

Before Arun B. Saharya, C. J. & V.K. Bali, J

L.I.C. OF INDIA—Appellant

versus

HANS RAJ—Respondent

L.P.A. 1282 of 1991

7th December, 2001

Constitution of India, 1950—Art. 226—Life Insurance Corporation of India (Staff) Regulations, 1960—Regs. 19(2) & 25(4)—Removal from service—A Field Officer of L.I.C. contesting the M.C. elections by making an application for permission to the chairman well in time—Neither the Chairman ever declined the request of the plaintiff nor he received any communication from the Chairman—Corporation granting permission to contest the election to some similarly situate employees—Plaintiff not permitted to lead evidence in his defence—Violative of the provisions of Regulation 39(2)—Order of the Single Judge holding the petitioner entitled to reinstatement and compensation upheld—Corporation's appeal dismissed with costs.

Held, that the first charge against the plaintiff was that he had offered himself as a candidate for the election to a local authority and subsequently got elected as a Member without prior permission of the competent authority. Proviso (iii) to sub-clause (4) of Regulation 25 of 1960 Regulations does not envisage prior permission. That apart, the only competent authority, as conceded, to accord permission is the Chairman, to whom, concededly as well the plaintiff had made an application well in time. It was not disputed that at no stage, the Chairman had declined the permission to the plaintiff to contest the election.

(Para 12)

Further held, that while issuing charge-sheet to the plaintiff, he was asked to give a list of witnesses, whom he wanted to examine to prove his case and the plaintiff alongwith reply to the charge-sheet had appended a list of witnesses. If the stand of the Corporation was that there was no need to examine any witness on his behalf or even

to permit the plaintiff to lead evidence in defence, there was no need to call upon the plaintiff to give a list of witnesses in the charge-sheet. In not permitting the plaintiff to lead his evidence, the Corporation clearly violated the provisions of Regulation 39(2) of 1960 Regulations, which enjoins upon the competent authority to give an opportunity to a person, against whom an order of dismissal, removal or compulsory retirement is intended to be passed. Plaintiff's request for leading defence was rejected. Surely, he was entitled to establish his *bona fides* and defences projected by him in the replies to the show cause notice and charge-sheet were such that if proved, the same could have resulted into the order or exonerating the plaintiff.

(Paras 12 & 13)

Ashok Aggarwal, Sr. Advocate with B.R. Mahajan, Advocate,
for the appellant.

R.C. Setia, Advocate, *for the respondent.*

JUDGMENT

V. K. Bali, J. :

(1) Service career of Hans Raj Arya (hereinafter referred to as 'plaintiff') ran into rough weather in the very initial years when he came to be employed as Development Officer with the Life Insurance Corporation of India (hereinafter referred to 'as appellant') and the litigation that ensued has consumed all the years for which he would have served as it appears. he must have. either reached the age of superannuation or may be very close to the same.

(2) Brief facts of the case reveal that the plaintiff was removed from service,—*vide* order dated 3rd December , 1964. Constrained he raked up the issue by styling his removal from service as wholly illegal before the Civil Court wherein he filed suit for declaration to the effect that the order aforesaid passed by the Zonal Manager, Life Insurance Corporation of India, was illegal and so was the order rendered in appeal preferred by him against the order of his dismissal. He succeeded in obtaining a decree of declaration to the effect that his removal from service from the appellant Corporation was wrongful and that the impugned orders dated 3rd December, 1964 and 8th June, 1965 were

unsustainable. In Consequence of the findings, referred to above, the plaintiff was, however, not ordered to be reinstated in service and instead was held entitled to a decree for damages to the tune of Rs. 2,000 on account of difference in his earnings between the period of his wrongful removal and the institution of the suit with proportionate costs. His claim for future damages was, however, rejected. Constrained, whereas the plaintiff filed Regular First Appeal bearing No. 1910 of 1978, the appellant-Corporation filed Cross Objections bearing No. 225/CI of 1979. Obviously whereas, the plaintiff in the appeal aforesaid prayed that he should have been ordered to be reinstated with all consequential benefits, the appellant—Corporation challenged the grant of damages as well to the plaintiff. Both, the appeal as also the cross objections, were decided by a common judgment dated 15th March, 1991. Appeal preferred by the plaintiff against the judgment and decree passed by the learned trial Court dated 30th October, 1973 was set aside, thus ordering the plaintiff to be reinstated in service and deemed to be in continuous service till his superannuation as also emoluments, which were to be determined keeping in view the fact if the plaintiff was in gainful employment during the period, he was removed from service, cross objections preferred by the appellant were dismissed. It is this judgment of the learned Single Judge emanating from the decree of the Civil Court that has since been challenged in this appeal filed under Clause X of the Letters Patent.

