

(1975) 04 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 786 of 1972

Mahadeb Dash

APPELLANT

Vs

Life Insurance Corporation of India

RESPONDENT

Date of Decision : 28-04-1975

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 1, 39, 46, 46(2), 49

Citation : AIR 1975 Ori 234

Hon'ble Judges : G.K. Misra, C.J.;B.K. Ray, J

Bench : Division Bench

Advocate : S.B. Nanda and J.K. Tripathy, for the Appellant; R. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The petitioner was working as a Development officer under the Life Insurance Corporation of India (hereinafter to be referred to as the L. I. C.). On 21-10-1965 certain charges were framed against him under Annexure 1 in a disciplinary proceeding. By Annexure 2 dated 8-11-1965 the petitioner filed his written statement. Enquiry was entrusted to the Assistant Divisional Manager, Cuttack who submitted his report Annexure 6 on 21-11-1966. The Disciplinary Authority (Zonal Manager, Calcutta) issued the second show-cause notice Annexure 3 on 7-7-1967 asking the petitioner to show cause why he should not be dismissed from service. By Annexure 7 dated 11-8-1967 the petitioner showed cause. By Annexure 8 dated 6-1-1968 the petitioner was dismissed from service. On 5-2-1968 he filed a petition of appeal (Annexure 9) to the Managing Director who rejected the same by his order Annexure 11 on 18-3-1968. A memorial to the Chairman, L. I. C. was rejected under Annexure 13 on 26-8-1968, The petitioner filed O. J. C. No. 877 of 1968 on 2-9-1968 under Articles 226 and 227 of the Constitution assailing the order of dismissal. That writ application was withdrawn on 16-9-1971. This writ application was filed under Articles 226 and 227 of the Constitution on 29-9-1972 for quashing the

order of dismissal.

2. Mr. Tripatby for the petitioner raised the following contentions:--

(i) Though the enquiry officer found that the petitioner was guilty of some charges and exonerated him of other charges, the disciplinary authority held him guilty of all the charges without indicating the reasons influencing him to take a different view from the Enquiry Officer and as such the order of dismissal is unsustainable.

(ii) The appellate authority failed to exercise jurisdiction conferred upon him under Regulation 46 (2) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter to be referred to as the Regulations) inasmuch as he gave no reasoned order based on materials on record to indicate that he applied his mind to the findings given and penalty imposed by the disciplinary authority.

(iii) The Chairman failed to exercise jurisdiction vested in him under Regulation 49.

Besides combating these contentions, Mr. Mohanty for the opposite party urged that the writ application is liable to be dismissed on the ground of delay.

All these contentions require careful examination.

3. Before examining the various contentions it would be appropriate to notice the relevant law on the point.

The Regulations came into force with effect from 1-7-1970. There was conflict of decisions as to whether the Regulations have the force of law and whether the statutory bodies thereunder are "authorities" within the meaning of Article 12 of the Constitution. The matter is now concluded by 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, (See para 67). Their Lordships held that the Regulations have the force of law and the statutory bodies mentioned therein are "authorities" within the meaning of Article 12 of the Constitution.

4. Chapter III of the Regulations deals with conduct, discipline and appeals. Regulation 39 prescribes penalties. So far as material, it is extracted hereunder :--

"39 (1) Without prejudice to the provisions of other regulations, the following penalties for good and sufficient reasons, and as hereinafter provided, he imposed 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 increments or promotion;
- (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 employee shall be dismissed or removed or compulsorily retired or reduced to a lower service or post or to a lower time-scale or to a lower stage in a time-scale by an authority subordinate to that by which he was appointed and 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.

x x x x"

Regulations 40 to 45 deal with right of appeal, period of limitation for appeals, form and contents of appeal, submission of appeals, withholding of appeals, and transmission of appeals respectively.

