
(2008) 11 MAD CK 0196
In the Madras High Court
Case No : Writ Petition No. 29284 of 2005

K. Rayar

APPELLANT

Vs

The Senior Divisional Manager, (Disciplinary Authority), Life Insurance Corporation of India and The Zonal Manager, (The Appellate Authority), Life Insurance Corporation of India

RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 19(1)

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 25, 25(1), 25(4), 39

Citation : (2008) 11 MAD CK 0196

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : D. Rajagopal, for A. Thirumurthy, for the Appellant; S. Silambanan, SC for N. Umapathy, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard Mr. D. Rajagopal, learned Counsel representing Mr. A. Thirumurthy, learned Counsel for the petitioner and Mr. Silambanan, learned Senior Counsel appearing for Mr. N. Umapathy, learned Counsel for the respondents and perused the records.

2. The writ petition is filed against the order of the first respondent dated 12.4.2005 and the consequential order passed by the second respondent dated 27.5.2005 confirming the earlier order and after setting aside the same to direct the respondents to reinstate the petitioner into service.

3. The petitioner was working as a Development Officer in the respondent Life Insurance Corporation of India (for short "LIC"). He had put in 23 years of service in total. Initially, he worked as a LIC Agent for six years and thereafter as a Development Officer for 17 years. He claims to have conducted business as Development Officer for more than Rs. 100 crores.

4. The petitioner sent a letter dated 12.3.2004 to the Union of India through proper channel seeking permission to contest the Lok Sabha elections held during 2004 and he also sought for 30 days Privilege Leave. Further, by a letter dated 16.4.2004, he informed the first respondent about the impending elections and his having submitted nomination for contesting elections from Tindivanam Constituency. By a letter dated 20.4.2004, the petitioner was informed by the first respondent that his request was not considered by a communication dated 16.4.2004 received from the Central Office.

5. The petitioner sent a further reply dated 24.4.2004 stating that he has completed his norms as an employee of the LIC and standing in the election is purely his personal affair for which the respondent cannot have any say in the matter. However, charges were framed and he was issued with a charge memo dated 29.4.2004. The charges indicated that the petitioner's filing nomination for contesting the general election from Tindivanam Lok Sabha Constituency on 16.4.2004 without permission by the competent authority was wrong and he has disregarded the directives given by the appointing authority and his writing a letter to the Ministry casting aspersions on the LIC is also objectionable.

6. Subsequently, an enquiry was ordered to be conducted by the Enquiry Officer. The Enquiry was said to have been held on 17.6.2004, in which the petitioner's statement was recorded. The petitioner had admitted that he had filed nomination on 16.4.2004 but subsequently he withdrew his nomination on 26.4.2004 at 3.10 p.m. and he had attended office on 08.5.2004 after cancelling his leave. Since the charges levelled against the petitioner were not specifically denied, the Enquiry Officer by his report dated 02.10.2004 found the petitioner guilty of the charges. After getting an explanation from the petitioner, a show-cause notice was issued to the petitioner dated 07.9.2004 stating that the first respondent had agreed with the Enquiry Report and since the petitioner was guilty of the misconduct in terms of Regulation 39 of the LIC of India (Staff) Regulations, 1960 (for short "Regulations"), it was proposed to remove the petitioner from service. The petitioner sent a further reply dated 02.10.2004.

7. In his reply, he had stated that Regulation 25(4) permitting an employee to contest election to a local body with permission was alone provided and, therefore, not providing for contesting other elections is violative of Article 14 of the Constitution. He also sent a further reply dated 11.4.2005 requesting them not to impose any punishment. However, by an order dated 12.4.2005, the first respondent removed the petitioner from service. It was also indicated that the petitioner's past record and antecedents show that he was a permanent menace to the peace and order in the office. But the first respondent did not put the past record on notice to the petitioner, but nevertheless relied upon the same.

8. Before listing out the past misconduct, the first respondent had observed as follows:

AND WHEREAS, reverting back on his contention that the penalty is

disproportionate to the misconduct, I prefer to take a lenient view. However, on perusing previous records, I find that the Chargesheeted Employee is grossly indisciplined and has violated Staff Regulations on several occasions in the past. Lenient views were taken on several occasions on the basis of his assurance of good conduct but his actions have exceeded all the limits and there is no reasonable ground to view his misconduct sympathetically as no action has deterred him from violating discipline of Office and Staff Regulations, as detailed below:

(Emphasis Added)

After listing out the past misconducts, the first respondent had observed as follows:

AND WHEREAS, from the above bad past records and grave antecedents for over a decade, he virtually proved to be a permanent menace to the peace and order in the functioning of the office, I cannot persuade myself to be lenient in reducing the penalty.

