

(2008) 06 SHI CK 0023
In the High Court Of Himachal Pradesh

L.I.C. and Others

APPELLANT

Vs

Om Prakash

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Citation : (2008) 3 ShimLC 121

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The present letters patent appeal has been preferred against the order dated 21.5.2003, whereby, learned Single Judge has allowed Civil Writ Petition No. 41 of 1998 preferred by the respondent.

2. By the impugned order dated 25.6.1996 challenged in the aforesaid writ petition, the service of the respondent herein was terminated in exercise of powers under Regulation 39(1)(f) of Life Insurance Corporation of India (Staff) Regulations, 1960 (in short called "Regulations") for the alleged charge of unauthorized absence of more than 90 days.

3. In order to adjudicate the present appeal, it is necessary to give a back ground of the case. The respondent had joined as Assistant Administrative Officer in the Life Insurance Corporation (in short called "Corporation") in the year 1992 and for alleged unauthorizedly absence from duty from 25.9.1995, a charge-sheet-cum-show-cause notice dated 14.2.1996 was served to the respondent on his permanent address shown in his service. By the said notice the respondent was advised to resume the duty, however, despite such communication to explain his unauthorized absence, no response was given. The said charge-sheet-cum-show-cause notice was put on the notice board in compliance to the requirement of service as indicated in Explanation 2 of Regulation 39 of the "Regulations". It appears that by not getting response by the respondent, the Zonal Office of the Disciplinary Authority vide its order has

derived an inference that the respondent is guilty of the offence for abandoning his post as indicated in Regulation 39(4)(iii) and an order dated 25.6.1996 was passed terminating the service of the respondent under Regulation 39(1)(f) of "Regulations".

4. The said order was challenged by way of writ petition. After considering the pleadings and rival contentions of the respondent, learned Single Judge has arrived at finding that no endeavour was made on the part of the appellants to hold an inquiry even for ex-parte before imposing a penalty and while allowing the Writ Petition No. 41 of 1998 vide impugned order dated 21.5.2003. Learned Single Judge has also observed that the respondent had not been afforded any opportunity of hearing before awarding punishment.

5. Learned Single Judge while placing reliance on D.K. Yadav Vs. J.M.A. Industries Ltd., , has held that in absence of an inquiry having been made against the respondent and order imposing punishment passed without affording opportunity of hearing to the respondent is not legally sustainable. Learned Single Judge, however, while allowing the writ petition vide impugned order has given liberty to the appellants herein to proceed against the respondent for holding inquiry on the charges levelled against him in terms of Regulation 39 of the service conditions of the respondent. The observations indicated by learned Single Judge are indicated as below:

The Hon''ble Supreme Court in D.K. Yadav (supra) has held that application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person and that an order involving civil consequences must be made consistently with the rules of natural justice. Civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. It was further held that the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive" or damaging action and that the procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory result or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14.

In the case before the Hon''ble Supreme Court, the appellant therein was visited with the penalty of dismissal from service without holding any inquiry into the charges levelled against him, namely, absent from duty continuously for a period of more than 8 calendar days. The Hon''ble Supreme Court while setting aside the dismissal of the appellant therein held the imposition of penalty of dismissal from service as bad in the absence of inquiry on the charges levelled against the appellant.

6. On the other hand, learned Counsel for the respondent has submitted that the termination order dated 25.6.1996 has not been passed in consonance to the provisions of Regulation 39(2). According to him, in order to terminate the respondent in exercise the powers under Regulation 39(1)(f), the procedure prescribed for as indicated under Regulation 39(2) cannot be ignored. The authorities of Corporation could have taken a decision under Regulation 39(1)(f) provided the concerned authorities have given a subsequent second show-cause notice in respect of the proposed action to be taken against the respondent as required under Regulation 39(2) of "Regulations".

7. We have heard learned Counsel for the parties and have perused the documents.

For testing the validity of the impugned order dated 25.6.1996 above, it is necessary to quote the relevant provisions of Regulations:

39. (1) Without prejudice to the provisions of other regulations, (any one or more of) the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed (by the disciplinary authority, specified in Schedule I) on an employee who commits a breach of regulations of the Corporation, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct:

(a) censure;

(b) withholding of one or more increments either permanently or for a specified period;

(c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders;

(d) reduction to a lower service, or post, or to a lower time-scale, or to a lower stage in a time-scale;

(e) compulsory retirement;

(f) removal from service which shall not be a disqualification for future employment;

(g) dismissal.

(2) No order imposing on an employee any of the penalties specified in Clauses (b) to (g) of Sub-regulation (1) supra, shall be passed by the disciplinary authority specified in Schedule I without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him.

(3) The disciplinary authority empowered to impose any of the penalties (b), (c), (d), (e), (f) or (g) may itself enquire into such of the charges as are not admitted or if it considers it necessary so to do appoint a board of enquiry or an enquiry officer for the purpose.

(4) Notwithstanding anything contained in Sub-regulations (1) and (2) above:

(i) where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge; or

(ii) where the authority concerned is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in this regulation; or

(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.

2. All communications under this regulation and copies of orders passed thereunder may be delivered personally to the employee if he is attending office; otherwise they shall be sent by registered post to the address noted in the service record. Where such communications or copies of orders cannot be served on him personally or by registered post, copies thereof shall be affixed on the notice board of the office in which the employee is employed, and on such affixing such communications and orders shall be deemed to have been properly served on him.

8. By mere reading of the provisions of Regulation 39(1)(f), it becomes evident that before termination, the procedure indicated under Regulation 39(2) has to be adopted.

9. We are of the considered view that after communication of charge-sheet-cum-show-cause notice dated 14.2.1996 and keeping in view the response of the respondent when the competent authority of appellants/Corporation has proposed to pass an order of removal then a show-cause notice was to be served subsequently to the respondent herein, thereafter only order of punishment under Regulation 39(1)(f) could have been passed. Apparently no such subsequent notice in respect of the proposed action to be taken against the respondent was served to him. As such, the statutory compliance of the provisions of Regulation 39(2) has not been completed. In the facts and circumstances, the said termination order could not be said to have been passed after providing opportunity of hearing to the respondent herein. The termination order dated 25.6.1996 has been passed without observing the procedural formalizes and the provisions of Regulation 39 of "Regulations", as such, the

order dated 25.6.1996 is not legally sustainable, therefore, same has rightly been set-aside by the learned Single Judge.

10. We are of the considered view that the observations of learned Single Judge while setting aside the impugned order dated 25.6.1996 and while allowing the writ petition of the respondent herein vide order dated 21.5.2003 is legally correct and requires no interference in respect of observations of learned Single Judge indicating opportunity to the appellants herein to take further action against the respondent.

In view of the above observations, the appeal is dismissed.