5. Regulation 46 provides for consideration of appeals. Regulation 46 (2) and (3), so far as material, runs thus:--

"46. (1)

(2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 39, the appellate authority shall consider--

- (a) whether the procedure prescribed in these regulations has been complied with, and if not, whether such non-compliance has resulted in failure of justice;
- (b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders--

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

x x x x

(3) All appeals should be disposed of as expeditiously as possible and in any event not later than 6 months from the date of receipt of the appeal by the appellate authority."

6. Regulation 49 deals with memorial, Under it any employee whose appeal under the Regulations has been rejected by the Appellate Authority subordinate to the Chairman may address a memorial to the Chairman in respect of that matter,

7. A critical survey of the scheme of Chapter III with special reference to Regulations 39, 46 and 49 would show that the disciplinary authority, the appellate authority and the Chairman to whom a memorial lies would apply their minds fully to the materials on record and come to a conclusion whether charges have been established, They should also give due consideration to the adequacy or sufficiency of the penalty imposed. Reasons are to be given by them why a particular penalty was imposed and whether it was excessive, adequate or inadequate.

8. In Regulation 39 the expression "for good and sufficient reasons" is not without significance. It enjoins upon the authority to give reasons as to why a particular penalty out of the seven categories of penalty referred to therein is to be imposed. Initially that is the responsibility of the disciplinary authority. Regulation 39 (2) corresponds to Article 311 of the Constitution in material particulars. Under Regulation 39 (3) the disciplinary authority is entitled to appoint an enquiry officer.

9. The duty of the appellate authority has been specifically and clearly mentioned in Regulation 46 (2). The appellate authority is to examine if the procedure prescribed in Regulation 39 (2) has been complied with and whether non-compliance has resulted in failure of justice. In this case there is no complaint that there was dereliction of procedural prescription.

The appellate authority is also to examine whether the findings recorded by the disciplinary authority are justified. The appellate authority cannot reach such a conclusion merely by saying that the findings are justified. It has to apply its mind fully to all the materials on record, consider the grounds given in the memorandum of appeal and then come to the conclusion whether the findings are supportable. If the findings are justified, the appeal is to be dismissed. The appellate authority has got full power to set aside the findings. Power has been

conferred upon it to set aside, reduce, confirm or enhance the penalty. It may also remit the case to the disciplinary authority to re-examine the matter.

The duty of the appellate authority does not end by critically examining the findings. A further duty has been enjoined upon it to examine whether the penalty imposed by the disciplinary authority is excessive, adequate or inadequate.

All the authorities under the Regulations have been constituted quasi-judicial tribunals and they have to apply their judicial mind in recording the verdict not only in the matter of the procedure and findings but also on the question of the penalty, where the appellate authority agrees with the findings of the disciplinary authority but fails to apply its mind with regard to the excessiveness, adequacy or inadequacy of the penalty, the order is liable to be quashed, for non-application of the mind by following the legal duty imposed upon it under Regulation 46 (2). Similar is the duty under Regulation 49 of the Chairman while dealing with the memorial. Though the duties have not been specifically enumerated in Regulation 49 as has been done in Regulation 46 (2), yet the standard of consideration would be the same. The framers of the Regulations did not consider it necessary to repeat the same words as the appellate authority and the authority dealing with the memorial have the same powers as the disciplinary authority.

The essence of the matter therefore is that the Regulations created several quasi-judicial authorities to deal with disciplinary proceedings and the appeals and memorials arising therefrom. The appellate authority under Regulation 46 (2) and the Chairman under Regulation 49 are to fully apply their minds to the facts of the case and record conclusions whether the findings were justified and the penalty was proper. To do so, their orders must be speaking orders, otherwise one cannot understand that they observed the mandatory provisions enjoined upon them in Regulations 46 and 49.

10. The contentions raised by the petitioner would now be examined in the light of the principles laid down above. Material facts for that purpose may now be noticed.

The following charges were framed against the petitioner :--

"That you while working as a Development Officer under our Dhenkanal Office, had been operating a "Benami" agency in the name of one Sri Basudeb Das, your son Under Code No. 667/582 and you wilfully and deliberately suppressed this information while the agency was attached to your organisation. Thus you have acted in contravention of para 2 of Clause 12 of the appointment letter dated 25-6-1960 issued in your favour, appointing you as a Development officer of the corporation.

