsel for the petitioner would further urge that in law the petitioner is entitled for commission on the insurance business that he has provided to the respondent no.1 is not a fact in dispute. It is claimed that post his resignation just because he has started working with the SBI Life Insurance as Unit Manager, that by itself, would not act as an embargo to claim commission from the respondent no.1. As such, it is urged that the petitioner, in absence of there being any legal embargo to that effect, is entitled for the benefit of commission on the business that he has earned for the respondent no.1.

8. As against above, Mr. Badhe, learned counsel appearing for the respondents, would invite attention of this Court to the provisions of the Insurance Act, 1938 particularly Section 44. According to him, Section 44 provides for "Prohibition of cessation of payments of commission". He has drawn support from Section 44 (1)(c) which reads thus:

> *"Section 44 (1)…*
> *(a)……..*
> *(b)……..*
> *(c) Such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person".*

9. He would urge that since after the resignation of the petitioner, he has admittedly joined other Insurance Company viz SBI Life Insurance. In such an eventuality, since the petitioner has started working with other Insurance Company and he has directly or indirectly solicited or procured the insurance business, therefore, he is not entitled for the benefit of commission.

10. It is further claimed that the petitioner apart from soliciting insurance business, he is entitled to continue working in such other field as is permissible in law. In this background, it is

claimed that the decision of the respondent no.1 to discontinue the payment of commission to the petitioner on the business that he has earned for the respondent no.1 upto 8th May, 2008 is justified in law and as such dismissal is sought.

11. We have considered the said submissions.

12. It is borne out of the record that the petitioner was appointed as an Insurance Agent and has worked in such capacity by providing business for the respondent no.1 and was accordingly paid admissible commission.

13. It appears that the petitioner on 8th May, 2008 tendered his resignation, however, he was appointed by an appointment order dated 30th April, 2008 in SBI Life Insurance

14. The appointment order even if it is prior to the date of his resignation, that by itself, will not act as an embargo on the rights of the petitioner to accept such appointment order unless he physically joins post resignation on the said post.

15. Though Mr. Badhe, learned counsel appearing for the respondents has raised an objection as to the maintainability of the petition, as the same is allegedly time barred, we are required to be sensitive to the nature of claim made in the petition. Even if

the petitioner has resigned on 8th May, 2008, every year on renewal of the policy, the petitioner is entitled for the commission. Such commission is due and payable upon the renewal of the policy till such policy is valid in law. Mr. Kinkhede has stated that the petitioner is entitled to draw commission up to 2019 viz., the petitioner entering the age of superannuation as in the capacity of agent.

16. No doubt, the aforesaid objection, prima facie appears to be persuasive, however, we are required to be conscious to the fact that since the commission is payable in each year when the policy is renewed, there will be a continuous cause of action in favour of the petitioner.

In support of the aforesaid objection, reliance can be placed on the judgment of the Apex Court in the matter of **Union of India and others Vs. Tarsem Singh** reported in **(2008) 8 SCC 648**, particularly para 7 which reads thus:

> *"To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related*

claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition".

17. In view of the aforesaid position of law, in the matter of **Tarsem Singh** (cited supra), we are required to hold that the

claim put forth by the petitioner cannot be said to be time barred, as the delay in claiming the relief before this Court, in our opinion, does not in any way affect the right of the petitioner to claim the commission in a continuous manner. The Court, while dealing with the matter of Tarsem Singh has evolved an exception viz fresh continuing wrong which appears to be squarely applicable to the facts of the present case as the respondent no.1 has continued to deny the commission to the petitioner from 2008 onwards till 2019. That being so, the issue of limitation is not applicable in the facts of the present case.

18. With the assistance of learned counsel appearing for the parties, we have perused the appointment order of the petitioner. The petitioner came to be appointed as Unit Manager in Grade M8 Level L2 on probation for a period of six months. The appointment order in fact incorporates condition no.4 (i) viz., Actual production of Relieving letter or acceptance of resignation letter from the present employer i.e. respondent no.1 which will entails him to join in the said SBI Life Insurance.

19. The perusal of the appointment order does not reflect the nature of duties to be discharged as the Unit Manager. The

petitioner was accordingly confirmed in service with SBI Life Insurance on 25.11.2008.

20. It is an admitted position on the record that if not engaged with the SBI Life Insurance, the petitioner was entitled to continue to draw his commission from the respondent no.1 for the insurance business that he has provided upto 8th May, 2008.

21. So as to draw an inference that an embargo created under sub-section (c) of Section 44 of the Insurance Act, 1938 will be attracted in the facts of the present case, there is hardly any material placed on record viz.,the petitioner having solicited or procured the insurance business for the said SBI Life Insurance. Even otherwise, there is hardly any material on record to draw an inference that the petitioner can be said to have incurred an embargo or prohibition under the provisions of Section 44 of the Insurance Act, 1938 so as to claim the benefit of commission.

22. The Division Bench of this Court in Writ Petition No.2667 of 2017 decided on 15th February, 2018 (**Shri Pravin s/o Bhaskarrao Yenurkar Vs. Life Insurance Corporation of India and others**) had an occasion to consider the provision of Section 44 of the Insurance Act and has noted that the said provision stood repealed. No doubt, post repealing of the said

provision, a Notification dated 2nd February 2017 came to be issued thereby creating a similar type of an embargo, still the embargo which is sought to be read by the respondent no.1 under Section 44 (c) of the Insurance Act or *pari materia* provision in the aforesaid Notification of 2nd February, 2017 is not attracted in the facts of the present case for the reason of want of material to incur that the petitioner has solicited business for SBI Life Insurance.

23. Mr. Badhe has claimed that since the issue sought to be agitated in this petition is in regard to monetary claim of the petitioner and denial of such monetary claim is based on the interpretation of the provisions of Section 44 of the Insurance Act, 1938, the Court may not burden the respondent no.1 with the interest. Such submission made by counsel for the respondent no.1 are conceded by Mr. Kinkhede, learned counsel appearing for the petitioner.

24. That being so, the action of the respondent no.1 in not paying the commission to the petitioner cannot be said to be sustainable or can be said to be contrary to the provisions of Section 44 (c) of the Insurance Act, 1938. That being so, such decision of the respondent no.1 is hereby quashed and set aside.

25. We direct the respondent no.1 to release the admissible commission to the petitioner, as expeditiously as possible, and in any case within a period of three months from the date of production of this order.

(MRS.VRUSHALI V. JOSHI, J.) **(NITIN W.SAMBRE, J.)**

Mukund Ambulkar