9. The petitioner preferred an appeal to the appellate authority, the second respondent herein. The appellate authority, by an order dated 27.5.2005 concurred with the competent authority and dismissed the appeal. In the penultimate paragraph of the said order, he had observed as follows:

However, with a view to explore the possibility of showing leniency, when I probed the past conduct of the appellant, I find that he is a chronic delinquent showing utter disregard to the rules and regulations of the Corporation. He has been chargesheeted on as many as eight occasions in the past and visited with various penalties. His plea that LIC of India (Staff) Regulations, 1960 is not applicable to him itself speaks the sanctity he attaches to the Regulations. If any leniency is extended to such a person, the interest of the Corporation will be in jeopardy and it will also send wrong signals. Hence, my interference in this case is not at all warranted and the case does not merit any leniency at my hands.

(Emphasis Added)

10. Thereafter, the petitioner filed a memorial to the Chairman of the LIC of India vide his memorial dated 06.6.2005. The Chairman of the Corporation by his order dated 12.9.2005, rejected the memorial. Though he has not challenged the order of the Chairman dismissing his memorial dated 06.6.2005, it is seen that the writ petition was filed even prior to the receipt of the memorial and the writ petition itself came to be admitted on 13.9.2005, whereas, the memorial was signed by the Chairman only on 12.9.2005 and must have reached the petitioner some time thereafter. Since the memorial was dismissed, it only reinforces the earlier orders. This Court is of the opinion that the order passed in the memorial need not be challenged separately. Though the petitioner sought for an interim order, the same was denied by this Court by an order dated 30.9.2005. A counter affidavit dated 18.8.2007 has been filed on behalf of the respondents.

11. Before going into the merits of the charges levelled against the petitioner, it is necessary to refer to Regulations 25(1) and 25(4) of the LIC of India (Staff) Regulations, 1960, which is allegedly contravened by the petitioner.

25(1) No employee shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics, nor shall he take part in, subscribe in aid or assist in any other manner, any political movement or activity.

(2)

(3).....

(4) No employee shall take part in an election to any legislature or local authority. Provided that

i. an employee qualified to vote at such election may exercise his right to vote but, where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;

ii. an employee shall not be deemed to have contravened the provisions of this regulation by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him or under any law for the time being in force;

iii. the Chairman may permit an employee to offer himself as a candidate for election to a local authority and the employee so permitted shall not be deemed to have contravened the provision of this regulation.

Explanation.: The display by an employee on his personal vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-regulation.

(Emphasis Added)

12. In the present case, the petitioner was chargesheeted for violation of Regulation 25(4). It must be noted that the Regulation 25(1) came to be challenged before the Division Bench of the Bombay High Court in Appeal No. 19 of 1965 in Life Insurance Corporation of India and Ors. v Insurance Corporation Employees' Union and Anr. The Division Bench headed by Kotval, C.J., by a judgment dated 19.4.1967, dismissed the appeal filed by the LIC. The following passages found in the decision may be usefully quoted:

In the first place, it must be stated that during normal times there appears to be no bar in any law against a Citizen taking part in any political movement or activity so long as it is peaceful and not subversive. The Regulation however prohibits not merely taking part in any political movement or activity but even assisting in any other manner any such movement or activity. The wording of the Regulation is so wide that even attending a public meeting would fall within the ambit of the Regulation and be prohibited. That would directly infringe the right

conferred by Article 19(1)(b) to assemble peaceably. To that extent, therefore, the Regulation would clearly violate the right declared by Article 19(1)(b).

... ..

Thus the Supreme Court interpreted the expression "public order", to mean "public peace, safety and tranquility". In that context, the explanation offered even in the affidavit of the third respondent would not justify the restriction imposed by the Regulation 25(1), for all that is there stated is that the restriction was imposed in order to see that the staff of the Corporation worked as a coherent whole without dissensions on political matters. What was sought to be prevented was their taking active part in politics. Having regard to the connotation of "public order", as defined by the Supreme Court in the said judgment, it is impossible to hold that this would be valid justification under either Clause (3) or Clause (4) of Article 19. None of the other clauses of these two sub-articles has been invoked nor is it remotely suggested could be invoked, to justify the making of the Regulation 25(1). We are thus satisfied that the view which the learned Single Judge has taken as to the applicability of Article 19(1) (b) was correct and that Regulation 25(1) infringes Article 19(1)(b).

