

**(2003) 11 SHI CK 0007**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No 2753 of 1995**

Kamal Krishan Goel

APPELLANT

Vs

Life Ins. Corpn. of India and Others

RESPONDENT

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**Date of Decision :** 24-11-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 47, 48, 49

**Citation :** (2003) 3 ShimLC 403

**Hon'ble Judges :** R.L. Khurana, J

**Bench :** Single Bench

**Advocate :** Subodh Burathoki and Virender Rathore, for the Appellant;  
Bhupender Gupta Janesh Gupta and Swatantar Dixit, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.L. Khurana, J.—The Petitioner joined the Respondent No. 1 Corporation as Apprentice Development Officer, after having undergone the requisite training, on 8.10.1991 at Solan Branch with Headquarters at Kunihar. On completion of apprentice period of six months, the Petitioner came to be designated as Probationary Development Officer on 8.4.1992. The probation period was of one year, which could be extended by one more year. The Petitioner claims to have been automatically confirmed with effect from 8.4.1994 on the expiry of the maximum period of probation of two years.

2. The services of the Petitioner, as per averments made in the petition, were terminated on 27.10.1992 without assigning any reasons. According to the Petitioner no order of termination was ever served upon him. The contents of letter of termination were made known to him by the Branch Manager, Solan (Respondent No. 4) only on 4.11.1992. The Petitioner represented against his termination. His representation was allowed and he was reinstated in service vide order dated 18.3.1993 (Annexure PD), which reads :

Confidential

Shri K.K. Goel, Dev. Officer, L.I.C. of India, Branch Office, Solan (HP) (Through B.M. Solan)

Dear Sir,

Re : Your reinstatement in the Service of Corporation.

With reference to your representation dated 7.11.1992 requesting for revocation of termination order, we are pleased to inform you that it has been decided to reinstate your services as such with immediate effect. Please note:-

1. The entire period from the date of termination till date of your rejoining your duties will be treated as "DIES-NON.
2. That henceforth you will stay at your headquarters and properly develop the area allotted to you by selecting suitable agents imparting them required training to enable them to transact Life Insurance business.
3. Your performance as well as your field activities shall be watched closely and in case it is found that you are not staying at your headquarter and/or you fail to discharge your duties properly, you will be liable to disciplinary action.

Yours faithfully, Sd/-Hindi Sr. Divisional Manager.

3. Upon having been reinstated the Petitioner represented for waiving of dies-non period and his confirmation in service vide Annexure PE. His representation was rejected by the Respondents. The departmental statutory appeal preferred by the Petitioner against the rejection of his representation, was also dismissed on 23.2.1994 (Annexure PH).

4. The Petitioner claims to have preferred a further appeal before the Chairman of the Respondent No. 1 Corporation. It is averred that no decision on such appeal has ever been communicated to the Petitioner and that during the pendency of such appeal, the Respondents on 12.5.1994 have illegally and wrongly extended the probation period retrospectively from 24.8.1993 to 23.8.1994. It is further averred that instead of confirming the Petitioner in service, the Respondents on 19.8.1994 vide Annexure PL have terminated the service of the Petitioner without assigning any reasons.

5. The Petitioner assailed the termination order dated 19.8.1994 by way of a writ petition, being CWP No. 686 of 1994. In such writ petition a prayer for confirmation in service was also made. An objection was raised by the Respondents in the said writ petition that the same was not maintainable since the Petitioner had failed to avail the alternative remedy available to him under Regulations 47, 48 and 49 of the L.I.C. of India (Staff) Regulations, 1960. On such objection, the Petitioner withdrew the writ petition on 26.10.1994. The order dismissing the writ petition (Annexure PM) reads:-

Learned Counsel for the Petitioner having argued the petition at length, sought permission to withdraw the petition to seek other remedy, as may be available to

him either under the law or Rules or Regulations. The petition is dismissed as withdrawn.

6. The Petitioner, after the dismissal of his writ petition as having been withdrawn, preferred an appeal before the Respondent No. 2 against his termination vide order dated 19.8.1994. Such appeal was dismissed on 8.12.1995. Aggrieved, the Petitioner has approached this Court by way of the present writ petition under Article 226/227, Constitution of India praying for issuance of the following writ, order or direction:

(a) The termination order dated 19.8.1994 and the order dated 18.12.1995 passed in appeal be quashed and the Petitioner be deemed to be continuing in service with all consequential benefits;

(b) The Respondents be directed to confirm the Petitioner in service with effect from 8.4.1993 with all consequential benefits;

(c) The order dated 18.3.1993 passed by Respondent No. 3 directing the period from 27.10.1992 to 18.3.1993 be treated as dies non be quashed and directing the Respondents to treat the said period as duty period with all consequential benefits.

7. The Respondents have not disputed the facts leading to the filing of the present petition. The case put forth by them is that the Petitioner was discharged from service during the probationary period. The impugned order dated 19.8.1994 is innocuous. It is neither punitive nor stigmatic. An objection was also raised as to the maintainability of the present writ petition in view of the dismissal of earlier writ petition as having been withdrawn without any leave or liberty reserved to the Petitioner.

