REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURIS DICTION

Civil Appeal No. 1804 of 2020
(Arising out of SLP (C) No. 5142 of 2020 (D No 10865/2019)

Life Insurance Corporation of India **....Appellant**

Versus

Mukesh Poonamchand Shah **.... Respondent**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Leave granted.

2 The present appeal arises from a judgment of a Division Bench of the High Court of Gujarat dated 10 April 2018. The Division Bench, in a Letters Patent Appeal arising from an order of a learned Single Judge dated 11 July 2017, allowed the respondent, who had instituted proceedings under Article 226 of the Constitution, to respond to a notice to show cause issued by the appellant under Regulation 39(4) of the Life Insurance Corporation of India (Staff) Regulations 1960[1]. However, the appellant was directed not to issue final orders during the pendency of the appeal filed

1 "1960 Regulations"

by the respondent against his conviction for offences under the Prevention of Corruption Act 1988[2] and the Indian Penal Code 1860[3].

3 The respondent was appointed as a Probationary Development Officer by the appellant on 27 September 1990. His services were confirmed on 4 December 1991. On 16 February 1996, a charge-sheet was served on the respondent containing the following allegations:

> "i. That, you introduced 2 proposal no.s 7377 and 7529 on the lives of Shri PS Vyas and Shri RP Mehta through the agency, which resulted in issuance of policy for sum assured of Rs 10,00,000/-;
> ii. That, you certified as true a Fake School Leaving Certificate dated 13.07.1974 issued by the City High School, Raipur, Ahmedabad submitted the same as evidence of age along with the proposals for Life Insurance on the lives of the aforesaid Shri PS Vyas and Shri RP Mehta;
> iii. That, you submitted a Moral Hazard Report dated 14.12.1990 in form No 3251recommending acceptance of the said proposals without making independent and discreet inquiries and without satisfying about the genuineness of the proposals as required to be done before the submission of the proposals;
> iv. That, it has been revealed that the proposers Shri PS Vyas and Shri RP Mehta are non-existent persons."

4 A disciplinary enquiry was convened in which the respondent participated. The inquiry officer, in his report dated 17 April 1997, noted that the respondent had unconditionally accepted the charges. The charges against the respondent were held to be proven. On 16 June 1997, a notice to show cause was issued to the respondent, asking him to explain as to why a penalty of reducing his basic pay to the minimum of the time scale under Regulation 39(1)(d) of the 1960 Regulations should not be imposed upon him. The respondent submitted his response. By an order dated 15 July 1997, the disciplinary committee held the respondent guilty of misconduct and imposed the penalty of reducing his basic pay to the minimum of the time scale.

---

2 "Prevention of Corruption Act"
3 "Penal Code"

5 A Criminal prosecution[4] was instituted by the Central Bureau of Investigation[5] against the respondent and two other employees of the appellant before the Court of the Special Judge, CBI, Ahmedabad. The respondent was prosecuted for offences under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and Section 120B read with Sections 420, 467, 468 and 471 of the Penal Code. On 28 July 2014, the respondent was convicted of all the offences and sentenced to two years of rigorous imprisonment along with a fine of ₹ 5,000 per offence. The respondent preferred a criminal appeal[6] before the High Court of Gujarat challenging his conviction. The appeal is pending before the High Court. On 21 August 2014, the respondent filed an application[7] before the High Court for suspension of his sentence. By an order dated 21 August 2014, a learned Single Judge issued the following directions:

> "3. Considering the question of sentence within which the appeal is not likely to be heard, it is not in the interest of justice to ask the applicant to be in jail during the pendency of the appeal.
> 4. Under the circumstances, the judgment dated 28.07.2014 passed by Special Judge, Ahmedabad, in Special Case No 27 of 1993 shall remain under suspension till final hearing and disposal of the appeal. The applicant is ordered to be enlarged on bail on his executing a fresh bail bond and surety in the sum of Rs.5,000/- each (Rupees Five Thousand only) to the satisfaction of the Trial Court on the following terms and conditions that the applicant:
> (a) Shall not take undue advantage of liberty or misuse liberty;
> (b) Shall surrender passport, if any, before the concerned police authority;
> (c) Shall not leave territory of India without prior permission of the Trial Court;"

4 CBI Special Case No 27 of 1993
5 "CBI"
6 CA no 1024 of 2014
7 Criminal Miscellaneous Application no 1301 of 2014

6 On 23 June 2017, the appellant issued a notice to show to the respondent under Regulation 39(4)(i) of the 1960 Regulations proposing to impose the penalty of removal from service in view of his conviction by the Special Judge, CBI. The notice to show cause was challenged by the respondent in a Special Civil Application[8] before the High Court of Gujarat. A learned Single Judge by a judgment dated 11 July 2017 dismissed the application holding that:

(i) The notice of termination was based on the conviction of the respondent by the Special Judge for offences under the Prevention of Corruption Act and the Penal Code and no question of double jeopardy arose; and

(ii) Though the sentence of the respondent was suspended during the pendency of the criminal appeal, the conviction still stood.

