Life Insurance Corporation of India Vs Industrial Tribunal

Court: High Court Of Kerala

Date of Decision: July 30, 2001

Acts Referred: Industrial Disputes Act, 1947 â€" Section 11, 2
Life Insurance Corporation (Staff) Regulations, 1960 â€" Regulation 14, 14(4), 39, 39(1), 40
Life Insurance Corporation Rules, 1956 â€" Rule 48(1), 48(2A), 48(3)

Citation: (2001) 91 FLR 1104

Hon'ble Judges: M.R. Hariharan Nair, J

Bench: Single Bench

Advocate: E. Subramani, for the Appellant; C.P. Sudhakara Prasad, for the Respondent

Final Decision: Dismissed

Judgement

M.R. Hariharan Nair, J.
In this Original Petition filed by the Life Insurance Corporation of India (for short "LIC") challenging Ext. P8

award passed by the Industrial Tribunal, Kollam interfering with the punishment of "removal from service" imposed by the LIC and ordering

instead "reinstatement without backwages", the important question that arises is whether the jurisdiction of the Industrial Tribunal stands barred

with regard to claims made by employees of LIC.

2. The 2nd respondent entered service of the LIC as an Apprentice Development Officer on 1.3.1984. On 1.11.1984 he was appointed as

Probationary Development Officer. The probation period was one year. On 1.11.1985 the probation was extended by one more year and on

completion thereof, his probation was declared with effect from 1.11.1986.

3. On 6.12.1986 one Kuttappa Panicker wrote to the LIC stating that his son P.K. Sasidharan Nair in whose name a new proposal for insurance

was presented by the petitioner had actually passed away on 4.5.1977. As per Ext. P2 order, the Divisional Manager of the LIC ordered an

enquiry into the matter and one M. Mukundan was appointed as an Enquiry Officer. The Enquiry Officer found, vide Ext. P3 (see page 29 of the

OP) that charges 1 to 4 relating to failure to show honesty, integrity and devotion to duty alleged against the 2nd respondent stood proved and that

charge 5, which deals with furnishing false and fabricated particulars about the non-existent life to be assured and of manipulation to forge a

signature on the proposal form, alone stood unestablished. Based on the Enquiry Report filed on 21.3.1988, Ext. P3 show cause notice (see page

27 of the O.P.) was issued to the 2nd respondent under Regulation 39(1)(f) of the Staff Regulations, 1960. After considering Ext. P4 reply

presented by the 2nd respondent, he was removed from service as per Order dated 19.4.1989. The 2nd respondent filed an application

challenging the punishment before the Zonal Manager of the LIC, which was also dismissed.

4. As per order dated 18.2.1990 passed by the Central Government, the dispute raised by the 2nd respondent with regard to the legality of the

disciplinary proceedings and the propriety of the punishment was referred to the Industrial Tribunal, Kollam. I.D. No. 22 of 1991 was registered

on that basis. After hearing both sides, Ext. P8 order was passed therein. The Tribunal found that in the absence of any wrongful loss caused to the

Management or of any wrongful gain to the 2nd respondent arising from the presentation of the proposal form and considering the fact that the 2nd

respondent only signed by the papers presented by an LIC agent and in the absence of evidence regarding Charge No. 5, which alone was the

major charge, the punishment of removal from service was unjustified. It was thereupon that the 2nd respondent was directed to be reinstated

albeit without backwages or any other benefits.

5. Sri E. Subramani, who represented the petitioner-LIC submitted that the Industrial Tribunal has actually no jurisdiction to go into the dispute.

According to him, in view of the LIC Amendment Act, 1981 and the Regulations framed invoking powers thereunder, the Industrial Tribunal''s

jurisdiction stood barred. Case law was also relied on in that regard. He also argued that having upheld the findings of the Enquiry Officer with

regard to the Charges 1 to 4, the Tribunal erred in substituting the punishment, which the employer justly imposed on the delinquent.