8. Admittedly, the reliefs claimed as at (b) and (c) above were also claimed in the earlier writ petition, being CWP No. 686 of 1994, which was dismissed as withdrawn by the Petitioner on 26.10.1994. No leave or liberty was reserved to the Petitioner while dismissing the writ petition as withdrawn. Therefore, the present writ petition in so far as reliefs (b) and (c) above are concerned, is not maintainable and to that extent is liable to be dismissed.

9. The present writ petition survives only with regard to relief (a) above whereby the termination order dated 19.8.1994 and the appellate order dated 18.12.1995 have been assailed and sought to be quashed and set aside.

10. The termination order dated 19.8.1994 (Annexure PL) reads:

Shri Kamal Krishan Goel,

Prob. Development Officer,

Code No. 1212,

L.I.C. of India,

Vill. & P.O. Kunihar,  
Distt. Solan (HP) -173207

Dear Sir,

Ref : YOUR SERVICES AS PROB. DEVELOPMENT OFFICER.

Please refer to our letter Ref. Sales dated 27.6.1992 putting you on probation w.e.f. 8.4.1992 and our letter dated 13.5.1994 extending your probation period upto 23.8.1994.

In terms of Clause 2 of your appointment letter dated 27.6.1992, it has been decided to discharge you from the services of the L.I.C. of India with immediate effect. Accordingly, you are hereby discharged from the services of the Corporation with immediate effect.

To discharge you from the service is without prejudice to the right of the Corporation to recover all dues or any other amount, that may be due or become due from you.

You should immediately return to Branch Manager, Solan any Manuals, Stationery and any other material issued to you by the L.I.C. of India for official use.

Yours faithfully, Sr. Divisional Manager.

11. The letter of appointment dated 27.6.1992 (Annexure PA) a reference to which has been made in the termination order dated 19.8.1994 (Annexure PL) contains the following terms:

You shall be on probation initially for a period of twelve months from the date of your joining duties as a probationer, but the corporation may, in its sole discretion, extend your probationary period provided that the total probationary period, shall not exceed 24 months counted from the commencement of the Probation, appointment. During the probationary period (which includes extended probationary period, if applicable) you shall be liable to be discharged from service of the corporation without any notice and without any cause being assigned.

(Emphasis supplied)

12. The learned Counsel for the Petitioner contended that though on the face of it the impugned order of termination dated 19.8.1994 (Annexure PL) appears to be a simple order of discharge/termination casting no stigma on the Petitioner, since a reference therein has been made therein to a letter dated 13.5.1994 (Annexure PK), the same can be looked into for the purpose of determining whether the impugned order of termination is a simple order of termination or punitive. It has further been contended that a bare reading of the letter dated 13.5.1994 (Annexure PK) would show that the impugned order of termination is punitive and stigmatic. In support of his contention, reliance was placed on the decision of the Hon"ble Supreme Court in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others,

13. In the case relied upon by the learned Counsel for the Petitioner, the termination order contained a reference to three letters which were addressed to the Appellant therein prior to the termination of his services. In these letters the alleged acts of omission and commission of the Appellant were pointed out.

14. One of the question formulated for determination by the Hon"ble Supreme Court was can the stigma be gathered by referring back to proceedings referred to in the order of termination?

15. Answering the question in the affirmative, the Hon"ble Supreme Court held that the words amounting to stigma need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination or in an annexure thereto since the document referred to in the termination order or in its annexures could be called for or asked for by any future employer of the Probationer.

16. In the present case, in the termination order dated 19.8.1994 (Annexure PL) contains a reference to two letters, namely letter of appointment dated 27.6.1992 (Annexure PA) and letter dated 13.5.1994 (Annexure PK) extending the probationary period of the Petitioner.

17. Reliance was placed on behalf of the Petitioner only on the letter dated 13.5.1994 (Annexure PK) referred to in the termination order dated 19.8.1994 to contend that the impugned order of termination read with letter Annexure PK would show that the order of termination is stigmatic and punitive.

18. For proper appreciation of the contents of the letter dated 13.5.1994 (Annexure PK), it may not be out of place to quote in full hereunder the said letter:-

Shri K.K. Goel

Prob. Dev. Officer

LIC of India

Branch Office

Solan

Through S.B.M.-Solan.

Dear Sir,

Re : Your Probationary Period.

Consequent upon the rejection of your appeal by the Competent Authority for allowing you to give the credit of business done during the "Dies-Non" period w.e.f. 31.10.1992 to 17.3.1993, we have now considered your performance for the probationary period ending 23.8.1993.

We find that you have fulfilled the norms for Sum Assured and Schedule First

Year Premium Income only as mentioned in the Appointment letter dated 27.6.1992. However, you have not qualified atleast 9 agents during the Probationary Period.

Further, it has also been noticed that still you are not staying continuously at your headquarter i.e. Kunihar. However, taking a lenient view, it has been decided to extend your probationary period by one year upto 23.8.1994, during which you are required to fulfil following norms of performance w.e.f. 24.8.1993 to 23.8.1994:-

Sum Assured : 60 lacs

SFYPI : 1.90 lacs

No. of lives : 120

Active Agents : 15

Qualified Agents : 9

You are advised in your own interest to stay at your headquarter permanently and develop the area of operation for Insurance Work in terms of Appointment Letter dated 27.6.1992.

