

(2017) 04 OHC CK 0028

In the Orissa High Court

Case No : 7993 of 2010

Sankarsan Swain

APPELLANT

Vs

Senior Divisional Manager

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

[Life Insurance Corporation Act, 1956](#), [Regulation 21](#), [Regulation 39\(1\)](#), [Regulation 39\(1\)\(a\)](#), [Regulation 39\(1\)\(g\)](#)

Citation : (2017) 04 OHC CK 0028

Hon'ble Judges : B.R. Sarangi

Bench : SINGLE BENCH

Advocate : Dhuliram Pattnaik, N. Biswal, N.S. Panda, L. Pattnaik, Sanjit Mohanty, S.C. Samantray, S. Pattnaik, S.P. Panda

Judgement

1. The petitioner, who was initially working on daily wage basis since 1986 under Cuttack Divisional Office of Life Insurance Corporation of India, was appointed on 03.05.1989 as a Sub-staff on regular basis after undergoing due process of selection. On 04.04.1990, he was called upon by opposite party no.1 to submit explanation to the effect that the educational certificate submitted by him was not genuine. Pursuant thereto, on 28.05.1990, the petitioner filed duplicate copy of the educational certificate along with his reply. Then on 01.06.1990, the petitioner was served with a memorandum of charges that he failed to maintain the absolute integrity and acted in a manner prejudicial to good conduct detrimental to the interest of the Corporation and thereby violated the provisions of Regulations 21 and 39(1) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (for short "Regulations, 1960"), for which one or more penalties in terms of Regulation 39(1)(a) to (g) of the Regulations, 1960 may be imposed on him. Pursuant thereto, the petitioner, on being called upon, submitted his explanation on 12.07.1990 denying the charges. But the authority, having not satisfied with the explanation submitted by the petitioner, appointed

inquiry officer on 16.08.1990.

2. The inquiry officer proceeded with the enquiry and on its completion submitted his report on 25.06.1992. On receipt of the same, the disciplinary authority, on 27.07.1993, issued second show cause notice to the petitioner indicating the punishment to be imposed. In response thereto, on 13.09.1993, the petitioner filed his reply stating therein that since enquiry was conducted in utter violation of the principles of natural justice, he was liable to be exonerated from the charges levelled against him, and that penalty of removal from service was not called for. But, the disciplinary authority, by order dated 07.12.1994, in exercise of powers conferred upon him under Regulation 39(1) (a) of the Regulations, 1960 read with Schedule-1 thereof imposed the penalty of removal from service, as proposed in the show cause notice dated 27.07.1993, with effect from the date of order.

3. Challenging the order of punishment imposed by the disciplinary authority, the petitioner preferred an appeal before opposite party no.2 on 10.02.1994. But, the appellate authority, by order dated 09.05.1994, in exercise of powers under Regulation 46(2) of the Regulations, 1960 rejected the appeal and confirmed the order of removal from service passed by the disciplinary authority. As against the said order, the petitioner approached this Court by filing OJC No. 2272 of 1995, which was disposed of by order dated 04.01.2008 with the direction that if the petitioner made an application before the appellate authority-opposite party no.2 drawing his attention with regard to irregularity committed, the appellate authority would reconsider the case and pass necessary order on the same in accordance with law. It was further clarified in the said order that the order passed by the appellate authority on 09.05.1994 would not stand on the way to pass any order on the application of the petitioner and if required, the appellate authority might modify his own order.

4. Consequentially, the petitioner filed a fresh appeal on 30.01.2008, in compliance of the order dated 04.01.2008, before the appellate authority. Since there was inaction on the part of the authority concerned, the petitioner again approached this Court by filing W.P.(C) No. 12749 of 2008, in which this Court by order dated 13.01.2009, while disposing of the said writ petition, directed opposite party no.2 to dispose of the appeal of the petitioner within one month. In compliance of the order passed by this Court in W.P.(C) No. 12749 of 2008, the appellate authority considered the appeal and by order dated 12.02.2009 modified the penalty of "removal from service", as imposed by the disciplinary authority by order dated 07.12.1993, to "reduction in basic pay by two stages permanently" in terms of Regulation 39(1)(d) of the Regulations 1960 and also directed that the petitioner would be entitled to continuity in service but as he had not been exonerated he would not be eligible for the salary and other benefits for the period he had not worked in the Corporation. Accordingly, the petitioner has been reinstated in service, but modified punishment imposed by the appellate authority continued. Therefore, the petitioner in the instant writ

petition has sought for direction to the appellate authority to modify the order of punishment of "reduction in basic pay by two stages permanently" as the same is ultra vires the statute, and grant all service and consequentially financial benefits as due and admissible to the post in accordance with law.