7 In a Letters Patent Appeal filed by the respondent, the Division Bench restrained the appellant from passing final orders on the notice to show cause pending disposal of the criminal appeal. The appellant preferred a Special Leave Petition before this Court under Article 136 of the Constitution against the judgment of the Division Bench which has given rise to the present appeal.

8 Assailing the judgment of the Division Bench of the High Court, Mr Gautam Narayan, learned counsel appearing on behalf of the appellant submitted that:

(i) In terms of the provisions contained in Regulation 39(4) of the 1960 Regulations, the appellant is entitled to proceed against the respondent upon his conviction on a criminal charge;

(ii) No question of double jeopardy that attracts the provisions of Article 20(2) of the Constitution can arise in a situation where the service regulations

8 Special Civil Application no 12855 of 2017

empower the employer to proceed against the employee upon his conviction on a criminal charge;

(iii) The High Court by directing the appellant from refraining from taking any action against the respondent pending the disposal of the criminal appeal has erroneously interfered with the exercise of the disciplinary jurisdiction of the appellant; and

(iv) The order of the learned Single Judge dated 21 August 2014 did not stay or suspend the conviction of the respondent pending the disposal of the criminal appeal but only suspended the sentence as a result of which the conviction has not been obliterated or effaced.

In this context, reliance was placed on the decisions of this Court in (i) **Dy Director of Collegiate Education (Admn)** v **S Nagoor Meera**[9], (ii) **K C Sareen** v **CBI**[10], and (iii) **State of Haryana** v **Balwant Singh**[11].

9 On the other hand, Mr Harin P Raval, learned Senior Counsel appearing on behalf of the respondent submitted before this Court on 10 January 2020 that there was a delay of 257 days in filing the Special Leave Petition which had not been satisfactorily explained. This Court allowed the appellant to file an additional affidavit setting out the reasons for delay. An additional affidavit was filed by the appellant explaining that the appellant had initially, in terms of the view of its western zonal office, sought to move the CBI authorities for expediting the disposal of the criminal appeal. However, the empaneled local advocate had opined that there was no provision of law under which the appellant could be allowed to join as a party in the criminal appeal. The affidavit refers to the steps taken by the appellant thereafter to

9 (1995) 3 SCC 377
10 (2001) 6 SCC 584
11 (2003) 3 SCC 362

pursue the available remedies against the judgment of the High Court before this Court. We are of the view that sufficient cause for condoning the delay has been made out. The delay is accordingly condoned.

10 Responding to the submissions of the appellant, Mr Harin P Raval, learned Senior Counsel for the respondent submitted that:

(i) Originally, in the course of the disciplinary proceedings, the respondent was proceeded against under Regulation 39(1) (a to g) of the 1960 Regulations;

(ii) The underlying facts on the basis of which the disciplinary enquiry was instituted and the criminal prosecution took place are identical;

(iii) The appellant having imposed a penalty in the course of the disciplinary proceedings by reducing the respondent's basic pay to the minimum of the time scale has exhausted its disciplinary jurisdiction and is not entitled to issue a fresh notice to show cause for removal from service;

(iv) Regulation 39(4) dispenses with the requirement of a notice to show cause and an opportunity to defend. Recourse to the above power can be taken only when the employer has not exercised its disciplinary jurisdiction under clauses (1) and (2) of Regulation 39; and

(v) There has been an unexplained delay on the part of the appellant in issuing a notice to show cause.

11 The respondent has been convicted and sentenced to two years of rigorous imprisonment by the Special Judge, CBI for offences under Sections 420, 467, 468, and 471 read with Section 120B of the Penal Code, and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act. By the order of the learned Single Judge dated 21 August 2014, the conviction of the respondent has not been stayed and it is only the sentence which has been suspended. The law on this point is well settled. While the

court hearing a criminal appeal does have the power to suspend the conviction in appropriate cases, this is an exceptional power which can be exercised only when the attention of the court is drawn to the consequences which may ensue if the conviction is not stayed. A criminal miscellaneous application[12] was filed by the respondent for the grant of bail pending disposal of the criminal appeal. Significantly, in the special civil application which was instituted before the High Court of Gujarat, the respondent himself understood the order of the Single Judge as having only suspended his sentence and not as having stayed the conviction. The pleading of the respondent in that regard is as follows:

> "The petitioner submits that vide order dated 21.08.,2014 passed in Criminal Misc. Application No 13091 of 2014, the sentence of the petitioner was suspended and the petitioner was ordered to be enlarged on bail on executing a fresh bail bond of Rs.5000/-."

That apart, on a reading of the order of the Single Judge, it is evident that only the sentence of imprisonment was suspended. Paragraphs 3 and 4 of the order of the learned Single Judge, as mentioned in the earlier part of this judgment, must be read together. Hence, it is not possible to accede to the plea that the conviction of the respondent remains stayed pending the disposal of the appeal.