6. According to Sri. Sudhakara Prasad, who appeared for the 2nd respondent, the Industrial Tribunal has ample jurisdiction to go into the disputed

aspects. Once a reference was made to it by a competent Government merely because Staff Regulations have been framed under the LIC

Amendment Act, 1981, it cannot be said that the Tribunal''s jurisdiction was barred. According to him, the question is whether there is any

provision in the Act or Regulation, which debars the jurisdiction of the Tribunal and in the absence of any such provision, it cannot be said that the

Tribunal is wanting in jurisdiction. He also pointed out that in any event, the want of jurisdiction is not a ground, which is specifically urged in the

Original Petition or even before the Industrial Tribunal. The learned counsel further submitted that Industrial Tribunal is fully vested with powers to

substitute the punishment, in case of punishment is found to be disproportionate to the gravity of the charge alleged and established.

7. I shall first go into the aspect of jurisdiction. The major changes brought into the Act through the LIC Amendment Act, 1981, as far as the

present case is concerned, are the introduction of R. 48(1)(cc), 48(2A) and 48(3) of the LIC Act, 1956. Under R. 48(1)(cc), the Central

Government is empowered, inter alia, to provide for ""the terms and conditions of service of the employees and agents of the Corporation including

those who became employees and agents of the Corporation on the appointed day under this Act. Under S. 48(2A), ""The regulations and other

provisions as in force immediately before the commencement of the Life Insurance Corporation (Amendment) Act, 1981, with respect to the terms

and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on

the appointed day under this Act, shall be deemed to be rules made under clause (cc) of sub-=s. (2) and shall, subject to the other provisions of

the section, have effect accordingly. R. 48(3) provides for placing the rules made by the Central Government before both Houses of Parliament.

The Amendment Act hence clothes the Corporation with power to frame rules regarding the service conditions of its employees and save

regulations and provisions in force earlier. There is thus nothing in the Amendment Act which specifically debars the jurisdiction of the Industrial

Tribunal.

8. During hearing, the learned counsel for the petitioner made available a copy of the LIC of India (Staff) Regulation 1960 as modified up

December, 1983. R. 39(i)(f) thereof provides that 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 breach of discipline or is guilty of any other act prejudicial to good conduct may, inter alia, be imposed the punishment

of removal from service, which shall not be a disqualification for future employment. Under Regulation 39(1)(g) the punishment of dismissal can

also be given. Regulation 40 provides for a right of appeal to the employee against whom the punishment is imposed. Regulation 49 provides that

an employee, whose appeal under the regulation has been rejected by the Appellate Authority subordinate to the Chairman, or in whose case such

appellate authority has enhanced the penalty either on appeal under Reg. 40 or on review under Reg. 48(2) may address a memorial to the

Chairman in respect of that matter within a period of six months from the date the appellant received a copy of the order such appellate authority.

9. As far as the present case is concerned, the 2nd respondent has exercised his right of appeal albeit with little success; but he did not choose to

file any memorial as contemplated in Reg. 49. The submission of the learned counsel for the petitioner is that the aforesaid provisions relating to

appeal and review justify a conclusion that the jurisdiction of the Industrial Tribunal is impliedly barred. At the same time, it is conceded by the

learned counsel that the regulation also does not specifically contain any provision that the jurisdiction of the authorities under the Industrial

Disputes Act would stand barred.

10. Certain observation in A.V. Nachane and Others Vs. Union of India (UOI) and Another, were relied on by the learned counsel for the

petitioner in support of his contention that in view of the provisions in the Amendment Act, 1981 and the framing of the regulations, the jurisdiction

of the authorities under the Industrial Disputes Act is barred. A perusal of the decision, however, shows that the Apex Court has not found that

there is total ouster of jurisdiction for the authorities under the Industrial Disputes Act to act. That was a case where the claim was made before the

authority for bonus. The court found that under the relevant rules that is provision for extra payment in lieu of bonus available in the rules and as

such claim for a higher amount as bonus made under the Industrial Disputes Act was unjustified being inconsistent with the specific provision for

such payment and that such being the position claim made before the Industrial Tribunal was barred. It was found that in view of S. 49(2)(c) read

with S. 48(2)(cc) which authorities the Central Government to make rules to carry out the purposes of the Act, notwithstanding the Industrial

Disputes Act or any other law, in respect of matters covered by the rules, the provisions of the Industrial Disputes Act or any other law would not

be operative. The rationale appears to be that there was inconsistency between the claim before the Tribunal and the amounts actually admissible

to the employee under the specific provisions in the rules. That was the sole reason why the jurisdiction of the Tribunal to proceed with the matter

was found affected in the said case.