5. Mr. Dhuliram Pattnaik, learned counsel for the petitioner, in course of hearing fairly submitted that the petitioner does not want to challenge the quantum of punishment imposed on the petitioner, save and except the order of "removal from service" passed by the disciplinary authority, which was (though confirmed by the appellate authority on 09.05.1994) reconsidered and modified to "reduction in basic pay by two stages permanently" by order dated 12.02.2009 passed by the appellate authority in compliance of order dated 13.01.2009 passed by this Court in W.P.(C) No. 12749 of 2008. He specifically contended that the word "permanently", which has been used by the appellate authority in the modified order of punishment, is not contemplated under the statute and, therefore, such punishment cannot sustain in the eye of law. As such, the word "permanently" used by the appellate authority in modified order of punishment is liable to be declared ultra vires the statute and deleted from the same.

6. Mr. S.P. Panda, learned counsel for opposite party- Corporation, while justifying the order of punishment passed by the appellate authority, strenuously urged that the allegation against the petitioner, being grave in nature, the appellate authority, on reconsideration of the appeal filed pursuant to the order dated 13.01.2009 passed by this Court in W.P.(C) No. 12749 of 2008, has rightly modified the order of removal from service to "reduction in basic pay by two stages permanently" and, as such, no illegality or irregularity can be said to have been committed by the appellate authority so as to warrant interference by this Court. He, however, stated that even if the word "permanently" is omitted, the nature and character of the modified order of punishment so passed by the appellate authority will remain unaffected. He lastly contended that, as such, this Court lacks jurisdiction to interfere with the quantum of punishment imposed by the authorities, and that the scope of interference being very limited, specifically in a case of this nature, this Court should refrain from interfering with order of punishment.

7. Heard Mr. Dhuliram Pattnaik, learned counsel for the petitioner and Mr. S.P. Panda, learned counsel for the opposite party- Corporation. Pleadings between the parties having been exchanged, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

8. The undisputed fact being that the petitioner was subjected to a disciplinary proceeding and consequentially removed from service which was confirmed in appeal. The punishment so imposed by the disciplinary authority and confirmed by the appellate authority was the subject matter of challenge before this Court in OJC No. 2272 of 1995, which was disposed of by order dated 04.01.2008 giving liberty to the petitioner to file a fresh appeal to be reconsidered by the appellate authority in accordance with law. But, since there was delay in disposal

of the appeal preferred by the petitioner in compliance of the order passed by this Court on 04.01.2008, the petitioner again filed W.P.(C) No.12749 of 2008, which was disposed of by this Court on 13.01.2009 directing opposite party no.2 to take a decision on the appeal of the petitioner within a period of one month from the date of communication of the order. In compliance thereof, the order was passed by the appellate authority on 12.02.2009 under Regulation 46 of the Regulations, 1960, by which the appellate authority modified the order of punishment of "removal from service" imposed by the disciplinary authority to "reduction in basic pay by two stages permanently".

9. Mr. Dhuliram Pattnaik, learned counsel for the petitioner specifically urged that the petitioner is not challenging the quantum of punishment imposed on him, save and except the word "permanently" used in the modified order of punishment "reduction in basic pay by two stages permanently", as contrary to the Regulations, 1960, and stated that the appellate authority be directed to delete the word "permanently" so as to enable the petitioner to get the financial benefits as due and admissible to him in accordance with law.

10. The Life Insurance Corporation of India, with a view to defining the terms and conditions of service of its staff, in exercise of powers vested in it under clauses (b) and (bb) of sub-section (2) of section 49 of the Life Insurance Corporation Act, 1956 and with the previous approval of the Central Government framed Regulations called "Life Insurance Corporation of India (Staff) Regulations, 1960". Regulation 39 thereof, deals with penalties. "Reduction in basic pay by two stages permanently" comes within the punishment specified in sub-clause (d) of clause-1 of Regulation, 39. For better appreciation, Regulation 39(1) (d) is reproduced hereunder:- "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 any 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 timescale, or to a lower stage in a time-scale;" Regulation-40 of Regulations, 1960 deals with right of appeal. Regulation-41 stipulates the period of limitation for appeals. Regulation-42 prescribes the form and contents of appeal. Regulation-43 deals with submission of appeals. Regulation-44 deals with withholding of appeals. Regulation-45 deals with transmission of appeals. Regulation-46 deals with consideration of appeals. For better appreciation, Regulation-46(2) is reproduced below: "46 (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. Provided that ? (i) The appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose. (ii) No order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and (iii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties in clauses (b) to (g) of Regulation 39, and an inquiry under the said Regulation has not already been held in the case, the appellate authority shall itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to."

