

Life Insurance Corporation of India & Ors.

v.

Om Parkash

(Civil Appeal No(s). 4393 of 2010)

13 November 2024

[Hrishikesh Roy* and S.V.N. Bhatti, JJ.]

Issue for Consideration

Whether the High Court erred in granting relief to the employee by setting aside his termination for abandonment of service despite the employee's failure to disclose his subsequent employment and the procedural compliance by the employer under Regulation 39(4)(iii) of the LIC Staff Regulations, 1960.

Headnotes[†]

Regulation 39(4)(iii), LIC Staff Regulations, 1960 – Abandonment of Service – The regulation deems an employee to have abandoned service if absent for 90 consecutive days without intimation – Employee absented himself without informing the employer, and notices were issued to his recorded address – The High Court overlooked the Respondent's abandonment of service and suppressed subsequent employment. [Para 11]

Constitution of India – Article 226 – Equitable Relief – Relief under Article 226 is equitable and requires the petitioner to approach the court with clean hands – Employee, during the pendency of the dispute, secured employment with the Food Corporation of India (FCI) but concealed this fact from the court and employer – Suppression of subsequent employment disentitled the employee to equitable relief [Paras 10, 12].

Service of Notice – Procedural compliance under Regulation 39(4)(iii), LIC Staff Regulations, 1960 – Regulation 39(4)(iii) permits service of notices by registered post to the employee's address in the service record, with deemed service if undelivered and affixed on the office notice board –

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Notices sent to the employee's permanent address, with postal remarks indicating he had left his job and residence – Satisfied procedural requirements – Held that the employer's actions complied with the regulation, and the employee's non-response justified the abandonment finding – The High Court's doubt on notice service was misplaced. [Paras 9, 11]

Held: The High Court erred in granting relief to the employee by allowing the Writ Petition and setting aside the termination order, as it overlooked that "it was a case of the employee abandoning his services without informing his employer about his whereabouts" – Treating the employee to have abandoned his service and taking appropriate action against him, in terms of the LIC Staff Regulation, cannot be faulted, given his absence since 25.09.1995, unanswered notices, and subsequent employment with the Food Corporation of India on 14.04.1997 – The employee's suppression of this employment in his Writ Petition filed on 05.01.1998 disentitled him to equitable relief from the High Court in exercise of powers under Article 226 of the Constitution – Accordingly, the impugned order is set aside and quashed [Paras 8-13].

List of Acts

Constitution of India; LIC Staff Regulations, 1960.

List of Keywords

Abandonment of service; Unauthorized absence; Equitable relief; Suppression of facts.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4393 of 2010

From the Judgment and Order dated 26.06.2008 of the High Court of H.P at Shimla in LPA No. 6 of 2003

Appearances for Parties

Kailash Vasudev, Sr. Adv., Ms. Ekta Choudhary, Divyank Dutt Dwivedi, Ms. Jeba Khan, Advs. for the Appellants.

Jaideep Gupta, Sr. Adv., Kunal Chatterjee, Advs. for the Respondent.

Life Insurance Corporation of India & Ors. v. Om Parkash**Judgment / Order of the Supreme Court****Order****Hrishikesh Roy, J.**

1. Heard Mr. Kailash Vasudev, learned Senior Counsel appearing for the appellant(s). Also heard Mr. Jaideep Gupta, learned Amicus Curiae assisted by Mr. Kunal Chatterjee, learned counsel for the respondent.
2. The challenge here to the judgment and order dated 26.06.2008 in the LPA No.6/2003 of the High Court of Himachal Pradesh whereunder, the judgment of the learned Single Judge dated 21.05.2003 was upheld by the Division Bench. Through the said judgment, the termination of the respondent ordered by the appellant(s) on 25.06.1996 was found to be unsustainable on the ground of not providing due opportunity to the delinquent. The learned Single Judge set aside the penalty of removal from service granting all consequential benefits to the delinquent. The Court however observed that the employers were at liberty to proceed to conduct inquiry on the charges in terms of the *Life Insurance Corporation of India (Staff) Regulation, 1960* (for short “*LIC Staff Regulation*”, and take necessary action.
3. The disciplinary authority while ordering removal from service of the respondent through the order dated 25.06.1996 (Annexure P-1) considered the absence from duty by the respondent to be a case of abandonment of service under Regulation 39(4)(iii) read with Explanation 1 of the LIC Staff Regulation. The order notes that the delinquent failed to respond to the notice(s) issued to him. Moreover his whereabouts were not known for over 90 days, as specified in the LIC Staff Regulation. The respondent who was serving as an Assistant Administrative Officer in the LIC, since 25.9.1995 absented himself from duties without informing his employer. The LIC’s letters addressed to him to resume duties remained unanswered by the delinquent. Then the chargesheet-cum-show cause notice was issued on 14.02.1996 proposing his removal from service. But the same was also not answered.
4. The Authority therefore considered it to be a case of abandonment of service and by invocation of powers under Regulation 39(4)(iii) ordered from removal of the delinquent. The relevant part of the Regulation reads as under:-

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"39 (4) (iii) Where an employee has abandoned his post, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

Explanations: 1. For the purpose of this regulation, an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or overstays his leave for a continuous period of ninety days without any intimation therefore in writing.