(3) Brief facts culminating into filing of the suit by the plaintiff with the result already indicated above reveal that the plaintiff was employed as Development Officer in the Branch Office of the appellant at Abohar. In view of the provisions contained in Rule 19(2) of the Life Insurance Corporation of India (Staff) Regulation, 1960 (hereinafter referred to as 1960 Regulation), the plaintiff was entitled to continue in service till he completes the age of 58 years with all increments, gratuity and provident fund. In the year 1961, Municipal elections were held at Abohar. The date of filing of nomination papers was upto 20th August, 1961 and the elections were held on 24th September, 1961. The plaintiff sought permission to contest the election from the Chairman of the appellant—Corporation,—*vide* his application dated 20th August, 1961. The Branch Office, Abohar,—*vide* letter dated 31st August, 1961, informed the plaintiff that his application has been forwarded to the Divisional Manager, Jalandhar, for consideration. However,—*vide* communication dated 5th December,

1963, he was called upon by the Senior Divisional Manager, 4th respondent so arrayed in the memo of parties before the Civil Court, to submit his explanation within 15 days as to why he has contested the election and as to how he has accepted the office of Senior Vice-President in the Municipal Corporation. The plaintiff submitted his explanation on 21st December, 1963, which was not found satisfactory, thus, resulting in charge sheeting the plaintiff,—*vide* order dated 16th March, 1964. The charges as spelled out from Ex. P-6, dated 16th March, 1964, read thus :—

- “(i) That you offered yourself as a candidate for election to and subsequently got elected as a Member of Municipal Committee, Abohar, without prior permission of the competent authority in violation of Regulation 25(4) of (Staff) Regulations, 1960, and have thus committed a breach of the aforesaid Staff Regulations.
- (ii) That you also accepted the office of the Senior Vice-President of the aforesaid Municipality in the year 1963 without prior permission of the competent authority which act of yours tantamounts to breach of Regulation 28 of the (Staff) Regulations, 1960.”

(4) In the last but one of the paragraphs of the charge-sheet, it has been mentioned that if the plaintiff may desire to cite any witnesses (in which case, their names, designation and addresses should be furnished indicating the nature of their evidence which he intended to prove or disprove the case) he would be permitted to produce the witness or witnesses at his own cost. The plaintiff submitted a reply to the charge-sheet,—*vide* his letter dated 30th March, 1964 wherein, *inter alia*, he stated that he was elected as Member of the local Municipal Committee three years ago and explanation was submitted to the local branch office,—*vide* his letter dated 7th January, 1962. For all intent and purposes, the matter was closed but, it appears issue was again raked up purely motivated by extraneous considerations. He made a reference of recent judgment of this Court rendered on 11th November, 1960 in **Bishan Dass versus W.L. Bhambari** and explained that there was nothing to warrant any punishment since he had sought permission well before the election as in view of the judgment, mentioned above and further that there