That you had also allowed the above agency to work under your organisation knowing fully that he was a minor during the years 1961 to 1964, when he was

attached to your organisation.

That it has also been reported to us that you have been holding an appointment as "Sarbarakar" (Revenue Collector) of village Katapall as per orders of the Collector of Cuttack, dated 24th February, 1965 even during your service as a Development Officer, thereby committing a breach of Regulation No. 28 of the Staff Regulations, 1960."

The petitioner in his show-cause petition admitted that he had held the Sarbarakari of village Katapall. He said that he had no financial benefit accruing out of it and he bagged to be exonerated of this charge as he was not conversant with the provisions of the Regulations, He denied the other charges.

The Enquiry Officer recorded his findings thus :--

"He has not effectively worked as a Sarbarkar excepting purchasing 15 acres of landed property as Rayat at cheap rate. I do not consider him guilty of committing the breach of Regulation No. 28 of Staff Regulations, 1960.

I conclude that he has not wilfully or deliberately suppressed information that Sri Basudeb Das was his son. Secondly in holding the appointment of a Sarbarakar of village Katapall he has not committed breach of Regulation 28 of Staff Regulations, 1960 but he is guilty of operating a "Benami" agency in the name of Sri Basudeb Das, his son although it is to be added that he has been helped in committing the offence by the Dhenkanal Sub-office and Sri L. N. Panda, Development Officer.

He is guilty of allowing the agent to work under his organisation knowing fully that he was minor during the years 1961 to 1964 when he was attached to his organisation."

It would thus be seen that the enquiry officer exonerated the petitioner of some of the charges and found him guilty of other charges.

The Zonal Manager issued the second show cause notice with the following observation :--

"I observe from the findings of the Enquiry officer and other relevant papers that the charges framed against you have been established. Since the charges framed against you have been established, I propose to dismiss you from the service of Life Insurance Corporation of India."

It would be seen that the Zonal Manager failed to apply his mind to the report of The enquiry officer. While the enquiry officer exonerated the petitioner of some of the charges, the Zonal Manager stated that the enquiry officer had found all the charges established against the petitioner.

In his reply to the second show-cause notice the petitioner gave his reasons why the findings would not be accepted and the punishment of dismissal would not be imposed.

11. The Zonal Manager passed the order of dismissal, the whole of which may be extracted :----

"Upon considering your reply dated the 11th August, 1967 to the show cause notice of even reference dated the 11th July, 1967, issued to you by us, I find no reason to revise the penalty to be imposed upon you as proposed in the aforesaid show cause notice.

As such, you are hereby informed that you are dismissed from the services of the the Insurance Corporation of India with immediate effect in terms of Regulation 39 (1) (g) of the Life Insurance Corporation of India (Staff) Regulations, 1960."

It would thus be seen that neither in the second show-cause notice nor in the final order of dismissal the disciplinary authority gave his reasons as to how he was satisfied that the charges had been established or the penalty was not severe. There is clearly non-application of mind to the materials on record which could only be evinced from the reasoned order itself.

12. In appeal the Managing Director passed the following order;--

"I have considered the appeal dated the 6th February, 1968 from Sri Mahadeb Dash, against the order dated 6th January. 1968 passed by the Zonal Manager. Calcutta, dismissing Sri Mahadeb Das from the service of the Corporation under Regulation 39 (1) (g) of the Life Insurance Corporation of India (Staff) Regulations 1960. The said order was passed as a result of the disciplinary proceeding taken against him on the charges of allowing the Benami Agency of his minor son to operate under his own organisation and for holding an appointment as "Sarbarakar (Revenue Collector). After going through the records of the case. I am satisfied that the proceeding has been conducted in accordance with the prescribed procedure and that the finding of the Zonal Manager are justified. In the circumstances. I do hereby order that the appeal be and is hereby rejected."

