(2018) 10 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Letter Patent Appeal No. 247 Of 2017

Abdul Rahim Sholla @APPELLANT@Hash Chairman cum Managing Director & Others

Date of Decision : 03-10-2018

Acts Referred:

General Insurance Business (Nationalization) Act, 1972 — Section 17A

Citation : (2018) 10 J&K CK 0018

Hon'ble Judges : Gita Mittal, CJ;Alok Aradhe, J

Bench : Division Bench

Advocate : Arshid Andrabi, J. A. Kawoosa

Final Decision : Dismissed

Judgement

(1)The appeal is admitted for hearing. With the consent of the learned counsel for the parties, the matter is heard finally.

(2) In this intra Court appeal, the appellant assailed the validity of order dated 06.07.2017 passed by the learned Single Judge by which the writ petition preferred by the appellant has been dismissed and the order dated 19.11.2010 rejecting the claim of the appellant has been upheld. In order to appreciate the appellant's challenge to the impugned order, few facts need mention, which are stated infra.

(3) The appellant at the relevant time was working as a Development Officer (Administration) in the National Insurance Company Limited. In exercise of the powers conferred under Section 17A of the General Insurance Business (Nationalization) Act, 1972, the Central Government promulgated the General Insurance (Rationalization of Pay-Scales and other Conditions of Service of Development Staff) Scheme, 1976, which was amended from time to time, i.e. in the years 1987, 1990, 1996, 2000, 2003 & 2008 respectively.

(4) As per the Scheme, every Development Officer was required to work with such cost as to maintain his cost ratio within the limits stipulated in Clause 17(C) of Paragraph 3 of the 1990 Scheme. The aforesaid Clause envisaged that if a

Development Officer exceeded his cost ratio for a particular performance year, his non-core allowance, i.e. fixed conveyance allowance and entertainment allowance admissible to him during the next appraisal year was to be withdrawn. It is further provided that if the Development Officer repeated the same for the second performance year in succession, his non-core benefits would continue to be withdrawn till such time as he came within the stipulated cost.

(5) The respondents by invoking the provisions of the aforesaid Scheme withdrawn the non-core allowance and reduced the salary of the appellant on the ground that the appellant was working at very high cost ratios and had not shown any growth in the premium collected by him. The appellant challenged the aforesaid action of respondents by way of SWP No.51/2004, in which vires of the Scheme was also assailed. Learned Single Judge vide order dated 26.03.2010 upheld the vires of the Scheme and directed the respondents to consider the impact of restriction which was placed on the writ petitioner for soliciting of business in view of the abnormal circumstances in Kashmir Valley and quashed the impugned order with the direction to consider the case of the writ petitioner (appellant herein) afresh. In pursuance of the aforesaid direction, the respondents considered the claim of the appellant and rejected the same by order dated 19.11.2010. The aforesaid order was challenged by the appellant before the learned Single Judge in the writ petition being SWP No.2201/2011 which was dismissed vide order dated 06.07.2017.

(6) Learned counsel for the appellant submitted that the learned Single Judge ought to have appreciated that the impugned order dated 19.11.2010 is bad in law inasmuch as no opportunity of hearing was given to the appellant and the rejection of the claim of the appellant tantamounts to taking disciplinary proceedings against the appellant. On the other hand, learned counsel for the respondents has supported the order passed by the learned Single Judge.

(7) We have considered the submissions made by the learned counsel for the parties and have perused the record. Before proceeding further, we deem it appropriate to reproduce herein-below the operative portion of order dated 26.03.2010 in pursuance of which the decision impugned in the subsequent petition out of which this Letters Patent Appeal is arises, was taken:-

"For the above stated reasons this writ petition deserves to be allowed in the following terms:-

i) By issuance of writ of Certiorari, orders passed by the respondents depriving the petitioner of his non-core allowances and reducing his salary below the minimum salary are quashed.

ii) Respondents are directed to reconsider the case of the petitioner and take a fresh decision in the case on the basis of observation made in this judgment within a period of two months from the date copy of this judgment is served on them.

iii) Respondents to further consider the claim of the petitioner for being promoted and appointed to higher post strictly in accordance with rules."

(8) Learned Single Judge on meticulous appreciation of material on record has held that the appellant's performance in procuring of premium and business was considerably lower in comparison to other officials. The comparative chart of performance of the appellant and the other officials has been reproduced by the learned Single Judge in Paragraph 13 of the order impugned. On the basis of the comparative chart, learned Single Judge has concluded that the performance of the appellant for the relevant years was not satisfactory. It has further been held that the Insurance Company had not prohibited the Development Officers or the Field Officers from procuring the business and if that were so, the other offices of the Company in Srinagar would not have been in a position to show increase in business during the relevant years. The learned Single Judge has further held that this Court in extraordinary jurisdiction cannot sit as Court of appeal over the decision taken by an Authority. We do not find any ground to differ with a view taken by the learned Single Judge.

(9) From perusal of the directions passed in the order dated 26.03.2010 by the learned Single Judge, quoted supra, it is evident that the respondents were directed to reconsider the case of the writ petitioner (appellant herein) and to take a fresh decision on the basis of observations made in the judgment within two months from the date of receipt of copy of the judgment. It is pertinent to mention that the judgment nowhere directs that the personal hearing is required to be afforded to the appellant. Therefore, the submission that the order dated 19.11.2010 rejecting the claim of the appellant is bad in law on the ground that no opportunity of hearing was given to the appellant does not deserve acceptance. Similarly, we are not impressed by the submissions made by the learned counsel for the appellant that the rejection of the claim of the appellant tantamounts to disciplinary proceedings. The claim of the appellant was processed under the Scheme, the vires of which was already upheld in SWP No.51/2004, therefore, the aforesaid contention also does not deserve any acceptance.

(10) In view of the preceding analysis, we do not find any merit in the appeal, the same fails and is hereby dismissed.