

HON'BLE SRI JUSTICE K.G. SHANKAR

WRIT PETITION NO. 16668 OF 2002

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ORDER:

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The petitioner assails the orders of the first and second respondents dated 15.7.1998 and 3.11.1997 respectively terminating his agency as illegal and for consequential direction to reinstate the petitioner as agent of LIC of India with all consequential benefits.

The petitioner was appointed as LIC agent in 1987. He was placed under the control of the third respondent. The petitioner contends that he was provided with Divisional Managers Club Membership in 1991 recognizing his hard work. In 1994, the petitioner was granted Zonal Managers Club Membership again owing to the hard work of the petitioner. Finally, in 1996 he was granted membership of Centaury Club in recognition of his work.

The petitioner submitted proposal in respect of six persons during 1993-94. It would appear that the proponents submitted false age certificates. On the basis of the certificates, policies were issued.

Subsequently, having come to know about the falsity

of the certificates, considering that the petitioner committed dereliction of duty in verifying the same, a show cause notice was issued to the petitioner on 16.10.1996. The petitioner submitted explanation contending that he did not indulge in any fake age proof certificates of six policy holders and that he may not be responsible for the same. However, the agency of the petitioner was terminated through orders dated 17.3.1997, passed by the third respondent. In the appeal preferred by the petitioner, the second respondent confirmed the same through orders dated 3.11.1997. *Inter alia*, it was also ordered that the renewal commission, if any payable to the petitioner, stood forfeited apart from the termination of the agency. Questioning the same, the present Writ Petition is filed.

The first contention raised by the learned counsel for the petitioner is that there was no enquiry and that the termination of the agency of the petitioner without proper enquiry is a violation of the principles of natural justice and that the orders passed by the third respondent, second respondent and the first respondent, therefore, deserve to be set aside.

The learned counsel for the respondents on the other hand contended that the regulations do not envisage any

departmental enquiry as such. He placed reliance upon S.P. HABBU VS. L.I.C OF INDIA^[1]. A Division Bench of the Karnataka High Court pointed out in para 6 of the judgment dated 2.2.1996 as under:

“The submission of learned counsel that the divisional Manager did not hold any enquiry is without any substance. The Regulations do not contemplate holding of any enquiry like a trial in a Criminal Court or like a departmental enquiry against an employee. Regulation 16 merely provides that before the agency is terminated for commission of lapse by the agent, reasonable opportunity to show cause against the termination should be given. The Divisional Manager accordingly served show cause notice upon the agent and after considering the reply had terminated the agency. It is not permissible to import the concept of departmental enquiry or that of Article 311 while examining whether principles of natural justice are complied with while terminating agency.”

It is contended on the basis of this decision by the learned counsel for the respondent that where show cause notice was already issued, the termination of the agency is justified and that the same cannot be set aside on the ground that departmental enquiry is not held.

The learned counsel for the petitioner on the other hand contended that although the petitioner is an agent, more or less he is an employee and that his agency could

not be terminated without due enquiry. He contended that the petitioner was appointed as an agent and that the agency of the petitioner was not a contract. In support of his contention, he placed reliance upon Regulation No. 4 of (Agents) Regulations, 1972 ("the Regulations" for short). Regulation No. 4 speaks about the appointment of an agent. Regulation 4(1) reads that an agent might be appointed in any place for the purpose of soliciting or procuring life insurance business for the Corporation. It is the contention of the learned counsel for the petitioner that the petitioner was appointed as an agent and that it was not a case of contract. He also referred to various portions of the regulations, which speak about training, probation and gratuity for the agent and contended that an agent of the LIC is not a contract person but is an employee of the LIC. The learned counsel for the petitioner also placed reliance upon G. SREENIVASA REDDY V. ZONAL MANAGER, LIC OF INDIA, HYDERABAD^[2]. In that case, an agent of LIC, who was entitled to travel in A/c II Class travelled in Sleeper Class but claimed T.A, as if he has travelled in A/c II Class. On verification with the railways, it was found that the agent

did not travel in A/c II Class. After issuing show cause notice his agency was terminated. A learned Single Judge of this Court did not agree with the LIC regarding termination of the agent without enquiry. It was observed that under Regulation 16 (1)(b) of the Regulations, the termination of the employee without enquiry was violation of principles of natural justice. The present case exactly fits in the facts of G. Sreenivas Reddy. Assuming that the petitioner was guilty of misconduct, I am afraid that the agency of the petitioner cannot be terminated without due enquiry after framing charges and holding regular enquiry against the petitioner. Thus the very termination of the petitioner without due enquiry violates the principles of natural justice. The order of termination deserves to be set aside.

There is another aspect in this case. The fake age proof certificates were submitted by the six policy holders. It is contended by the learned counsel for the respondents that under Regulation 8(2)(b) and (c), an agent shall make reasonable enquiries regarding the lives of the insured and shall take all reasonable steps to ensure that the age of the assured is admitted at the commencement of the policy and contended that had the petitioner verified with

the schools regarding the records produced by the policy holders, it would have come out that the school records produced by the policy holders were fake. He submitted that the petitioner committed total dereliction of duty in not verifying the school records.

I am afraid that I cannot read from the Regulation 8 that an agent is expected to verify the records by going to the extent of visiting the schools and verify whether the age certificate produced by the proponent is true or otherwise. As long as the certificates produced by the proponents, prima facie appears to be true, an agent is expected to act accordingly; there is no ground to assume that there was connivance between the petitioner and proponents.

Added to it, the contention perhaps is irrelevant. Subsequently, the proponents produced genuine school certificates. They stated to the authorities that the school certificates relied upon by the petitioner were produced by them. One of the proponents went further and stated that his clerk brought school certificate, which he believes to be true and produced before the petitioner. In any event, there is no evidence to consider that the petitioner was

aware that the school certificates produced before him were fake and that he acted carelessly or in connivance with the proponents. I, therefore, consider that the finding that the petitioner committed misconduct itself is not justified assuming that proper enquiry was conducted against the petitioner. Viewed in any manner, the order terminating the agency and also forfeiture of renewal of commission, as awarded by the third respondent on 17.3.1997, deserves to be set aside.

Be it noted that the first respondent has set aside the order regarding the forfeiture of the renewal of commission through its orders. Consequently, the orders of the termination of agency alone is in dispute at present. As the termination of the agency is found to be bad on question of fact and also on the ground that the termination was without due enquiry, the termination orders are set aside. The respondents are directed to restore the agency of the petitioner with all consequential benefits, within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. No costs. Miscellaneous petitions, pending if any in this Writ Petition, shall also stand closed.

JUSTICE K.G.SHANKAR

DATE: 22.11.2013
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[\[1\]](#) 1996 LEGAL DIGEST 57 (Karnataka)

[\[2\]](#) 2002 (6) ALT 748