The first para merely gives the introduction. The second para is the substantive passage. It does not at all show as to what materials the Managing Director took into consideration. He merely borrows the words of Regulation 46 (2) (b) that the findings are justified. He therefore failed to exercise jurisdiction vested in him by not applying his mind to the facts and circumstances of the case and then concluding whether the findings were justified.

Moreover he did not at all apply his mind to the question of excessiveness or adequacy of the penalty imposed as prescribed in Regulation 46 (2) (c). Therein also he signally failed to exercise jurisdiction vested in him.

13. The Chairman has the same power as the appellate authority in dealing with the memorial under Regulation 49. He also failed to exercise his jurisdiction as would appear from his order, the substantive portion of which is to the effect ;--

"In considering the memorial of the Development officer against the above order

of the Managing Director and on perusing the record of the proceedings I am satisfied that the findings of the Zonal Manager and that of the Managing Director are justified."

This is again a bald order which fails to give a glimpse of the mind of the Chairman. Ex facie there are no reasons in support of the order.

14. Thus both the appellate authority and the Chairman failed to exercise jurisdiction vested in them under Regulations 46 and 49 respectively. Their orders Annexures 8 and 13 are liable to be quashed.

15. Mr. Mohanty, however, contends that the writ application is liable to be dismissed on account of inordinate delay. To the writ application itself explanation has been given as to why there has been delay. It is to be remembered that the dismissal order was assailed in O. J. C. No. 877 of 1968 which was allowed by the court to be withdrawn on 16-9-1971 as in AIR 1969 Rom 337, (Pramodrai v. L. I. C.) the L. I. C. was held not to be an "authority" within the meaning of Article 12 of the Constitution against whom an application under Articles 226 and 227 of the Constitution would lie. The present writ application had been filed on 29-9-1972 just after one year of the withdrawal of the previous writ application. Before the controversy was settled by the Supreme Court, several other High Courts held that the functionaries under the Regulations are "authorities" within the meaning of Article 12 of the Constitution and Pramodrai Shamaldas Bhavsar Vs. Life Insurance Corporation of India, was dissented from. (See 1972 (2) Lab LJ 546 (Ker), (S. R. S. Mony v. L. I. C.); 1973 (1) Lab LJ 87 = (1974 Lab IC 657) (Mad). (L. I. C. Higher Grade Assistants" Association v. L. I. C.) which was affirmed by a Division Bench of that court in 1973 (2) Lab LJ 288 (Mad), (A. L. I. Employees" Association v. L. I. C. Higher Grade Assistants" Association). The Kerala Judgment was pronounced on 13-4-72 and was reported a little later. The Madras Judgment was delivered on 30-11-72 and was reported afterwards. The present writ application was filed after some of these judgments were pronounced dissenting from the Bombay view Though apparently the present writ application had been filed about 44 years after the order of dismissal was passed, really there was no such inordinate delay as the first writ application was filed soon after the memorial was rejected and the second writ application was filed after one year and few days from the date of withdrawal of the first writ application as soon as the petitioner's advocate came to know of some decisions upholding the maintainability of a writ application. There is no particular period of limitation prescribed for invoking the jurisdiction of this court under Articles 226 and 227 of the Constitution. Whether there has been delay so as not to grant relief under Articles 226 and 227 of the Constitution would depend upon the facts and circumstances of each case. At the time when the first writ application was withdrawn, the view current was adverse to the petitioner and accordingly the petitioner was permitted to withdraw the writ application. The then prevailing view has been overruled and the matter has been finally set at rest by the

Constitution Bench decision of the Supreme Court. In the circumstances, the real delay is delay of one year from the date of withdrawal of the first writ application till the filing of this writ application. In the facts and circumstances of this case, we are not inclined to reject the writ application on the ground of delay.

16. In the result, the writ application is allowed, the impugned orders Annexures 8 and 13 are quashed and the case would go back to the Zonal Manager for reconsideration of the appeal in accordance with law and the observations made above. It need hardly be mentioned that the appeal would be disposed of as expeditiously as possible keeping in view Regulation 46 (3). In the circumstances, parties to bear their own costs.

B.K. Ray, J.

17. I agree.