(Emphasis Added)

13. Similar writ petitions were also filed before the High Court of Allahabad. Though the challenge was both to Regulations 25(1) and 25(4), the Division Bench of the Allahabad High Court dealt with the vires of Regulation 25(4). The decision is reported in Shyam Lal Sharma Vs. Life Insurance Corporation of India and Another, . The Division Bench presided by V.G. Oak, C.J., held that Regulation 25(1) and Regulation 25(4) in so far as it prohibits an employee canvassing or otherwise interfering or using his influence in connection with an election is illegal and the LIC was directed not to enforce these Regulations against its employees. In paragraphs 52 and 53, it was observed as follows:

52. The petitioner has established the position that the effect of Clause (1) of regulation 25 and the first part of Clause (4) of the regulation is to deprive him of a number of fundamental rights. The Corporation should not be permitted to enforce these invalid parts of the regulation.

53. In my opinion, the petition should be partly allowed. The respondents should be directed not to enforce against the petitioner Clause (1) of regulation 25 and the following words appearing in Clause (4) of regulation 25: "canvass or otherwise interfere or use his influence in connection with or." Since the petition partly succeeds and partly fails, parties may be left to bear their own costs.

14. This matter was taken to the Supreme Court by the Life Insurance Corporation of India and it was heard along with other group of writ petitions filed by other statutory Corporations. In the judgment of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram,

Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . With reference to the appeal preferred by the LIC in Civil Appeal No. 1879 of 1972, the conclusion of the Court is found in paragraph 200, which is as follows:

200. In Civil Appeal No. 1879 of 1972, our conclusion is that the Corporation is an authority within the meaning of Article 12 of the Constitution for the reasons given in this judgment. The conclusion of the High Court that the regulations have not the force of law is set aside. The conclusion of the High Court that Corporation should not be permitted to enforce the regulations mentioned in Clauses (1) and (4) of Regulation 25 is upheld.

(Emphasis Added)

15. In the light of the above, it has to be seen that whether the removal of the petitioner is justified or not. In the present case, though the contention is raised by the petitioner that Regulation 25(4) in allowing the employees to participate in local authority alone and not to legislature was violative of Article 14, in the light of the judgment of the Allahabad High Court in Shyam Lal Sharma's case (cited supra), and as confirmed by the Supreme Court in Sukhdev Singh's case (cited supra), the said argument may not be open to him.

16. Though the order of the Supreme Court as extracted from the Sukhdev Singh's case (cited supra), in paragraph 200 looks as if the entire Regulation 25(4) has been held to be ultra vires, the same cannot enure to the benefit of the petitioner. The Supreme Court in Sukhdev Singh's case, only confirmed the order of the Allahabad High Court, wherein Regulation 25(1) and very small portion of Regulation 25(4) alone have been held to be unconstitutional and, therefore, the power of the LIC to prevent the employees from participating in the election to the Legislature and Parliament cannot be said to be unconstitutional, as contended by the petitioner.

17. However, in the present case, the facts indicate that the petitioner had given a reply to the Enquiry Officer that though he had filed his nomination on 16.4.2004, he had withdrawn his nomination on 25.4.2004. But unfortunately even before he could reach the returning officer's office, the time for withdrawal is over by 3.00 p.m. and he has submitted his withdrawal requisition only at 3.10 p.m. and, therefore, it was not accepted. The fact that he gave written requisition for withdrawal of nomination is not denied by the respondents.

18. On the contrary, the petitioner has informed the domestic Enquiry Officer about his intimating the same to the first respondent. Notwithstanding the intimation, he has proceeded with the enquiry. In the present case, in the domestic enquiry, excepting the recording of the petitioner's statement, no other evidence had been let in. If the respondents want to take advantage of the petitioner's admission of the misconduct, the statement given by the petitioner in its entirety must be taken into account. They cannot rely upon bits and pieces of his statement only to suit the convenience of the respondents. The petitioner had categorically stated that after his being intimated the refusal of permission,

he has withdrawn his nomination and did not contest the election nor canvassed for any votes. It was due to the technical fault of the Returning Officer, the withdrawal was not notified and his name had appeared in the ballot paper. But there is no proof that he has contested the election in the real sense of electioneering.

19. Knowing fully well the nature of the misconduct, both the competent authority and the appellate authority have stated that they want to take a lenient view, but his past misconducts have prevented them from taking such a lenient view. As rightly contended by the learned Counsel for the petitioner, before the past misconduct is taken into account, they have not put the petitioner to any notice. On the contrary, the first respondent had recorded in his final order that after the show-cause notice and after receiving the explanation from the petitioner, they took note of his past misconduct suo motu and placed reliance on the past conduct as the basis for his dismissal. Otherwise, there was no necessity to state that while leniency is called for, the past conduct deters him from considering the same. The statement made in the punishment order of removal that he proved to be a permanent menace to the peace and order in the functioning of the office was totally unwarranted.