11. The above being the statutory provisions governing the field, while initiating the disciplinary proceeding, the same are to be adhered to in letter and spirit. On careful perusal of the provisions contained in Regulation 39(1)(d), taking recourse to which the modified order of punishment has been passed by the appellate authority, it can be seen that the said provision clearly prescribes that punishment of reduction to a lower service, or post, or to a lower time-scale, or to a lower stage in a time-scale can be imposed, but nowhere the word "permanently" has been used in the said provision.

12. The word "Permanent" is defined to mean not temporary, or subject change; abiding, remaining fixed, or enduring in character, state, or place.

13. The meaning of the word "permanent" according to lexicographers, is continuing in the same state, or without any change that destroys form or character, remaining unaltered or unremoved, abiding, durable, fixed, lasting, continuing; as a permanent impression, permanent institution.

14. In *Henriksen v. Grafton Hotel*, (1942) 2 KB 184, it was held that "permanent" is a relative term, and is not synonymous with "everlasting".

15. In *Salt v. Power Plant Co. Ltd.*, (1936) 2 All ER 322, it was held that the term "permanent" in some circumstances means employment for life.

16. In *Krishna Kumar Singh v. State of Bihar*, (1998) 5 SCC 643, it has been held that the word "permanent" means irreversible or it would be highly impractical or against public interest to reverse it. What is reversible, is not permanent.

17. Applying the meaning of the word "permanent" to the impugned modified

order of punishment imposed by the appellate authority, i.e., "reduction in basic pay by two stages permanently" it amounts to continue with the same state or without any change that destroys form or character remaining unaltered or unremoved or it is continuous or a permanent impression. If this will be taken into consideration, "reduction of basic pay by two stages permanently" is not contemplated under the provisions contained in Regulation 39 (1)(d) of the Regulations, 1960.

18. In *Taylor v. Taylor*, (1875) 1 Ch D 426, it has been held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

19. The origin of this Rule is traceable which was followed by Lord Roche in *Nazir Ahmad v. King Emperor*, AIR 1936 Priv y Council 253 to the following effect: "The rule which applies is that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden." Similar principle has also been followed in catena of decisions, more particularly in *Municipal Corporation of Delhi v. Jagdish Lal* and another, AIR 1970 SC 7, *Ramachandra Keshav Adke v. Govind Joti Chavare* and others, AIR 1975 SC 915, *Babu Verghese and others v. Bar Council of Kerala* and others, AIR 1999 SC 1281.

20. The provision contained in Regulation 39(1)(d) is very clear and unambiguous. In *Nelson Motis v. Union of India*, AIR 1992 SC 1981, the apex Court held that when the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Similar view has also been taken in *Gurudev datt VKSSS Maryadit v. State of Maharashtra*, AIR 2001 SC 1980, *State of Jharkhand v. Govind Singh*, AIR 2005 SC 294, *Nathi Devi v. Radha Devi Gupta*, AIR 2005 SC 648.

21. Applying the above mentioned principles to the present context, since provision of Regulation 39(1)(d) is absolutely plain and unambiguous, using the word "permanently" in the modifying order of punishment is not permissible. While thus observing, this Court is conscious of the fact that it has no jurisdiction to interfere with the quantum of punishment imposed by the authority concerned. Therefore, while interpreting the provisions contained in Regulation 39(1)(d) and coming to a finding that the word "permanently", having not incorporated in the said Regulation, the same could not have been used by the appellate authority while modifying the punishment of "removal from service" to "reduction of basic pay in two stages permanently", this Court is of the considered view that the modified order of punishment, i.e., "reduction in basic pay by two stages permanently" requires reconsideration by the appellate authority, inasmuch as, by deleting the word "permanently", if the modified order of punishment is interpreted, then it may be in consonance with the provisions contained in Regulation 39(1)(d) of the Regulations, 1960.

22. In the above view of the matter, this Court is of the considered opinion that the appellate authority should reconsider the word "permanently" used in the modified order of punishment, i.e., "reduction of basic pay by two stages permanently" passed by him on 12.02.2009. As the petitioner is willing to accept the modified order of punishment, in the event the word "permanently" is deleted therefrom, this Court remanded the matter back to the appellate authority so that keeping the modified order of punishment intact, the use of word "permanently" could be reconsidered keeping in view the provisions contained in Rule 39(1)(d) Regulations, 1960, and such exercise shall be done as expeditiously as possible, preferably within a period three months from the date of communication of this order.

23. The writ petition is allowed to the extent indicated above. No order to cost.