

(2007) 10 CAL CK 0010
In the Calcutta High Court
Case No : C.A.J.F.M.A. No. 248 of 2004

Zonal Manager, LIC of India and Another	APPELLANT
Vs	
Sarojnath Moitra and Others	RESPONDENT

Date of Decision : 16-10-2007

Acts Referred:

Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 16, 49

Citation : (2008) 1 CHN 1079 : 112 CWN 36 : (2008) 117 FLR 668 : (2008) 2 LLJ 883

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Dillip Kumar Kundu, for the Appellant; Mohan Kumar Sanyal, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred from the judgment and order dated September 3, 2003 passed by the learned single Judge in the writ petition bearing CO. No. 11609 (W)/1994. The appellant herein has assailed the aforesaid judgment and order under appeal passed by the learned single Judge mainly on the ground that the said learned single Judge committed serious error in law in holding that the respondent/writ petitioner should be deemed to be in the employment as Assistant Branch Manager till February 10, 1988 without appreciating the fact that the said respondent/writ petitioner got his appointment to the said post of Assistant Branch Manager on fraudulent representations.

2. From the records of this case we find that the respondent/writ petitioner was appointed as a Development Officer on: September 1, 1956 and thereafter, promoted to the post of Assistant Branch Manager on September 20, 1975 upon considering the business performance records. Subsequently, it was found that the said respondent/writ petitioner falsified the relevant records relating to his performance in promoting business for the Life Insurance Corporation of India. After the said promotion of the respondent/writ petitioner, the appellant-Life

Insurance; Corporation of India came to know about the aforesaid falsification of the relevant records relating to the performances in promoting the business for the Life Insurance Corporation of India in respect of the periods in question and an enquiry was conducted by the appellants herein.

3. Pursuant to the said enquiry, ultimately it was found that the respondent/writ petitioner falsified the records relating to his performance in securing business for the Life Insurance Corporation of India and, therefore, the Zonal Manager of the said Life Insurance Corporation of India by the order dated March 19, 1976 reverted the writ petitioner to the post of Development Officer with immediate effect in terms of Regulation 16 of the Life Insurance Corporation of India (Staff) Regulations, 1960 on the basis of the said enquiry report. The said Regulation 16 provides that an employee of Life Insurance Corporation of India on probation can be reverted back by the Corporation to its original post, without notice during the period of probation.

4. The respondent/writ petitioner challenged the said order of the Zonal Manager before the appellate authority, which was, however, turned down by the said appellate authority by the order dated November 23, 1976.

5. The respondent/writ petitioner thereafter filed a writ petition challenging the aforesaid order of reversion passed by the Life Insurance Corporation of India authorities by filing a writ petition before this Court and this Hon'ble Court by the order dated March 30, 1981 set aside the said order of reversion upon granting liberty to the said Life Insurance Corporation of India authorities, to pass a fresh order in accordance with law after considering the appeal of the said writ petitioner dated May 12, 1976. The appellate authority considering the said appeal rejected the same by the order dated August 1, 1981.

6. The respondent/writ petitioner preferred a memorial under Regulation 49 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and the same was also rejected on April 4, 1983.

7. Challenging the said order dated April 4, 1983, another writ petition was filed before this Hon'ble Court by the respondent/writ petitioner herein. The said writ petition was ultimately disposed of by the order dated August 21, 1987 whereby and whereunder the respondent-Life Insurance Corporation of India authorities were granted liberty to proceed against the writ petitioner after granting reasonable opportunity of being heard. In the said order it was also specifically mentioned that the writ petitioner would be entitled to all service benefits to which he would have been entitled to had the order of reversion not been passed against him. The respondent-Life Insurance Corporation of India authorities were also directed to allow the writ petitioner to join the post of Assistant Branch Manager forthwith. The relevant portion from the aforesaid order dated August 21, 1987 passed by the learned single Judge is set out hereunder:

Since the impugned orders are set aside the, petitioner would be entitled to all service benefits to which he would have been entitled had the order of reversion

not been passed against him. Mr. Sarker submitted that the petitioner would be paid 50 per cent of the backlog of salary and allowances attached to the post of Assistant Branch Manager (D) and the payment of the balance 50 per cent will be subject to the result of the proceedings if initiated at all. The respondents are directed to allow the petitioner to join the post of Assistant Branch Manager forthwith.

The application is thus disposed of.

There will be no order as to costs.

8. Pursuant to the aforesaid order dated August 21, 1987, regular enquiry was conducted in which the writ petitioner duly participated and the Enquiry Officer submitted his report. Ultimately, the Zonal Manager, Life Insurance Corporation of India being the disciplinary authority passed the order on July 9, 1990 reverting the writ petitioner to the cadre of Development Officer with effect from March 19, 1976.

9. According to the appellants herein, the writ petitioner was reverted to the post of Development Officer pursuant to the aforesaid order dated July 9, 1990 passed by the disciplinary authority and the said writ petitioner worked as Development Officer in the Berhampore Branch of the Life Insurance Corporation of India till the date of his retirement on November 30, 1999 which was, however, disputed on behalf of the appellants herein.

