
(2010) 03 OHC CK 0049
In the Orissa High Court

P. Prabhakar Verma

APPELLANT

Vs

LIC of India and Others

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Citation : (2010) 110 CLT 49 : (2010) 126 FLR 1124 : (2011) 2 LLJ 476

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Judgement

A.S. Naidu, J.—The Petitioner was working as an Assistant in the office of Life Insurance Corporation, Berhampur Branch-I. He seeks to assail the Order Dated 27.5.1996 (Annexure-2) passed by Opp. Party No. 1 imposing punishment of reduction in the basic pay by five stages permanently.

2. Bereft of unnecessary details, the short facts are stated here-in-below for better appreciation. The Petitioner while continuing in the post of Assistant at Berhampur Branch of the Life Insurance Corporation went on leave to attend his ailing wife, who suffered from cardiac problems. His wife was admitted in M.K.C.G Medical College, Berhampur. Unfortunately there was no other male member in the family & as the treatment continued for a long time & she was to undergo operation at Satyasai Institute of Higher Medical Sciences, Prasanti Nilayam, Putaparty at Andhra Pradesh, the Petitioner could not join in his duties within the sanctioned leave period. He was constrained to extend his leave time & again. While his wife was struggling between life & death, his elder son, who was prosecuting his +2 studies, absconded from his house & despite sincere attempts, the Petitioner could not trace his whereabouts. In view of the aforesaid mis-happenings, the Petitioner lost his balance of mind & could not report to his duties till 8.9.1993. After gaining confidence, he submitted his joining report on 9.9.1993, but the same was not accepted by the authorities on the ground that he has already been removed from service with effect from 22.1.1993.

3. On enquiry, the Petitioner came to know that by Order Dated 22.1.1993 (Annexure-2), the Senior Divisional Manager had imposed punishment of

removal from service in exercise of the powers conferred upon him under Regulation 39(1)(F) read with 39(4)(III) of the Life Insurance Corporation of India (Staff) Regulation, 1960, in short, "Regulation, 1960", mainly on the ground that the Petitioner remained absent continuously for more than ninety days without any communication whatsoever.

4. Being aggrieved by the said order, the Petitioner preferred an appeal in consonance with Regulation 40 of the Regulation, 1960 before the Zonal Manager. After perusing the records, the Appellate authority found that the Petitioner remained absent from office with effect from 30.10.1991 without any sanctioned leave. On verification of the leave records of the Petitioner, it was found that the Petitioner had sent telegrams till 18.11.1991 requesting to extend his leave, but then no leave application was filed nor any supporting medical documents were submitted. The Appellate authority further found that a departmental proceeding was initiated, charge-sheet was framed & show cause notice was issued, unfortunately the Petitioner failed to submit any show cause. Thus, the Appellate authority was satisfied that sufficient opportunity was afforded to the Petitioner before passing final order of dismissal from service. The Zonal Manager (Appellate authority) on consideration of the entire facts & circumstances & the charge-sheet took a liberal & lenient view & set aside the order of removal of the Petitioner from the services of the Corporation & in stead imposed punishment of reduction of basic pay by five stages permanently as per Regulation 39(1)(d) of the Regulation, 1960 The said order, as stated earlier, is assailed in this Writ Petition.

5. Learned Counsel for the Petitioner submits that the punishment imposed is too harsh. It is stated that the Petitioner was not granted enough opportunity by the disciplinary authority. That apart, it is submitted that the Petitioner had no intention to remain absent from service, but the circumstances compelled him to do so. Reiterating the facts, Learned Counsel for the Petitioner submitted that the punishment awarded is not only excessive, but also disproportionate to the alleged charges & it is a fit case where the same should be set aside.

6. Mr. Sanjit Mohanty, Learned Sr. Counsel appearing for the Corporation, on the other hand, took pain to place the orders passed by the authorities before this Court & submitted that perusal of the same would reveal that the Petitioner had not acted bonafidely inasmuch as though opportunity was given to him to show cause, he failed to avail the same. It is further submitted that in consonance with the Regulation, 1960 if an employee remains absent unauthorisedly for more than the stipulated period, the authorities have the power to dismiss him from service. Even otherwise, it is submitted that the Appellate authority has taken a very lenient view & it is a fit case where the writ application may be dismissed.

7. We have heard Learned Counsel for the parties at length & also perused all the documents annexed to the writ application & counter affidavit meticulously.

8. Regulation 39 of the Regulation, 1960 prescribes penalties to be imposed for

good & sufficient reasons 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. Clause (d) of the said Regulation reads as follows:

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

9. In the case in hand, as would be evident from the facts & circumstances, the Petitioner went through a turmoil period inasmuch as his wife suffered from cardiac problems & had to ultimately undergo operation at Satyasai Institute of Higher Medical Sciences, Prasanti Nilayam, Putaparty at Andhra Pradesh Added to it, his son, who was a +2 student absconded. The shock a person would receive by such mis-happenings definitely would be very severe Admittedly, the Petitioner proceeded on leave at the first Instance, but later on, circumstances became such, that he was not able to come & Join and/or extend his period of leave. He was the only male member of the family. The facts further reveal that he was appointed on 1.6.1962 & was confirmed on 1.2.1963. He proceeded on leave in the year 1991. Thus, he had served the Corporation for near about 30 years & as such, it is to be presumed that he had enough leave to his credit & the disciplinary authority should have taken a lenient view & adjusted the period of absence in view of the peculiar facts & circumstances of the case. The Appellate authority has considered all the facts & circumstances with an humanitarian touch He had set aside the order of dismissal & in stead imposed the penalty of reduction of basic pay by 5 stages permanently.

10. Considering the aforesaid facts & circumstances, this Court feels that the penalty imposed though strictly speaking is not disproportionate to the allegations, but towards the higher side. This Court, therefore, while not interfering with the order passed by the Appellate authority vide Annexure-2, modified the penalty of reduction of basic pay by two stages permanently in stead of 5 stages.

11. With the aforesaid modification of penalty, the Writ application is disposed of.

B.N. Mahapatra, J.

I agree