We may also inform you that your performance shall be further reviewed after receiving the performance results as on 23.8.1994 and till you hear from us you shall not be deemed to have been confirmed.

Yours faithfully, Sd/- Sr. Divisional Manager.

A bare reading of the above said letter shows that nothing adverse or stigmatic is contained therein against his work and conduct. It only contains the comments with regard to the work and performance of the Petitioner during his initial probationary period. Keeping in view his work and performance, the Respondents had extended his probationary period till 23.8.1994.

19. In Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, it has been held that one of the judicially evolved tests to determine whether in substance the order of termination is punitive is to see whether prior to termination there was-

- (a) a full scale formal inquiry;
- (b) into the allegations involving moral turpitude or misconduct which;
- (c) culminated in a finding of guilt.

If all the three factors are present, the termination would be punitive irrespective of the form of termination order. However, if any one of the three factors is missing, the termination order would not be punitive and has to be upheld.

20. In the case before the apex Court before the services of the Appellant therein

were terminated there was an enquiry into some allegations against him. It was contended that the termination turned the innocuous order into one of punishment. Repelling the contention, the apex Court observed in para 32 of the judgment as under:-

We are also not prepared to hold that the enquiry held prior to order of termination turned this otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the Appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the termination was in substance punitive exist here.

While dealing with the question as to what language in a termination order would amount to a stigma, it was observed :-

Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

21. The Hon"ble Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, has held that before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of rules governing a probationer in this respect, the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude, the probationer is unsuitable for the job and hence must be discharged/terminated. No punishment is involved therein. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal of an inquiry. But in those cases the authority may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination.

22. Again in *H.F. Sangati v. R.G. High Court of Karnataka and Ors.* 2001 Lab. I.C. 1104, the Hon"ble Supreme Court while dealing with the question of termination of services of a probationer, has observed :-

It is well settled by a series of decisions of this Court including the Constitution

Bench decision in Parshotam Lal Dhingra Vs. Union of India (UOI), and 7 Judges Bench decision in Samsheer Singh Vs. State of Punjab and Another, that services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. In Samsheer Singh's case it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post; the competent authority may come to conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job or for any temperamental or other similar grounds not involving moral turpitude. No punishment is involved in such a situation. Recently, in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, having reviewed the entire available case law on the issue this Court has held that termination of a probationer's services, if motivated by certain allegations tantamounting to misconduct but not forming foundation of a simple order of termination cannot be termed punitive and hence would be valid. In Satya Narayan Athya Vs. High Court of M.P. and another, the Petitioner appointed on probation as a Civil Judge and not confirmed was discharged from service in view of the non-satisfactory nature of the service. This Court held that the High Court was justified in discharging the Petitioner from service during the period of probation and it was not necessary that there should have been a charge and an enquiry on his conduct since the Petitioner was only on probation and it was open to the High Court to consider whether he was suitable for confirmation or should be discharged from service.

23. Annexure PK, in the present case, a reference to which has been made in the impugned termination order. Annexure PL only talks about non achieving of the target fixed in regard to the performance of the Petitioner during the probationary period. On similar facts in M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, the Hon'ble Supreme Court upheld the termination of the probationer working with the Respondent Corporation and it was held that service of a probationer could be terminated after making an overall assessment of his performance during the probation period and no notice is required to be given before terminating his service.

24. Dealing with a similar situation of termination of services of a probationer, the Hon'ble Supreme Court in Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another, has held :-

Generally in connection with an order of termination, a question is raised before the Court as to what is the motive behind the termination of the service of the employee concerned whether the reason mentioned in the order of termination has to be accepted on its face value or the background in which such order of termination simpliciter has been passed should be examined to find out as to

whether an officer on probation or holding a temporary appointment has been, in fact, dismissed from the service without initiating any departmental enquiry. If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of terminations simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature.

When an appointment is made on probation, it presupposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation. He is to be confirmed after the expiry of probation only when his service during the period of probation is found to be satisfactory and he is considered suitable for the post against which he has been appointed. The principle of beating of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee.

Even if such employee while questioning the validity of an order of termination simpliciter brings on the record that some preliminary enquiry or examination of some allegations had been made, that will not vitiate the order of termination. Reference in this connection may be made to the case of Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, , where it was pointed out that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. It was also said that even if misconduct, negligence, inefficiency may be the motive or the influencing factor which induced the employer to terminate the service of the employee which such employer admittedly had under the terms or the appointment, such termination cannot be held to be penalty or punishment....

25. Following the above said principle and reading the letter Annexure PK along

with the impugned termination order, Annexure PL, it cannot be said that the termination of the Petitioner, who was still on probation, is stigmatic or punitive. The impugned order dated 19.8.1994 (Annexure PL) is an order of termination/discharge simpliciter and as such have to be upheld.

26. For the self same reasons no fault can be found in the appellate order dated 18.12.1995.

27. As a result, there being no merit in the writ petition, the same is dismissed leaving the parties to bear their own costs.