11. M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, which is the

other decision relied on by the petitioner dealt with a case where termination of service ordered by the LIC was challenged before the Industrial

Tribunal. The court found that Reg. 14 of the LIC of the India (Staff) Regulations 1960 provided for putting employees coming under Clauses I

and II under probation for a period of one year and that Reg. 14(4) authorities the Management to terminate the service of the employee without

any notice during the period of probation. The Court found that the framers of the Corporation Act, through the amendment, have given the

provisions of the Corporation Act an overriding effect over the provisions of the Industrial Disputes Act in so far as it applies to terms and

conditions of employment and that where the terms conflict with the provisions of the Industrial Disputes Act, the corresponding provisions in the

Staff Regulation alone would prevail. It was held that a probationer, in view of the provisions in the Staff Regulation, cannot be taken as a

workman coming within the Industrial Disputes Act and that the termination of the service of the probationer shall not be deemed to be a

retrenchment"" within the meaning of S. 2(cc), even if sub-s. (bb) had not been introduced in the section. It was also held that once S. 2(cc) is not

attracted, there is no question of application of S. 25-F on the basis of which the termination of the service of the probationer can be held to be

invalid. It was therefore that the court found that the proceedings before the Tribunal were not justified. There again the reasoning is that in the case

of conflict between the provisions in the Staff Regulation and the provisions of the Industrial Disputes Act, the former would prevail.

12. The learned counsel for the 2nd respondent has brought to my notice the decision in S.K. Verma Vs. Mahesh Chandra and Another, . The

specific question considered therein was whether a Development Officer in the LIC is a Workman coming under S. 2(s) of the Industrial Disputes

Act. It was found that the Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in an

industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It was, therefore, necessary to interpret

the definitions of ''industry'', ''workman'', ''industrial dispute'' etc. so as not to whittle down the object of the Act. Disputes between the forces of

labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act.

The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not

on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of the labour for no apparent reason. After

considering the terms and conditions relating to appointment of Development Officers, it was found that the Development Officer, a whole time

employee of the LIC with liability for transfer is expected to assist and inspire the agents while exercising no administrative control over them. The

agents are not his subordinates. In the circumstances, he is not a person in administrative or managerial cadre and as such was held to be a

workman within the meaning of S. 2(s) of the Industrial Disputes Act. In view of the aforesaid decision and also considering the fact that the staff

regulation does not contain anything which blocks the right of an employee to approach the Industrial Tribunal to get his grievance redressed under

the provisions of the Industrial Disputes Act, I am of the view that the contention of the petitioner that the Tribunal did not have jurisdiction to

entertain the dispute referred to it, has to fail.

13. The next question to be considered is whether the Tribunal was justified in interfering with the punishment imposed even after finding that the

conclusions arrived at by the Enquiry Officer were proper and justified. For deciding this question it is necessary to appreciate the charges framed

against the 2nd respondent.

14. Charge No. 1 against the 2nd respondent was that on 13.9.1986 the 2nd respondent submitted to the LIC a confidential report in Form No.

3251, as expected from a Development Officer, with regard to a proposal for insuring the life of P.K. Sasidharan Nair (actually deceased) for a

sum of Rs. 5,000/- without actually satisfying himself about the existence of the life proposed to be insured and recommended the acceptance of

the proposal. The 2nd charge was that the 2nd respondent issued temporary receipt for a sum of Rs. 51.70 and deposited the amount at the

Branch Office of the LIC of India towards the 1st premium due in respect of the new policy. The 3rd charge was that the 2nd respondent

submitted the SSLC Book of the said Sasidharan nair to the branch Manager of the LIC of India as proof of age for the above proposal. The 4th

charge was that the 2nd respondent submitted a confidential report in form No. 3251; issued temporary receipt and produced proof of age with

regard to a non-existent person who had actually expired long back. Actually charges 1 to 3 formed break up of charge No. 4. The 5th charge,

which was found not proved by the Enquiry Officer, alleged that the proposal in question was filled by the 2nd respondent after furnishing false and

fabricated particulars about a non-existent person and also manipulated a signature on the proposal purported to be that of Sasidharan Nair with

the intention of deceiving the Corporation into accepting the risk on a deceased life.

