

# ANDHRA PRADESH HIGH COURT

Akella Satyanarayana Murthy

Vs.

Life Insurance Corporation of India

Writ Peta. No. 1218 of 1966

(Narasimham and A.D.V. Reddy, JJ.)

21.12.1967

## JUDGMENT

### **Narasimham, J.**

1. This is a petition seeking the quashing of the order of the Zonal Manager, Life Insurance Corporation of India, 5-5-1966, dismissing the petitioner on a writ of certiorari.
2. The facts relevant to this petition are these: The petitioner was a Development Officer in the Life Insurance Corporation of India. While working as such in Visakhapatnam and Srikakulam districts, the authorities of the Life Insurance Corporation referred cases of alleged misappropriation of the insurance moneys collected from the policy-holders by the petitioner to the Special Police Establishment. The said authorities filed a charge-sheet against the petitioner in the Court of the Fourth City Magistrate, Hyderabad, for alleged misappropriation of Rs. 58 collected by the petitioner from one T. Jagannayakulu and Chowdary Krishnamurty. The Magistrate tried the case against him as S.P.E. No. 5 of 1965 and found him guilty under Section 409, I.P.C., but, instead of sentencing him, directed that he be released on probation of good conduct for a period of two years under Section 4 (1) of the Probation of Offenders Act, 1958 (Central Act No. XX of 1958). After the conviction and release as aforesaid under the provisions of the Central Act XX of 1958, the petitioner was dismissed from the service of the Life Insurance Corporation of India by the order of the Zonal Manager which is now impugned.
3. The main challenge to the order before us is that by reason of Section 12 of the Probation of Offenders Act, 1958, the petitioner cannot be dismissed as that section specifically enacts that a person found guilty of an offence and dealt with under Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.
4. The Life Insurance Corporation by their counter pleaded that the authorities dismissed the petitioner under Regulation 39 (4) of the Life Insurance Corporation of India, Staff Regulations, 1960. These Regulations, it is said, were made under Section 49 of the Life Insurance Corporation Act, 1956 (Central Act XXXI of 1956) and have the force of law.
5. Now three questions arise for our consideration in this matter:

- (1) Whether the Life Insurance Corporation is precluded from taking appropriate action against an employee under Regulation 39(4) of the Staff Regulations, 1960, by reason of Section 12 of the Probation of Offenders Act, 1958.
- (2) If the authorities are not so precluded, whether in fact action has been taken in this case under the said Regulation?
- (3) Whether the impugned order suffers from any infirmity?

6. We would now appropriately peruse Section 12 of the Probation of Offenders Act, 1958 and Regulation 39 of the Staff Regulations, 1960, relevant in this context.

7. Section 12 is in these terms: "Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence."

8. There is no controversy before us that the petitioner was dealt with under the provisions of Section 4 and for that reason he would not suffer disqualification, if any, attaching to his conviction under Section 409 I. P. C. by reason of Section 12 of the Probation of Offenders Act.

9. Now we may read Regulation 39 in so far as it is relevant: Regulation 39 (1) sets out the penalties (a) to (g) which may be imposed for good and sufficient reasons. Regulation 39 (1) (g), mentions dismissal as one of the penalties. Sub-regn. (2) sets out the procedure of communicating the charge or charges to the delinquent official and giving him a reasonable opportunity of defending himself. Sub-regulation (3) says that the disciplinary authority may enquire or may appoint a Board of Enquiry or an Enquiry Officer. Sub-regulation (4), which is significant in the context of the impugned order, states thus:

"(4) Notwithstanding anything contained in sub-regulations (1) and (2) above-

- (i) Where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge; or
- (ii) Where the authority concerned is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in this regulation, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit."

10. What we have to consider now is whether by reason of Section 12 of the Probation of Offenders Act, the disciplinary authority is precluded from proceeding to deal with the employee under Regulation 39 (4) (i). The answer to this question depends on the scope of Section 12 of the Probation of Offenders Act.

11. Our attention has been invited to two decisions of the Madras High Court which had dealt with this question. No doubt the said cases considered the matter with reference to a similar provision under the Madras Probation of Offenders Act, 1937 (Act III of 1937), Section 12-A.

Section 12-A was in substance similar to Section 12 of the Probation of Offenders Act (Central Act) and so the reasoning and the conclusion equally applies.

12. The first of the cases: *R. Kumaraswami Aiyar v. Commr., Tiruvannamalai Municipality*<sup>1</sup>, dealt with the case of a clerk in the Municipal Office at Tiruvannamalai who was convicted of an offence of cheating under Section 420, I.P.C., and was released as a first offender under Section 4 (1) of the Madras Probation of Offenders Act. Under the rules regulating the conditions and tenure of service under the municipal councils, more specifically mentioned as Rule 3, a person was convicted of an offence involving moral (sic) service. Acting under that rule, the Municipal Commr. issued a memo, to the official concerned directing him to show cause why his service should not be terminated under Rule 3 of the Statutory Rules. The official moved the Court under Article 226 of the Constitution of India for the issue of a writ of prohibition against the Commissioner, Tiruvannamalai Municipality, restraining him from proceeding against the official. It was contended that Rule 3 of the Statutory Rules was a disqualification contemplated under Section 4 (1) of the Madras Probation of Offenders Act and the Municipal authorities were, therefore, incompetent to take any action against the official concerned. That contention was rejected. It was said that what Section 12-A of the Madras Probation of Offenders Act had in view was an automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the accused. The learned Judge, Rajagopala Ayyangar, J., observed thus at p. 563 (of Mad LJ) : (at p. 256 of Cri LJ):

"In my judgment the possibility of disciplinary proceedings being taken against a person found guilty is not a disqualification attaching to the conviction within the meaning of Section 12-A of the Probation of Offenders Act. In the present case the conviction does not act as any disqualification for holding any office, that is, it has no automatic effect. Only the moral turpitude involved in the petitioner's act is treated as a ground for removing him from service. If this is the proper construction of Section 12-A of the Probation of Offenders Act, it is clear that the first respondent, the Municipal Commissioner, had jurisdiction to proceed under Rule 3 of the Statutory Rules and there is no substance in this writ petition."

