(2000) 09 AHC CK 0127

In the Allahabad High Court

Case No : C.M.W.P. No. 31688 of 1994

Rakesh Agarwal APPELLANT

Vs

Chairman, L.I.C. of India and others RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Life Insurance Corporation (Agents) Regulations, 1972 — Regulation 9
Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 14(4), 56

Citation : (2000) 4 AWC 3145 : (2000) 87 FLR 717

Hon'ble Judges : Sudhir Narain, J;Krishna Kumar, J

Bench : Division Bench

Advocate : R.N. Singh and K.C. Sinha, for the Appellant; R.P. Goel, A.G., Satish Chaturvedi, R.G. Padia, S.C. and G.C. Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Narain and Krishna Kumar, JJ.—The basic question involved in this writ petition is as to whether the discharge of the petitioner from service as probationer based on enquiry report was foundation of termination of his service or it was a simple enquiry to assess the performance of the petitioner.

2. The factual matrix of the case is that the petitioner was appointed as Probationary Development Officer in Life Insurance Corporation of India w.e.f. 9.3.93 vide appointment dated 17.3.93. As per clause 10 of the appointment order, the petitioner was required to secure through the agents recruited at his instance, minimum completed life business of Rs. 80 lacs yielding a first year''s schedule premium income of not less than 2 lacs. It was further provided that the minimum business set out above shall be spread over not less than 250 lives. The third requirement as per the appointment order was that at least 15 of the agents appointed on his recommendations during the period of probation should have become active and fifteen agents individually should have put in during that period the minimum business required of them in an agency year according to Regulation 9 of the L. I. C. of India (Agents Regulation, 1972). The petitioner

was to remain on probation initially for a period of twelve months, the Corporation could, however, extend his probationary period for another period upto one year.

3. As per clause 11, on satisfactory completion of the period of probation the petitioner was to be confirmed in the service of the Corporation in Class 11. It was further provided in the aforesaid clause that his confirmation would depend, inter alia, upon the fulfilment of the minimum business guarantee set out in paragraph 10 and upon his record of post-sale services to the Corporation''s policy holder and other functions performed by him in the area allotted to him to the satisfaction of the competent authority. The relevant clauses 10 and 11 of the appointment letter read as under :

"10. Minimum business :

(i) During the probationary period you shall secure through the agents recruited at your instance minimum completed life business of Rs. 80 lacs yielding a first year''s schedule premium income of not less than Rs. 2,00,000 provided, however, that in case the pay and/or allowance admissible to you under clause 1 are increased during the period, the minimum business and the premium income which you shall secure shall be increased proportionately.

(ii) The minimum business set out in (i) above shall be spread over not less than 250 lives and shall be secured regularly through a network of dependable agencies.

(iii) At least 15 of the agents appointed on your recommendation during the period should have become active and 15 Agents should individually have put in during that period the minimum business required of them in an agency year according to Regulation 9 of the L.I.C. of India (Agents Regulation 1972).

(iv) You will have to procure 60 % of business and agency force from the Sector allotted to you and balance from other areas of the city. If your area of operation covers the Nyaya Panchayats/Village Panchayats also you will have to appoint at least one agent in every Nyaya Panchayat / Village Panchayat falling under your area of operation.

(v) If your probationary period is extended, you shall secure during the extended period such business as may be intimated to you.

11. Confirmation and increments ;

(i) On your satisfactorily completing the period of probation and your observance and compliance with all conditions set out in this letter of appointment, you will be confirmed in the services of the Corporation in Class II. Your confirmation will depend inter alia upon the fulfilment, of the minimum business guarantee set out in para 10 above and upon your record of post-sales services to the Corporation''s policy holders and other functions performed by you in the area allotted to you to the satisfaction of the competent authority.

(ii) The grant of increments to you shall be governed by Regulation 56 of L. I. C. of India (Staff) Regulation 1960 read with Schedule III as amended from time to time.

4. Before the completion of one year, the probationary period of the petitioner was extended on 31.1.1994 for one year. The Senior Branch Manager respondent No. 5, submitted an assessment report on March 5, 1994, wherein it was reported by him that the petitioner had achieved the prescribed target. The respondent No. 3, however, passed an order discharging the petitioner from service by order dated 10.9.94. It is settled law that a probationer can be discharged from service taking into account his performance during the period of probation. The authority may also consider all the relevant aspects of his performance and may obtain necessary report to assess his performance. It has to be, however, examined in each case whether the services of a probationer has been dispensed with only on the basis of his performance of his services or his services have been terminated on any ground which amounts to misconduct. As regards the performance of the petitioner, the Senior Branch Manager respondent No. 5, had submitted report that the petitioner had achieved the target prescribed in clause 10 of the appointment letter and he was to be confirmed. The appraisal report of the petitioner gives the following data :

Item	Target	Achievement	%age of Achievement to target
No. of Lives	250	277	110.80%
Sum Assured	Rs.80,00,000	Rs. 86.72.000	108.40%
S.F.Y.P.I.	Rs. 2,00.000	Rs.2.12.723.70	106.36%

No. of Agents newly Recruited

15

15

100%

No. of Qualified Agents

15

16

106%

5. From a perusal of the assessment report, it is clear that the petitioner within one year of the period of probation had achieved the target fixed in appointment letter. He secured business of Rs. 86,72,000 yielding first year''s scheduled premium income of Rs. 2,12,723.70 as against the requirement of Rs. 80 lacs and Rs. 2 lacs respectively the aforesaid business was spread over 277 lives as against 250 lives provided in the appointment letter.

