
(2003) 02 AHC CK 0116
In the Allahabad High Court
Case No : C.M.W.P. No. 7334 of 2000

Anil Kumar Srivastava

APPELLANT

Vs

Chairman, L.I.C. of India and Others

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 39

Citation : (2003) 2 AWC 1113 : (2003) 97 FLR 725 : (2003) 3 LLJ 108 : (2003) 2 UPLBEC 1017

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Nimai Dass and Pulak Ganguly, for the Appellant; R.G. Padia and Prakash Padia and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned order dated 27.12.1999 passed by the respondent No. 2 and the order dated 17.12.1996 passed by the respondent No. 3 Annexures-14 and 11 to the writ petition. The petitioner has also prayed for a mandamus directing the respondent to reinstate the petitioner as Development Officer with back wages in the service of the Life Insurance Corporation (hereinafter referred to as "the L.I.C.").

2. The petitioner was appointed as Apprentice Development Officer in the service of the L.I.C. vide letter dated 17.6.1992 Annexure-2 to the writ petition and he was confirmed vide order dated 5.7.1993 Annexure-3 to the writ petition. Since then, the petitioner has been working as Development Officer in Kanpur. It is alleged in paragraph 11 of the writ petition that since March 1996, the petitioner was not given salary. On 6.11.1996, a show cause notice was given to the petitioner vide Annexure-9 to the writ petition. In this notice, it was mentioned that the petitioner was absenting himself on various occasions from the office without intimation and prior permission. He was absent from 1.12.1994 to

31.7.1996, i.e., for 152 days, thereafter from 1.8.1996 to 15.10.1996 he was absent without leave. It was mentioned in that letter that since he was absent continuously for 90 days without leave, this amounts to abandonment of the post as per Regulation 39 (4) of the L.I.C. of India (Staff) Regulations. The petitioner was asked to show cause why he be not removed from service. The petitioner sent his reply vide Annexure-10 to the writ petition. However, the respondent No. 3 passed an order removing the petitioner from service vide order dated 17.12.1996 Annexure-11 to the writ petition. It is alleged in paragraph 20 of the writ petition that the order dated 17.12.1996 was passed without giving opportunity of hearing and without holding any enquiry against the petitioner.

3. Aggrieved against that order the petitioner filed an appeal vide Annexure-12 to the writ petition which was rejected by the order dated 27.12.1999 Annexure-14 to the writ petition. Hence, this petition.

4. A counter-affidavit has been filed by the L.I.C. In paragraph 11 of the same, Regulation 39 has been quoted. The relevant part of that provision with which we are concerned in this case is Clause 4 (iii) which states :

"(iii) Where an employee has abandoned his post, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

Explanation.--1. For the purpose of this regulation, an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or overstays his leave for a continuous period of ninety days without any intimation therefore in writing."

5. In paragraph 13 of the counter-affidavit. It is stated that the petitioner was given a show cause notice dated 3.8.1993 vide Annexure-C.A. 1 to the counter-affidavit stating that the petitioner was in the habit of leaving the headquarters without taking permission. For Instance, he left the headquarters on 10.7.1993 and went to Lucknow without taking permission and stayed there up to 15.7.1993. Again he was absent from the headquarters on 19.7.1993 and 26.7.1993 also. He left the headquarters again on the evening on 28.7.1993 and went to Lucknow without taking permission and stayed there up to 2.8.1993. He was asked to inform why he is leaving headquarters without permission or taking leave and staying at Lucknow.

6. Since the petitioner did not reply to this letter, a fresh letter dated 29.9.1993 was sent to him vide Annexure-C.A. 2 to the counter-affidavit. In this letter it was stated that the petitioner left on 7.8.1993 and returned only on 12.8.1993. He then left on 20.8.1993 and returned on 25.8.1993. Again he left on 31.8.1993 and returned on 4.9.1993. He then left on 22.9.1993 and returned on 29.9.1993. He was asked to submit his explanation regarding his absence without leave. Since satisfactory reply was not given, another show cause notice was given to the petitioner on 9.11.1993 vide Annexure-C.A. 3 to the counter-affidavit in which details have been given about eight* Instances. The petitioner

was absent without leave for several days on each occasion. Another show cause notice was sent on 5.4.1994 to the petitioner mentioning the occasions when he was absent without leave. He was then sent another letter dated 11.5.1994 vide Annexure-C.A. 5 to the counter-affidavit. Similar letters/show cause notices were sent on 13.2.1995 vide Annexure-C.A. 6. 10.6.1999 vide Annexure-C.A. 7, 6.11.1996 vide Annexure-C.A. 8 and 17.12.1996 vide Annexure-C.A. 9 to the counter-affidavit. In these letters details have been given showing that the petitioner is repeatedly absenting without leave or intimation. The letter dated 6.11.1996 mentioned that the petitioner was absent without leave from 1.12.1994 to 31.7.1996 totalling 152 days and again from 1.8.1996 to 15.10.1996 thus he was absent without leave for more than 90 days and hence abandoned his post in view of Regulation 39 (4).

7. Learned counsel for the petitioner submitted that no enquiry was held before removing the petitioner from service. He has relied on the decisions in D.K. Yadav Vs. J.M.A. Industries Ltd., ; Hindustan Paper Corporation Vs. Purnendu Chakrobarty and Others, ; Uptron India Limited Vs. Shammi Bhan and Another, ; Basudeo Tiwary Vs. Sido Kanhu University and Others, and Shrawan Kumar Jha and others Vs. State of Bihar and others, .

8. In our opinion, adequate opportunity of hearing was given to the petitioner as is evident from Annexures-C.A. 1 to C.A. 9 to the counter-affidavit. Repeatedly the petitioner was asked to explain why he was leaving the headquarters without leave or without intimation. Rules of natural justice are not a strait-jacket formula as held by the Supreme Court in several decisions e.g., Union of India and Another Vs. Tulsiram Patel and Others, ; Hiranath Mishra v. Principal, Rajendram Medical College AIR 1973 SC 1260 . Personal hearing is also not necessary vide Dr. Satyendra Singh Vs. Director of Education (Higher Education) and Others, ; Gyanendra Deo Tripathi v. Board of High School and Intermediate Education. 1988 (2) AWC 770 : 1988 UPLBEC 333 and Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), etc.

9. Moreover, this is not a fit case for exercise of our discretion under Article 226 of the Constitution. It is evident from the facts of the case that the petitioner had got it into his head that he can simply go away without taking leave or even without intimation to the management whenever he pleases and come back whenever he pleases. This he did not on one or two but on repeated occasions, as is evident from Annexure-C.A. 1 to C.A. 9 to the counter-affidavit. The petitioner appears to be a thoroughly indisciplined employee who is not sincere in his work, and no establishment can run if any employee behaves in this manner. Writ jurisdiction is discretionary jurisdiction and we are not inclined to exercise our discretion in favour of such person.

10. The petition is dismissed.