was nothing to debar the employees of the Life Insurance Corporation development staff from remaining employees of the Municipal Committee and remaining employees of Life Insurance Corporation of India as well. He further stated that there were precedents of which the department was fully aware that Field Officers were the Members of the Municipal Committee elsewhere. He named S/Sh. Walaiti Ram Bhambari and, Madan Lal Mahendru of Pathankot in that connection. With regard to his election as Senior Vice-President, Abohar Municipal Committee, he stated that under by no stretch of imagination this election could be held as an office of profit and further that the term of such election is only one year. There was no adverse effect of his election to the local Municipal Committee on his work in the appellant Corporation. On the contrary, the appellant-Corporation should feel pride that one of its workers enjoys such a measure of confidence of people and is their elected representative. He further stated that he was the only Harijan Field Officer in the entire organisation of the appellant in Jalandhar Division and he should be permitted to continue earning a living and doing his humble bit in the sphere of social service to his community. He further stated on solemn assurance that under no circumstance, he would let Life Insurance Corporation's work suffer on account of his association with the Municipal Committee. It appears from the records of the case and such are also the finding recorded by the learned trial Judge and learned Single Judge that without recording any evidence on its behalf and for that matter permitting the plaintiff to lead evidence in defence, a show cause notice dated 14th September, 1964 was issued to the plaintiff proposing his removal from service, which, however, was not to be a disqualification for future employment. He was asked to submit his explanation within 10 days from the date of receipt of the show cause notice aforesaid, failing which it was to be presumed that he had no explanation to offer. The plaintiff responded to the show cause notice aforesaid,—*vide* letter dated 29th September, 1964 pleading therein that the only competent authority to grant permission to him to contest the election was the Chairman of the Corporation. His request was never declined by the competent authority and he had reasons to believe that action taken against him was under the influence of his opponents to desist him from contesting election. He further stated that rejection of his application by the Chairman, if any, was never communicated to him and that he had submitted his application for

permission in time on 20th August, 1961. Even the Divisional Office did not object to his contesting election, as he never received any letter prior to 12th December, 1963, when he had since been elected as Senior Vice-President. He believed that show cause notice was issued to him on account of influence of his opponents, exerted on authorities. He also stated that he was being discriminated and in fact being a Harijan he should have received better treatment. On the contrary, the appellant had given sanction to S/Sh. Walaiti Ram Bhambri, Madan Lal Mahendru of Pathankot and Sh. S.R. Sehgal, Field Officer, Moga Sub-Office, to contest the election and he was being deprived of even equivalent treatment on account of high approach and influence of his opponents. He further stated that Sh. S.R. Sehgal not only remained a Member of the Moga Municipal Committee but also acted as President for a term. He attached a copy of permission granted in the case of Sh. S.R. Sehgal. In the end, he prayed for formal hearing in the matter by the Punishing Authority.

(5) Without considering anything stated by the plaintiff in his reply to the show cause notice proposing removal from service, order dated 3rd December, 1964 came to be passed. The same reads thus :—

“I have gone through the reply dated the 29th September, 1964 of Shri H.R. Arya, Development Officer. Code No. 18, Abohar Branch to the Show Cause Notice dated the 14th September, 1964 served on him, proposing the penalty of removal from service of the Corporation which shall not be a disqualification for future employment, under Regulation No. 39-1(f) of the Life Insurance Corporation (Staff) Regulations, 1960. His reply has not been found satisfactory. I, therefore, in exercise of the powers vested in me,—*vide* Schedule I of the Life Insurance Corporation (Staff) Regulations, 1960, impose on Shri H.R. Arya the following penalty under Regulation No. 39-1 (f) of the Life Insurance Corporation (Staff) Regulations, 1960 :—

“Shri H.R. Arya be removed from service which shall not be a disqualification for future employment.”

The above order shall come into force with effect from the date of its service on him.”

(6) Constrained, the plaintiff filed appeal against the order aforesaid on 6th February, 1965, which was dismissed. On facts as stated above preceded by a notice, plaintiff filed suit seeking decree for declaration to the effect that the order of removal from service and the appellate order were wholly illegal and void. In paragraph 10 (a) to (m), he pleaded grounds, which according to him would result in invalidating order of his removal from service. The same read as follows :-