12 The appellant exercised its disciplinary jurisdiction while proceeding against the respondent and after a disciplinary enquiry imposed a penalty of a reduction of his basic pay to the minimum of the scale. The 1960 Regulations determine the terms and conditions of service of the employees of the Life Insurance Corporation of India. Chapter III of the 1960 Regulations provides for conduct, discipline and appeals.

12 Criminal Miscellaneous Application no 13019 of 2014

Regulation 39 deals with penalties and the relevant portion for our purposes is extracted below:

> "39. Penalties. - (1) Without prejudice to the provisions of other regulations, [any one or more of] the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed [by the disciplinary authority specified in Schedule-I] on an employee who commits a breach of regulations of the Corporation, or who display negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct -
> (a) Censure;
> (b) Withholding of one or more increments either permanently or for a specified period;
> (c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of order;
> (d) reduction to a lower service, or post, or to a lower time scale, or to a lower stage in a time-scale;
> (e) compulsory retirement;
> (f) removal from service which shall not be a disqualification for future employment;
> (g) dismissal.
> (2) 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.
> (3) The disciplinary authority empowered to impose any of the penalties, (b), (c), (d), (e), (f) or (g) may itself enquire into such of the charges as are not admitted or if it considers it necessary so to do, appoint a board of enquiry or an enquiry officer for the purpose.
> (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; or
> (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."

13 Regulation 39(1) of the 1960 Regulations deals with the penalties which can be imposed upon an employee who is found guilty of misconduct. Regulation 39(2) mandates compliance with the principles of natural justice in terms of providing a reasonable opportunity to the employee to defend the charges. Regulation 39(4) operates with a non-obstante clause. In terms of Regulation 39(4)(i), "where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge", the appellant is independently entitled to take steps against the employee. It is in pursuance of the above provision that a notice to show cause was issued to the respondent. The penalty which was imposed on the disciplinary enquiry was for an act of misconduct. The notice which has been issued under Regulation 39(4) is for the conviction on a criminal charge. The former does not foreclose the latter.

14 The position in this regard was elaborated upon in a judgment of a two judge Bench decision of this Court in **Dy Director of Collegiate Education (Admn)** v **S Nagoor Meera**[13], where Justice B P Jeevan Reddy speaking for the Court held:

> "8. ... taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal."

This Court specifically disapproved of the view of the Tribunal that until the appeal against the conviction was disposed of, action under clause(a) of the second proviso to Article 311(2) was not permissible. The Court held:

13 (1995) 3 SCC 377

> **"**10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."

This view has been reiterated in another two judge Bench decision of this Court in **K C Sareen** v **CBI**[14]. Justice K T Thomas, speaking for the Court, held:

> "12. ...When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself..."

15 In **State of Haryana** v **Balwant Singh**[15], the respondent, who was an employee of a public transport corporation, caused a death as a result of his rash and negligent driving. The Corporation had to suffer an award of the Motor Accident Claims Tribunal. Following the disciplinary enquiry, the employee was subjected to a punishment of a reduction of pay to the minimum of the time scale of a driver for four years. On the conviction of the employee for offences under Sections 279, 337, 338 and 304A of the Penal Code, his services were terminated. On this set of facts, a two judge Bench of this Court, speaking through Justice Shivaraj V Patil, rejected the argument based on the principle of double jeopardy and held:

14 (2001) 6 SCC 584
15 (2003) 3 SCC 362

> "7… there was no question of the respondent suffering a double jeopardy. The aid of Article 20(2) of the Constitution of India was wrongly taken. Article 20(2) of the Constitution of India does not get attracted to the facts of the present case..."

The Court held that when a major penalty was proposed to be imposed on the ground of the conduct of the employee which had led to conviction on a criminal charge, it was not necessary to take recourse of the provisions of Rules 7(1) and (2) of the Haryana Civil Services (Punishment and Appeal) Rules 1987 relating to the convening of an inquiry in which a reasonable opportunity of showing cause would have to be given.

16 The decision in **Lt Governor, Delhi** v **HC Narinder Singh**[16], relied upon by the respondent, is clearly distinguishable. Unlike the present case, where the respondent was convicted of various criminal offences and subsequently, a notice to show cause was issued, in **HC Narinder Singh** there was no conviction based on a criminal charge. In the present case, following the conviction of the respondent by the Special Judge CBI, the appellant was acting within jurisdiction in issuing a notice to show cause under Regulation 39(4) of the 1960 Regulations. The learned single judge was correct in dismissing the special civil application filed by the respondent challenging the notice to show cause issued by the appellant. The judgment of the Division Bench restraining the appellant from taking a final decision on the show cause notice pending the disposal of the criminal appeal has no valid basis in law.

17 We accordingly allow the appeal and set aside the impugned judgment and order of the Division Bench dated 10 April 2018. As a consequence, we confirm the

16 (2004) 13 SCC 342

order and judgment of the learned single judge dismissing the Special Civil Application filed by the respondent. There shall be no order as to costs.

……..…..…..……..…….....J.
[Dr Dhananjaya Y Chandrachud]

……..…..…..……..…….....J.
[Hemant Gupta]

New Delhi;
February 25, 2020