6. The contention of the learned counsel for the respondents is that the petitioner had secured certain policies from various persons but such policies lapsed because they did not pay amount of premium after the payment of the first premium and the ratio of lapsation was as high as 49%. As policies had lapsed because the premium amount was not paid subsequently, the performance of the petitioner cannot be treated satisfactory and the respondents were entitled to dispense with his services. In this respect, there is a circular of the Corporation, which provides that the lapsation of the policies shall not be taken into account while considering case of Probationary Development Officer for the purpose of confirmation. The petitioner has annexed copy of Circular Letter dated 21.10.1991 issued by the respondent-Corporation laying down guidelines which will be followed while considering the case of a probationer for confirmation as Annexure SA-1 to the supplementary affidavit. The relevant para of the said circular in regard to Probationary Development Officers reads as under :

"Probationary Development Officers :

We have so far dealt with the appraisals of confirmed Development Officers only. Probationary Development Officers to need to be appraised for the purpose of confirmation at the end of probationary period of twelve months from the date of probationary appointment.

Incentive Bonus and Additional C. A. are not payable to a Development Officer who is on probation. However, the same will be paid to him after he earns his confirmation as the Class II, Development Officer. As a corollary, advances against incentive Bonus and Additional C. A. are not admissible to Development Officer who is on probation. The benefit will be admissible only after he earns his confirmation.

Probationary period of the Development Officer may be extended by one year. Whenever probationary period is extended nothing is payable to S.F.Y.P.I. of initial probationary period of 12 months. At the end of extended probationary period if he earns his confirmation. Incentive Bonus and A. C. A. will be paid to him on the S.F.Y.P.I. of for 12 months period immediately preceding date of confirmation. Debit/credit point on all counts No. of lives, agency organization requirement need to be worked out while finalizing appraisal of such extended probationary period of 12 months. Lapsation however need not be worked out for appraisals of probationary Dev. Officers...."

7. A perusal of the aforesaid circular clearly indicates that the lapsation need not be worked out for appraisal of the Probationary Development Officers. A probationer is not entitled to Incentive Bonus and Additional C. A. who is on probation. He is entitled to such benefit only after he is confirmed in service.

8. The third submission of the learned counsel for the respondent is that an enquiry was conducted against the petitioner and a report was submitted to the respondent No. 3 that the petitioner was guilty of concealment and fraud and on such report, the petitioner was not entitled to confirmation on the post of Development Officer. A copy of the said report has been annexed as Annexure-1 to supplementary counter-affidavit filed on behalf of the respondents.

9. Para 3 of the report indicates that the petitioner had shown three policies in the name of three persons but they were not carrying on business at the places where it has been disclosed in the policies. In para 4, it has been stated that particulars given by certain policy holders are wrong. In para 5, it has been stated that the petitioner has made certain amendments in the proposal form of the policy holders. In para 6, it has been stated that certain policy holders had signed in English but some in Hindi. The enquiry was conducted and they stated that they did not sign in English. In para 7, it has been stated that the proposal form does not contain the signature of the witnesses. In para 8, it has been stated that contacts were made from certain policy holders. Some of them stated that they ether are working as a temporary employee or working on contract and their services could be terminated at any point of time.

10. The first contention of the learned counsel for the petitioner is that the petitioner was not afforded any opportunity of hearing or show cause notice to explain the above alleged irregularities and in absence of opportunity to explain the facts stated in the report, the petitioner''s services should not have been terminated.

11. It has to be examined as to whether this report was a foundation of termination of the services of the petitioner or was only a motive for terminating his service. The Hon''ble Supreme Court in AIR 2000 1706 (SC) , after surveying all the cases laid down legal principles as to when an enquiry report shall be considered as a material to assess the performance or whether such report

enumerating the charges against the probationer is a foundation for discharging his services. It was observed as under :

"The Courts can, therefore, lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is as innocent as worded. (See Parshotam Lal Dhingra v. Union of India). It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was "founded" on those factors or other disqualifications.

28. The important principles which are deducible on the concept of ''motive'' and ''foundation'', concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against the employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of ''motive''.

29. ''Motive'' is the moving power, which impels action for a definite result, or to put it differently, ''motive'' is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? if it were the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry."

In that case, the employee was a constable who had completed 2 years period of probation. An inquiry was conducted and a report was submitted that he quarrelled with another constable and indulged in a misconduct of hurling blows and used filthy language to the superior officers of the department and he was found guilty along with others for the said misconduct and misbehavior. Their Lordships in the Supreme Court applying the principles enumerated in the

Judgment held that the report was foundation for terminating the services of the probationer.