- “10 (a). That the election in question was going to be held on 24th September, 1961 and the plaintiff had applied on 28th August, 1961 for permission, i.e., about a month before the election and there was sufficient time at the disposal of Chairman, Life Insurance Corporation of India to accept or reject his application. As no communication was received from the Chairman, the plaintiff in good faith presumed that his application had been accepted. He, therefore, contested the election and was elected a member of Municipal Committee, Abohar.
- (b) That if the application of the plaintiff had been rejected and he had received an order to that effect, he would not have contested the election nor would have he offered himself for election as Senior Vice-President of the Municipal Committee. No order has so far been passed on the said application of the plaintiff. Rather the election of the plaintiff as Municipal Commissioner and Senior Vice-President of the Abohar Municipal Committee was felicitated by the office of the Life Insurance Corporation of India.
- (c) That the plaintiff was served with the notice mentioned in para 4 of this plaint after two years. The notice was given to the plaintiff *mala fide* at the instance of political rivals of the plaintiff with a specified object to harass the plaintiff alongwith the approval of the confirmation about contesting the election could be granted to the plaintiff even at a subsequent stage. Any how if the officers of the Life Insurance Corporation of India had

no mind to accord the sanction to the plaintiff, they could call upon the plaintiff to resign the seat and office of the Municipal Committee, Abohar and on the failure of the plaintiff to do as such, defendant No. 1 could take some sanction against the plaintiff. Since the defendants were acting *mala fide* so they did do all this.

- (d) That there was no justification for discriminating against the plaintiff who is a Harijan.
- (e) That the plaintiff was an independent candidate and was not connected with any political party.
- (f) That the office of Senior Vice-President of the Municipal Committee is not an office of profit nor any likelihood of the insurance work suffering as a consequence of the plaintiff election as a Municipal Commissioner, or Senior Vice-President. Rather it was beneficial for the insurance work.
- (g) That the defendant No. 4 not being the punishing authority could not frame any charge-sheet against the plaintiff.
- (h) That no enquiry as required by Regulation 39(2) was held. The plaintiff was not given a reasonable opportunity of defending himself against the charge levelled against him. Even a copy of report of defendant No. 4 was not supplied to him. The plaintiff submitted a list of 6 defence witnesses with their designations and addresses and yet not even one was called and examined by any officer.
- (i) That the show cause notice is no notice in the eyes of law as it does not give reasons for the finding of imposition of the penalty of the removal of plaintiff from service.
- (j) That the order of the removal is only a cryptic order and not a speaking order.
- (k) That the appellate order passed by defendant No. 2

suffers from the same legal infirmity and does not fulfil the requirements of Regulation No. 46(2) of the Staff Regulations, 1960.

- (1) That the said order was against the natural justice as neither defendant No. 3 nor defendant No. 2 heard the plaintiff before passing the order in question. The defendant No. 4 too never heard him.
- (m) That the plaintiff was sent for training at Ambala Cantonment Zonal Training Centre by the defendant No. 4 from 14th May, 1962 to 23rd June 1962 and the Life Insurance Corporation of India had undergone all the expenses of the plaintiff during this period of training. It was implied that the Corporation had accepted the plaintiff's application and accorded sanction, otherwise the Corporation would have sent the plaintiff for training. The defendants by their conduct were barred for taking any action whatsoever against the plaintiff."

(7) The appellant contested the cause of the plaintiff by pleading some preliminary objections, like, misjoinder of parties, non-joinder of necessary parties, the suit being not properly valued for the purpose of court fee and jurisdiction, the Court having no jurisdiction in the matter and that no declaration could be granted to the plaintiff to the effect that the orders dated 3rd December, 1964 and 8th June, 1965 were bad in law, there being a contract of personal service between the plaintiff on one hand and the Life Insurance Corporation of India on the other, the contract of personal service could not be specifically enforced in view of the provisions of Section 21(b) of the Specific Relief Act. It was then pleaded that the services of the plaintiff were determined in accordance with the Life Insurance Corporation of India (Staff) Regulations, 1960, by which the plaintiff and defendants were governed in their relations *inter se*. The plaintiff was only in a contractual employment and not in a statutory employment. He could be removed from service as he had committed a breach of the contract entered into by him with the Life Insurance Corporation in as much as he contested Municipal Elections without prior permission of the Corporation. It was further pleaded that the plaintiff had been

communicated by the Corporation Branch Office at Abohar on 31st August, 1961 that he could not contest the Municipal Elections. On merits, it was pleaded that the plaintiff has also given opportunity on all occasions and further in view of the charges framed against him and reply thereof, there was no need to hold any enquiry. The pleadings of the parties gave rise to the following issues :—