13. The second of the cases, *Embaru v. Chairman, Madras Port Trust*<sup>2</sup>, dealt with the case of a Port Trust employee (a fitter) who was also convicted of an offence of cheating under the Section 420, I.P.C., and released under Section 4 (1) of the Madras Probation of Offenders Act, 1937, in lieu of a sentence. Rule 17 (a) (ii) of the Standing Orders of the Port Trust of Madras provided that, should a case against a workman result in his conviction and such conviction remained in force, the workman might be dismissed from service from the date of conviction. Purporting to act under that rule, the Chief Engineer of the Madras Port Trust informed the employee that he was dismissed from service with effect from the date of his conviction. The employee moved the Court under Article 226 of the Constitution of India to quash the aforesaid order of the Port Trust authorities. It was contended that under Section 12-A of the Madras Probation of Offenders Act, the employee, in view of the probation order, had immunity from dismissal or any other punishment. Negating the said contention it was held :

<sup>1</sup>(1956) 2 Mad LJ 562, at p. 563 : (1957 Cri LJ 255 at p. 255)

"Rule 171 (a) (ii) of the Standing Orders does not provide an automatic dismissal of a person from service on his conviction. The rule leaves a discretion and it would be open to the authority concerned to decide not to dismiss a person from service by reason of conviction. That being the case, the rule which merely reserves a discretion to the authority is in no way affected by Section 12-A. It would be another matter if the rule had stated that on a conviction the person concerned would stand automatically dismissed from service. But that is not the rule. All that the rule contemplates is that where a person has been convicted of an offence and the conviction is in force, it would be competent for the authority to proceed under that rule and dismiss the person from service without any further enquiry. To such a case, the procedure prescribed by Rule 42 has no application." Following (1956) 2 Mad LJ 562, it was held that the impugned order was valid.

14. We accept the reasoning of the said decisions and as Section 12 of the Probation of Offenders Act, 1958 (Central Act XX of 1958) is substantially similar to Section 12-A of the Madras Probation of Offenders Act, 1937 (Act III of 1937), we are of the view that what Section 12 of the Central Act has in view is an automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the official concerned. The disciplinary authority is not precluded from proceeding under Regulation 39 (4).

15. This takes us on to the next question, whether in fact the disciplinary authority, viz., the Zonal Manager, proceeded under Regulation 39 (4) of the Life Insurance Corporation of India (Staff) Regulations, 1960, aforesaid. We would appropriately set out the order dated 5-5-1966 received by the petitioner, which is impugned:

"Life Insurance Corporation of India. Zonal Office, Madras, 5th May 1966.

'By Registered Post with Ack. due.'

Shri. A. Satyanarayanamurthy,

Development Officer (under suspension),

Life Insurance Corporation of India,

12-1-14, Maharanipect P.O., Visakhapatnam-2.

Dear Sir,

I note the City Magistrate-cum-Special Magistrate for Special Police Establishment cases, Hyderabad, has found you guilty of an offence under Section 409, I.P.C.-vide Case No. CC 5 of 1965. In view of the conviction I hereby dismiss you from service in terms of Regulation 39 (1) (g) read with Reg. 39 (4) (1) of the Staff Regulations, 1960, with immediate effect.

Yours faithfully,

(Sd.),

P. Zonal Manager."

16. The order per se reads as if the dismissal followed from the conviction. Regulation 39 (4) of the Staff Regulations, which we have extracted, expressly mentions that a penalty might be imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge. Manifestly the disciplinary authority has to impose the penalty on the basis of the conduct and not on the conviction. That is so because there is no obliteration of the misconduct of the official concerned.

17. Sri. Parthasarathi for the Life Insurance Corporation has contended that the mention of Regulation 30 (4) (i) of the Staff Regulations, 1960, in the order is sufficient to indicate that the authorities acted on the conduct of the official concerned. He has contended that in substance the disciplinary authority acted under Regulation 39 (4) (i).

18. But the order itself, which we have set out, does not say so. There is a clear distinction between dismissing an official for his conduct and dismissing an official for his conviction. The order impugned shows as if it is a dismissal flowing from a conviction. We are, therefore, inclined to view that the disciplinary authority did not deal with the official under Regulation 39 (4) (i) but dismissed him because he was convicted of an offence under Section 409, I.P.C. This the disciplinary authority is precluded from doing under Section 12 of the Probation of Offenders Act, 1958.

19. As the impugned order suffers from the said infirmity, we would set aside the impugned order. The impugned order is, therefore, quashed. This will not, however, preclude the disciplinary authority from taking action under Regulation 39 (4) of the Staff Regulations, 1960, if they so choose.

20. The petition is accordingly allowed; but in the circumstances; we do not propose an order as to costs.

Petition allowed.