20. Regulation No. 39 provides for several punishments starting from censure to dismissal and nowhere the respondents have stated as to why he was inflicted with the punishment of removal. Even the appellate authority, while reiterating the order of the competent authority (the first respondent), had stated that leniency could be shown, but the past conduct of the petitioner deters him from doing so.

21. The Supreme Court while dealing with the case of Pandian Roadways Corporation not considering the past conduct in terms of its Certified Standing Orders, dealt with the law on this question vide its judgment in Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan, . Paragraphs 18 and 19 of the said judgment may be usefully extracted below:

18. Ordinarily, although Sub-clause (5) of Clause (17) of the Certified Standing Orders is required to be complied with, the same, in our opinion, would not mean that in a given situation, there cannot be any deviation therefrom. In a case where dismissal or removal from service is to be ordinarily followed e.g. in a case of grave misconduct like misappropriation, strict enforcement of the rule may not be insisted upon. When, we say so, we are not oblivious of the law that an executive agency is ordinarily bound by the standard by which it professes its actions to be judged. (See Harjit Singh and Another Vs. The State of Punjab and Another,). But where a procedural provision merely embodied the principles of natural justice, in view of the decision of this Court in State Bank of Patiala (supra), the question as to whether the principle has been followed or not, will depend upon the fact situation obtaining in each case. (See Ashok Kumar Sonkar Vs. Union of India (UOI) and Others,).

19. It will be useful to note that in *State of Punjab v. Sukhwinder Singh* (1999) SCC 1234, this Court has held that the words "gravest act of misconduct" occurring in Rule 16.2(1) of the Punjab Police Rules need not be used in the order of punishment, as it can be found out from the factual matrix obtaining in each case.

(Emphasis Added)

22. Thus, it can be seen that if the present conduct does not warrant dismissal it cannot be made to be more aggravated by adding past misconducts, for which the employee had suffered sufficient punishment. Even when looking into the past conduct, the respondents could not have made a sweeping observation that since the entire conduct was so bad, he cannot continue in service. In essence, the past conduct must have some nexus or continuation to the present misconduct. The present misconduct alleged by the petitioner is purely technical in character, namely, the petitioner had attempted to contest elections contravening the Regulations. On being denied permission, he had made an abortive attempt to withdraw the said nomination, so as to escape from the wrath of further action in terms of the Service Regulations. Since the respondents themselves have considered that for the present misconduct, a leniency could have been shown, it was improper on their part to have linked it up with his past misconducts (for which the petitioner had already been punished) so as to justify their extreme punishment of dismissal.

23. Mr. Silambanan, learned Senior Counsel appearing for the respondents, by relying upon the judgment of the Supreme Court in *Life Insurance Corporation of India Vs. R. Dhandapani*, , submitted that neither the High Court nor the Industrial Tribunal can justify variation of the penalty without reasons. Any relief granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence.

24. In the present case, the respondents themselves wanted to show leniency to the petitioner but for his past conduct. Whereas the petitioner had made all attempts to save himself from any disciplinary action by seeking withdrawal of his nomination. Unfortunately, that could not be done so because of the technical fault committed by the Returning Officer.

25. Looking at the long history of the challenge to the Service Regulations right from the year 1966, which was also found acceptance by the Supreme Court and the Courts have upheld the political right of the employee of a State owned Corporation, such as, LIC, the alleged misconduct committed by the petitioner will have to be seen only as a technical violation and not as a substantive misconduct. Since the respondents have not let in other evidence other than the recording of the statement of the petitioner, the explanation offered by the petitioner will have to be accepted in its entirety. Even the respondents also had

wanted to show leniency but for the past misconduct. But such conduct had to be seen in its own merits.

26. In the light of these factual matrix, this Court has no hesitation to set aside the impugned order of removal passed by the respondents. The writ petition will stand allowed and the petitioner is entitled to get reinstatement. With reference to the backwages, since the petitioner had not worked during the relevant time and his work is that of a Development Officer, this Court is not inclined to grant any backwages for the period from the date of dismissal till the date of his reinstatement. But, the interregnum period shall be counted for all practical purposes including for terminal benefits. However, there will be no order as to costs. The respondents are directed to comply with this order within a period of eight weeks from the date of receipt of a copy of this order.