- “1. Whether the orders of defendants No. 3, dated 3rd December, 1964 and order of defendant No. 2 dated 8th June, 1965 are null and void on the grounds mentioned in the plaint ? OPP.
2. Whether the suit is bad for mis-joinder of parties if so to what effect ? OPD.
3. Whether the suit is not maintainable in the present form ? OPD.
4. Whether the provisions of Shops and Commercial Establishments Act can be invoked in the present case, if so what they are and to what effect ? OPD.
5. Whether the suit is properly valued for purposes of Court fee and jurisdiction ? OPP.
6. Whether the suit is not competent in view of the objections No. 5/6 of the written statement ? OPD.
7. Whether the claim for damages is within time ? OPP.
8. Whether the election of the plaintiff either as a member or as Senior Vice-President of the Municipality offended against the rules of his service and Staff Regulations of the Life Insurance Corporation, if so to what effect ? OPD.
9. Whether the plaintiff is entitled to any damages, if so how much ? OPP.
10. Whether the plaintiff is entitled to the future damages, if so how much ? OPP.
11. Relief.”

(8) Resultant trial on the issues aforesaid culminated into judgment and decree that came to be rendered in favour of plaintiff in the manner noted above, which has since been modified by the learned Single Judge again as detailed above.

(9) The only contention raised by Mr. Ashok Aggarwal, Senior Counsel assisted by Mr. B.R. Mahajan, Advocate, in support of the present appeal is that in view of the nature of the charges and candid admission of the plaintiff, there was no necessity at all to prove the charges or even to give any opportunity to the plaintiff to lead evidence in his defence. Regulations 25(4) and 28 of the 1960 Regulations were violated by the plaintiff with impunity. The charges framed against the plaintiff were covered under Regulations 25(4) and 28 of the 1960 Regulations, violation whereof was alleged against the plaintiff. From the contents of reply to the show cause notice given by the plaintiff from time to time, the charges against the plaintiff stood proved, further contends the learned counsel representing the appellant.

(10) We have heard learned counsel representing the parties and with their assistance examined the records of the case. The only contention of learned counsel, noted above, in our view, in light of pleadings and evidence led by the parties, has no substance whatsoever. The contention that there was no necessity at all to lead any evidence to substantiate the charges framed against the plaintiff or for that matter, given an opportunity to the plaintiff to lead evidence, it may be mentioned, was not raised before the Courts below. However, even if the appellant is permitted to raise the issue for the first time, the same shall cut no ice. Regulation 25(4) of 1960 Regulations reads thus :—

“25 (4). No employee shall canvass or otherwise interfere or use his influence in connection with or take part in an election to any legislature or local authority;”

(11) Proviso (iii) to sub clause (4) of Regulation 25 of 1960 Regulations reads thus :—

“25(4)(iii). The Chairman may permit an employee to offer himself as a candidate for election to a local authority and the employee so permitted shall not be deemed to have contravened the provisions of this regulation.”

(12) It may be recalled at this stage that the first charge against the plaintiff was that he had offered himself as a candidate for the election to a local authority and subsequently got elected as a Member without prior permission of the competent authority. Proviso (iii) to sub clause (4) of Regulation 25 of 1960 Regulations does not envisage prior permission. That apart, the only competent authority, as conceded during the course of arguments, to accord permission is the Chairman, to whom, concededly as well the plaintiff had made an application well in time. It was not disputed that at no stage, the Chairman had declined the permission to the plaintiff to contest the election. The matter does not rest there as assuming it that there was an order rejecting the prayer of the plaintiff to contest the election to the Municipal Corporation, the plaintiff had enumerated number of grounds, which if proved, could have resulted in exonerated him. At every stage, the plaintiff stated that he was a victim of frame up. To substantiate it, prima facie at least, he had stated that even though it was a three years old matter when he had contested election, the issue was raked up at the instance of persons inimical or opposed to him on account of influence exerted by them in the corridors of power. In a suit that came to be ultimately filed by him, he also pleaded that after his contesting election he was sent for training, which would further show that the matter which stood sorted out earlier, was reopened on account of extraneous considerations. He further stated that permission was to be accorded by the Chairman, who never refused it and it may be mentioned at this stage that indeed, there is nothing available on the record to suggest that the Chairman had ever declined the permission to the plaintiff to contest the election. he also stated that the appellant Corporation employees similarly situate were granted permission to contest elections and some of them were even holding one or the other office. It is significant to mention here that while issuing charge sheet to the plaintiff, as mentioned above, the plaintiff was asked to give a list of witnesses, whom he wanted to examine to prove his case and the plaintiff along with reply to the charge sheet had appended a list of witnesses. If the stand of the appellant was that there was no need to examine any witness on his behalf or even to permit the plaintiff to lead evidence in defence, there was no need to call upon the plaintiff to give a list of witnesses in the charge-sheet dated 16th March, 1964. In not permitting the plaintiff to lead his evidence, in our view, the appellant clearly violated the