12. In Nar Singh Pal v. Union of India and others (2000) 3 SCC 5888, a preliminary inquiry was conducted against the employee in which it was found that he had assaulted the gate-man and on such inquiry his services were terminated. The order of termination was simpliciter. The Apex Court held that the report formed the basis of termination of the services of the employee. It was held that a report was in fact foundation for terminating the services though the order of termination was simpliciter and such order was liable to be set aside.

13. Shri R.P. Goel, the learned Advocate General, appearing for the. Corporation has placed reliance upon the decision M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, wherein considering the provisions of Regulation 14 (4) of the Life Insurance Corporation of India (Staff) Regulations, 1960, held that a probationer has no right of confirmation and his services can be discharged if it is not confirmed and apart from the said Regulations even under the general law, the services of a probationer can be terminated after making overall assessment of his performance during the period of probation and no opportunity is required to be given before termination of his services.

14. In Life Insurance Corporation of India and Another Vs. Raghavendra Seshagiri Rao Kulkarni, It was held that the services of a probationer cannot be equated with that of a permanent employee and no regular departmental enquiry is required before his services are terminated.

15. There is no dispute with regard to the power of the Corporation to terminate the services of a probationer without any notice or assigning any reason. The principles of law that if, the services of probationer are terminated on certain ground for which a preliminary enquiry was conducted, whether such order can be treated as punitive or simpliciter, has to be examined on the facts of each case.

16. In this context, it has to be examined as to whether the order of termination of the services of the petitioner, founded on the enquiry conducted against him by the respondents was simpliciter discharge of his services or it was based on the charges levelled against him. This Court had summoned the record of the Corporation in regard to the service of the petitioner. The record has been produced before us. The Senior Branch Manager, respondent No. 5, had submitted the appraisal report in regard to the petitioner on March 5, 1994, indicating that the petitioner had achieved target as provided in terms and conditions of the appointment. The record further discloses that on April 18, 1994, the Senior Branch Manager submitted a report that services of the petitioner be confirmed as he had achieved the target giving details work done by the petitioner within the probationary period of one year. The report did not indicate that there was anything adverse against him.

17. The Zonal Manager subsequently obtained another report wherein certain charges were made against him. The facts mentioned in the said report have already been discussed. It is the report dated May 28. 1994, which was under consideration of respondent No. 3 and on such report, the services of the petitioner were terminated on September 10, 1994. There was no other material on the record placed before us to show that the petitioner was otherwise not entitled to be confirmed. Against the required target of 250 lives the petitioner was able to get 277 lives. The enquiry was conducted in regard to certain policies and the petitioner was not given opportunity to explain the charges against him. The report thus was foundation of termination of the services of the petitioners. The order terminating the services of the petitioners on such basis cannot be upheld. The respondents ought to have given notice to the petitioner to explain the charges mentioned in the report specially when he was discharged from service on the charges levelled against him in the said report. It is not simpliciter discharge of the petitioner from service and such order could not have been passed without affording opportunity to him.

18. In view of the above, the writ petition is allowed. The order dated 10.9.1994 (Annexure-20 to the writ petition) discharging the petitioner from service is hereby quashed.

19. As regards consequential benefits, the Hon''ble Supreme Court in V.P. Ahuja Vs. State of Punjab and Others, while quashing the order discharging the services of the petitioner, directed that he shall be put back on duty with all consequential benefits. In this case, the appellant therein was appointed as Chief Executive in the establishment of Punjab Cooperative Cotton Marketing and Spinning Mills Federation Limited on probation for a period of two years which could be extended further at the discretion of the management. He was discharged from service within the period of probation on the ground that he failed in performance of his duties administratively and technically. He filed writ petition in the High Court, which was dismissed. The Supreme Court held that the order was stigmatic. It was quashed with the following directions :

"The order dated 2.12.1998, by which the services of the appellant were terminated is quashed with the direction that he shall be put back on duty with all consequential benefits."

20. In Anoop Jaiswal v. Government of India and another 1984 UPLBEC 441, the appellant therein had challenged the order of discharge from service. The High Court had dismissed the writ petition on the ground that it was simpliciter discharge of his service during the period of probation. The Supreme Court in appeal against the said order held that the order of discharge was in fact founded on the alleged misconduct of the incumbent, namely, that he reached late at the time of training. It was the real cause for the action taken against him. The appeal was allowed and the judgment of the High Court was quashed with the following direction :

"We accordingly set aside the judgment of the High Court and the impugned order dated November 5, 1981, discharging the appellant from service. The appellant should now be reinstated in service with the same rank and seniority, he was entitled to before the impugned order was passed as if it has not been passed at all. He is also entitled to all consequential benefits including the appropriate year of allotment and the arrears of salary and allowances up to the date of his reinstatement. The appeal is accordingly allowed."

21. Considering the facts and circumstances of the present case, the petitioner shall be reinstated in service within one month from today and will be paid salary including the arrears of salary and other consequential benefits up to the date of reinstatement and his seniority shall be fixed from the date of his appointment.

22. The parties shall bear their own costs.

