

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.15282 OF 2009

DATED:18-8-2015

Between:

K.M.A. Khan (died)
Per Legal Representatives
Kousar Sultana and two others

... Petitioners

And

Deputy General Manager/Disciplinary Authority
The New India Assurance Company Limited,
Regd & Head Office: New India Assurance Building
87, MG Road
Fort, Mumbai
and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONERS: Mr. Subba Rao Korrapati, for
Mr. P. Prabhakara Rao

COUNSEL FOR THE RESPONDENTS: Mr. Vedula Srinivas

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to set aside order dt.24.10.2007 imposing on petitioner No.1 the penalty of compulsory retirement, and order, dt.30.3.2009, of respondent No.2, whereby he has confirmed the said order of respondent No.1. The petitioner has also sought for setting aside the consequential proceedings dt.29.4.2009 of the respondents deducting a sum of Rs.3,96,085/- from the provident fund amount due to petitioner No.1.

I have heard Mr. Subba Rao Korrapati, learned counsel, representing Mr. P. Prabhakara Rao, learned counsel for the petitioners, and Mr. Vedula Srinivas, learned counsel for the respondents.

Brief facts leading to filing of this writ petition are that when the original petitioner was working as Branch Manager of the New India Assurance Company Limited of Vijayawada Branch, a charge memo was issued to him alleging that with a mala fide intention and ulterior motive he has resorted to accepting of bad risks for motor vehicles insurance that belonged to three agencies and recommended for settlement of three bogus/fabricated/doubtful motor own damage claims and thereby he has committed misconduct. After enquiry, the charges were found proved and penalty of compulsory retirement was inflicted on the original petitioner. Thereafter, the respondents while calculating the provident fund have deducted a sum of Rs.3,96,085/-, which represents the payments made to the owners of the insured vehicles towards own damage claims.

At the hearing, learned counsel appearing for the petitioners, submitted that during the pendency of the writ petition, the sole writ petitioner died and in his place petitioner Nos.2 to 4 were brought on

record as the legal representatives. He has further submitted that in view of the death of the original petitioner, his clients are not interested in pursuing the relief pertaining to the order of compulsory retirement and that they are aggrieved by deduction of a sum of Rs.3,96,085/- representing the insurance amounts paid to the owners of the insured vehicles.

Learned counsel for the petitioners submitted that no charge was framed with respect to the recovery of the alleged loss from the original petitioner. Mr. Vedula Srinivas, learned counsel for the respondents, has fairly conceded that no specific charge in this regard was framed.

In my opinion, recovery of the alleged loss from the original petitioner's provident fund being penal in nature, unless a specific charge is framed and an opportunity of being heard is afforded to the original petitioner, the respondents are not entitled to recover any part of the alleged loss from the provident fund payable to the original petitioner or to his family members. On this ground, the recovery of sum of Rs.3,96,085/- is set aside. The respondents are directed to release the said amount to petitioner Nos.2 to 4 within one month from the date of receipt of this order without prejudice to the right of the respondents to avail appropriate legal remedies for recovery of such amounts from the petitioners, if they are so advised.

The writ petition is accordingly allowed to the extent indicated above.

C.V. NAGARJUNA REDDY, J

18-8-2015

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