2. All communications under this regulation and copies of orders passed there under may be delivered personally to the employee if he is attending office; otherwise they shall be sent by registered post to the address noted in the service record. Where such communications or copies of orders cannot be served on him personally or by registered post, copies thereof shall be affixed on the notice board of the office in which the employee is employed, and on such affixing such communications and orders shall be deemed to have been properly served on him."

5. Assailing the judgment of the High Court granting relief to the delinquent, Mr. Kailash Vasudev, learned Senior Counsel would point out that notice(s) were issued on 06.10.1995, 06.11.1995 and 19.12.1995 to the respondent prior to the chargesheet-cum-show cause notice on 14.02.1996. In those, the delinquent was informed about his unauthorized absence from office with effect from 25.09.1995 and requiring him to rejoin services immediately or action would be taken against him under the LIC Staff Regulation. This was followed by chargesheet-cum-show cause notice which reflected the endorsement of the Postal Authorities to the communication dated 06.11.1995 to the effect that on enquiry it was learnt that the respondent had abandoned his job and left his place of residence. As all the notice(s) remained unanswered by the delinquent, the authorities invoked the powers under Regulation 39 (1)(f) and ordered delinquent's removal from service.
6. When the appeal of the delinquent was rejected by the Appellate Authority through order dated 19.08.1997, the respondent filed the writ petition resulting in the impugned orders of the Single Judge and Division Bench of the High Court.

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- 7.1 Mr. Kailash Vasudev, learned Senior Counsel would firstly submit that the appellant(s) had taken all steps to serve notice on the delinquent who was not to be found since 25.09.1995 and therefore treated it to be a case of abandonment of service. The termination of service was accordingly ordered, under the Regulation 39(4)(iii).
- 7.2 It is next pointed out that around that period, the respondent secured employment as AG-III Depot in the Food Corporation of India (FCI) on 14.04.1997 and although this was an important indication of abandonment of service by the respondent, he failed to disclose the same in the Writ Petition No.41 of 1998, which subsequently came to be filed before the High Court on 05.01.1998.
- 7.3 The Senior Counsel submits that the respondent absented from duty for 90 days without intimation to his employer and since the notice(s) addressed to the delinquent remained unanswered, conducting an inquiry into the charge of unauthorized absence was an impossibility. Therefore, the employer had rightly treated it to be a case of abandonment of service and terminated the respondent.
8. The respondent despite notice, was un-represented and accordingly Mr. Jaideep Gupta, learned Senior Counsel was requested to assist the Court. Mr. Gupta adverts to the circumstances under which the respondent's services were dispensed with by the appellant(s) and points out that service of notice as claimed by the appellant(s), may have to be treated with caution as the concerned notice(s) were sent to different addresses.
9. On the above aspect, it is discernible that three notice(s) were sent to the permanent address. In response to the second notice dated 06.11.1995 which returned back to the appellant(s), the postal remarks in Hindi reads as under:
- “pata karne par pata chala hai ki praptkarta kahin se naukari chodkar chala gaya hai. R.L. wapas ki jati hai” [English Translation: on enquiry it has come to know that the consignee has left job and gone. R.L is returned herewith]
10. Importantly, the respondent secured employment with the FCI on 14.04.1997 and although his Writ Petition was filed six months after securing the new job, the employment with the FCI was concealed in the Writ Petition. If this vital aspect was known the High Court

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possibly would have taken a different view and the respondent abandoning his job with the LIC, could have been easily inferred.

11. Relief was granted to the respondent by the High Court on the ground that the termination order was passed without affording a reasonable opportunity or conducting an inquiry into the charge of absence from duty. But in granting such relief, the Court overlooked that it was a case of the respondent abandoning his services without informing his employer about his whereabouts. Subsequently, it came to light that he joined the FCI on 09.05.1997.
12. Such conduct of the respondent could not have been condoned by the employer and therefore, in our assessment, treating the respondent to have abandoned his service and taking appropriate action against him, in terms of the LIC Staff Regulation, cannot be faulted. It is also necessary for us to say that as the delinquent was guilty of suppression of the fact of his employment with the FCI, he was disentitled to equitable relief from the High Court in exercise of powers under Article 226 of the Constitution.
13. With the above conclusion, the High Court in our assessment, erred in granting relief to the respondent by allowing the Writ Petition. The impugned order is accordingly set aside and quashed. With this, the appeal stands allowed leaving the parties to bear their own cost.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Ankitesh Ojha, Hon. Associate Editor
(Verified by: Abhinav Mukerji, Sr. Adv.)