provisions of Regulation 39(2) of 1960 Regulations, which reads as follows :—

“No employee shall be dismissed or removed or compulsorily retired or reduced to a lower service or post or to a lower time scale or to a lower stage in a time scale and no order imposing on an employee any of the penalties specified in clauses (b) to (g) of sub regulation (1) *supra*, shall be passed by the disciplinary authority specified in Schedule I without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him.”

(13) The regulation reproduced above enjoins upon the competent authority to give an opportunity to a person, against whom an order of dismissal, removal or compulsory retirement is intended to be passed. As mentioned above, request for leading defence was rejected. Surely, the plaintiff was entitled to establish his *bona fides* and defences projected by him in the replies to the show cause notice and charge-sheet were such that if proved, the same could have resulted into the order of exonerating the plaintiff. Reference at this stage be made to the grounds projected in defence as enumerated in paragraph 10 (a), (b), (c), (d) and (f) and further paragraph 10(m) which, however, was over and above from the one that he had taken before filing the suit.

(14) We are in respectful agreement with the learned Single Judge that the order of removal having been passed in violation of statutory provisions, the plaintiff is entitled to the order of his reinstatement.

(15) Insofar as the order of the learned Single Judge pertaining to calculating and paying to the plaintiff emoluments keeping in view the fact that the plaintiff was in gainful employment during the period is concerned, we have really deliberated on the issue. Whereas, it may appear to be somewhat harsh to the appellant to pay to the plaintiff pay/wages for entire length and breadth of his service even though he had not worked for all these years, it also appears that it

will be too inequitable not to pay to the plaintiff the pay that he would have earned in normal course as it is because of wholly illegal attitude of the appellant that he was deprived of his service career spanned over a period of about 40 years during which he could have reached the highest ladder as also his livelihood for all these years. The equities, in our view, would heavily tilt in favour of the plaintiff. That being so, the order passed by the learned Single Judge in compensating the plaintiff, as mentioned above, deserves to be upheld.

(16) Before we may part with this order, we would like to mention that nothing based upon the preliminary objections, as detailed above, or for that matter the present being a case of service contract between the parties and the plaintiff, thus, being entitled to only damages and not reinstatement has been urged before us.

(17) Finding no merit in this appeal, we dismiss the same with costs quantified at Rs. 5,000.

R.N.R.

Before G.S. Singhvi, J

PUNJAB STATE & OTHERS—*Appellants/Defendants*

versus

ANIL KUMAR—*Respondent/Plaintiff*

R.S.A. No. 1684 of 1994

23rd November, 2001

Punjab Police Rules, 1934—Rls. 12.21 & 16.24—Constitution of India, 1950—Arts. 226 & 311—Discharge of Constable from service under rule 12.21—Satisfaction of the SSP that constable is not likely to prove an efficient police officer is final—There is no bar in rule 12.21 from discharging a Constable if opinion is formed on assessment and relevant material—Even in the face of specific allegation of misconduct constable can be discharged—Merely because while forming an opinion on the issue of suitability of the constable his absence from duty taken into consideration is no ground to declare the order of discharge simpliciter to be punitive—Pleadings—Written Statement—Averments made in written statement in defence of discharge cannot