15. It can be seen from the above that when compared to charge No. 5, others were all minor charge. The defence of the 2nd respondent was that

he was persuaded to believe the representation made to him by the authorised Agent of the LIC and that the only error committed by him was not

to personally enquire into the details of the representation and in not trying to meet the said Sasidharan Nair himself before putting up the proposal.

Instead, without making detailed enquiry, he forwarded the papers presented to him by the Agent fully believing his words. The Agent himself did

not appear before the Enquiry Officer though notice was issued to him. The Principal of the College, who had certified the age particulars of

Sasidharan Nair, also did not turn up before the Enquiry Officer.

16. I have perused the enquiry reported as also the impugned order of the Industrial Tribunal. In fact, Charges 2 and 3 aforementioned were

admitted by the 2nd respondent before the Enquiry Officer. As regards Charges 1 and 4, the Tribunal took into account the fact that the contention

of the 2nd respondent that a different person was taken before him, was not properly proved.

17. The Enquiry Officer himself had stated that Form Nos. 3251 and 5122 were obviously completed by the 2nd respondent without seeing the

person concerned and merely based on imaginary details. The 4th charge was supported by the death certificate of Sasidharan Nair and also the

statement made by PW-1. With regard to the contention that the 2nd respondent was a stranger to the place Adoor where he was posted and was

a novice to the field, the Tribunal found that the 2nd respondent should still have made counter checking of the details of the life proposed. At the

same time, it noted that it was not very easy for him to go very deep into the information pertaining to reports of the proposals received by him in a

single day. It agreed with the finding of the Enquiry Officer that the 2nd respondent had not deliberately secured the proposal and with knowledge

that the party was dead. There was only carelessness in not verifying the correct facts and it was this lapse that led to the event of wrong proposal

being made. But then the question arises whether for such carelessness his service itself should be terminated. It was in this backdrop that the

Tribunal took the view that the punishment of dismissal was too harsh and that only a lesser punishment was justified. In view of S. 11-A of the

Industrial Disputes Act, the Tribunal had ample jurisdiction to go into the quantum of punishment. When the nature of allegations are taken into

account, I do not find my way to accept the contention of the petitioner that the proved circumstances justify the termination of the services of the

2nd respondent. It is to be remembered here that he was not a probationer at the time when the punishment was imposed, though the incident in

question took place at a time when his probation had not been declared.

18. The learned counsel for the petitioner placed reliance on the decision in Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores

Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., in support of the contention that Industrial Tribunal or Labour Court would not

be justified in interfering with the punishment imposed by the Management. It was found therein that it would be unjustified to reinstate an employee

against whom charge of misappropriation is established and that a proved act of misappropriation cannot be taken lightly. A number of such

misappropriations remain undisclosed and such employees or others amass wealth by such means. Such being the position a misappropriator

cannot be rewarded or legalised by reinstatement in service with full or part of backwages. It was also found that where misappropriation is

proved, there is no question of considering the past record as a mitigating circumstance. In such cases it is in the discretion of the employer to

consider the relevant aspects and the Labour Court, cannot substitute the penalty imposed by the employer.

19. The above findings were made in a case where the Management alleged that four of its employees committed breach of trust and

misappropriated two amounts of Rs. 24,239.97 and Rs. 19,884.06 during the period 1977-78. The charges were established based on shortage

of goods noticed on stock verification. When there is a charge of misappropriation proved, there is certainly no justification for interfering with the

punishment of dismissal imposed by the Management. But, in the instant case, there is no allegation of misappropriation. As already mentioned,

there was no wrongful loss to the corporation nor any wrongful gain to the 2nd respondent. All that was proved was negligence. The case of

breach of trust and forgery alleged in Charge No. 5 was already found against and only the minor charges arising from carelessness stood proved.

In such a case, the observations of the Apex Court made in the aforesaid case cannot be justly applied.

20. In view of the aforesaid circumstances, I am of the view that the Industrial Tribunal did not act perversely or in deviation of known principles,

when it concluded that the punishment of dismissal from service was unjustified and that the interests of justice would be met if reinstatement was

ordered without backwages.

The Original Petition, in the circumstances, is found to be without merit. It is accordingly dismissed.