10. Challenging the aforesaid order of the disciplinary authority dated July 9, 1990, another writ petition was filed before this Court which was finally disposed of by the learned single Judge of this Court by the judgment and order under appeal dated September 3, 2003. The learned single Judge in the aforesaid judgment and order under appeal specifically observed that there was no infirmity and/or illegality either in the report of the Enquiry Officer or in the order of reversion passed by the disciplinary authority. The relevant portion from the said judgment and order under appeal passed by the learned single Judge is set out hereunder:

I do not find any infirmity and illegality either in the report of the Enquiry Officer or in the order of reversion for the petitioner could not establish that his statement regarding lapse cases did not exceed permissible percentage. Therefore, I cannot accept the argument of Mr. De that the entire disciplinary proceeding and the order of reversion are bad in law.

11. However, in spite of the aforesaid finding, learned single Judge also held that the writ petitioner should be deemed to be in the employment of the appellant-Life Insurance Corporation of India as Assistant Branch Manager till July 10, 1988 and all the dues should be calculated on the aforesaid basis. The relevant portion from the said judgment and order under appeal is also set out hereunder:

As such the petitioner shall be deemed to be in the employment as Assistant Branch Manager till February 10, 1988 and all the dues of the petitioner shall be

calculated and be paid within eight weeks from the date of communication of this order.

12. The appellants herein have admitted that the respondent/writ petitioner was reverted to the post of Development Officer pursuant to the order of reversion passed by the disciplinary authority on July 9, 1990. The documents enclosed by the appellants herein even after filing of supplementary affidavit would clearly establish that the respondent/ writ petitioner herein was reverted to the post of Development Officer only after the subsequent order of reversion passed by the disciplinary authority. As a matter of fact, pursuant to the order dated August 21, 1987 passed by Mahitosh Majumder, J. (as His Lordship then was) in the earlier writ petition bearing CO. No. 9353 (W)/1993, the writ petitioner herein was allowed to join and continue in the post of Assistant Branch Manager by the appellants, herein.

13. It was also specifically mentioned in the said order that the writ petitioner would be entitled to all service benefits to which he had been entitled to had the order of reversion not: been passed against him. Therefore, the writ petitioner herein not only joined in the post of Assistant Branch Manager under the appellant-Corporation in compliance with the aforesaid order dated August 21, 1987 passed in, the writ petition bearing CO. No. 9353 (W)/1993, but also discharged his duty in the capacity of Assistant Branch Manager till the disciplinary authority passed the order of reversion on July 9, 1990.

14. The Zonal Manager, being the disciplinary authority by the order of punishment dated July 9, 1990 reverted the respondent/writ petitioner to the cadre of Development Officer with effect from March 19, 1976 and thus retrospective effect was given to the order of punishment.

15. Undisputedly, the earlier order of reversion dated August 1, 1981 issued to the, respondent/writ petitioner on behalf of the appellants herein was quashed by this Hon''ble Court by the order dated August 21, 1987 and pursuant to the said order, the appellants herein allowed the respondent/writ petitioner to join in: the post of Assistant Branch Manager. The said writ petitioner thereafter discharged his duties as Assistant Branch Manager till the fresh order of reversion was passed by the Zonal Manager as the disciplinary authority on July 9, 1990.

16. Since the earlier order of reversion was quashed by this Hon''ble Court upon specifically holding that the writ petitioner would be entitled to all service benefits to which he had been entitled to, had the said order of reversion not been passed against him and the writ petitioner was allowed to join in the post of Assistant Branch Manager pursuant to the earlier direction of this Hon''ble Court, the disciplinary authority by giving retrospective effect to the subsequent order of reversion cannot nullify the effect of the earlier order passed by this Hon''ble Court or take away the financial benefits which were received by the respondent/ writ petitioner after discharging the duties as Assistant Branch Manager in

compliance with the specific order passed earlier by this Hon"ble Court. Therefore, the order of reversion passed by the Zonal Manager as the disciplinary authority cannot and should not be deemed to be effective from any anterior date i.e. with effect from March 19, 1976 as mentioned in the said order dated July 9, 1990.

17. The punishment is bound to be effective prospectively and cannot operate retrospectively from a date earlier than the date of the order. Therefore, in the present case, the order of punishment dated July 9, 1990 issued to the respondent/writ petitioner by the Zonal Manager as the disciplinary authority reverting him back to the cadre of Development Officer should not be deemed to be effective from March 19, 1976 as the order of punishment could not operate retrospectively from a date earlier than the date of the order.

18. The aforesaid order of reversion, therefore, will have the prospective effect and could not operate from a date earlier than the said order of punishment dated July 9, 1990 or even from the date as directed by the learned single Judge. Accordingly, we hold that the said order of reversion would become effective from the date of issuance of the order of punishment by the disciplinary authority i.e., on and from July 9, 1990.

19. In the aforesaid circumstances, no amount should be recovered from the respondent/writ petitioner upon giving retrospective effect to the order of punishment dated July 9, 1990.

20. The respondent/writ petitioner should be treated as Development Officer only from the date of the order of reversion passed by the disciplinary authority i.e. with effect from July 9, 1990, till the date of retirement i.e. December 1, 1991.

21. The appellants herein are directed to calculate all the dues of the respondent/writ petitioner treating him as Assistant Branch Manager of the appellant-Corporation till the 1 date prior to the issuance of the order of reversion dated July 9, 1990 i.e. upto July 8, 1990 and thereafter the said respondent/writ petitioner should be treated as Development Officer with effect from July 9, 1990 till the date of his retirement i.e. upto December 1, 1991.

22. With the aforesaid observations and directions, the judgment and order under appeal passed by the learned single Judge stands modified and this appeal thus stands disposed of.

There will be, however, no order as to costs.

Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned advocates of the parties on usual undertaking.

Kalidas Mukherjee, J.

25. I agree.