



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2016

CORAM:

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THE HONOURABLE **MR.JUSTICE NOOTY.RAMAMOHANA RAO**

AND

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

W.A. (MD) .No.1137 of 2016

and

W.M.P. (MD) No.7068 of 2016

M.Shanmugaraja

:Appellant / Petitioner

Vs.

1.The Chairman Cum Managing Director,
United India Insurance Company Ltd.,
Head Office, No.24, White Road,
Chennai 14.

2.The Deputy General Manager,
United India Insurance,
No.24, White Road,
Chennai 14.

3.The Chief Regional Manager,
United India Insurance Company Ltd.,
Regional Office, 7A West Veli Street,
Madurai 625 001.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the Order dated 05.06.2015 made in W.P.(MD).No.12689 of 2011 on the file of this Court.

Prayer in WP(MD). 12689/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certioraraified Mandamus, to call for records relating to the impugned order HO:MKTG:252:2011 dated 22/08/2011 passed by the respondent and quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant benefits and back wages withint the time limit as imposed by this Honourable Court.

For Appellant

: Mr.T.Sakthi Kumaran

<https://hcservices.ecourts.gov.in/hcservices/>

For M/s.Victory Associates

For Respondents

: Mr.G.R.Prabhu Rajadurai

**JUDGMENT**

[Judgment of the Court was made by
NOOTY.RAMAMOohana RAO, J.]

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This Writ Appeal is directed against the Judgment rendered by the learned Single Judge in W.P.(MD).No.12689 of 2011, dismissing it on 05.06.2015.

2. The Writ Petitioner/appellant has been inflicted with the punishment of removal from service on 09.12.2002, while he was working as Development Officer of the first respondent Insurance Company, for proven misconduct. The order of removal from service was the subject matter of consideration in W.P.(MD).No.2829 of 2005. That Writ Petition was dismissed on 29.06.2006. The Writ Petitioner/appellant carried the matter in appeal in W.A.(MD).No.475 of 2006. A Division Bench of this Court, by its Judgment dated 24.01.2007, dismissed the said Writ Appeal on merits. But, however, in Paragraph Nos.13 and 14, it is noted therein as under:-

"13. After pronouncing the order, learned counsel for the appellant makes a formal request that if the appellant makes an application for reconsideration of the matter, the respondents may be directed to reconsider the matter afresh and pass appropriate orders.

14. In the circumstances, we consider it appropriate to observe that the dismissal of the Writ Appeal does not preclude the respondents from considering the application, if any, made by the petitioner for reconsideration of the matter afresh".

3. The Writ Petitioner/appellant, then, once again submitted an application to the Corporation to re-consider the entire issue. The Corporation has considered the matter and passed orders on 22.08.2011, declining to accede to the request of the Writ Petitioner/appellant to convert the order of removal from service to that of compulsory retirement, which resulted in another round of litigation in the form of W.P(MD).No.12689 of 2011.

4. When the original order of removal from service was the subject matter of consideration in W.P.(MD).No.2829 of 2005, all the grounds, that are available to the Writ Petitioner/appellant, ought to have been raised and without doing so, the Writ Petitioner/appellant ought not to have proceeded with the matter. Even otherwise, as per the principle enunciated in Rule 2 Order 2 of the Code of Civil Procedure, it must be construed that the ~~grounds~~ <https://hcservices.courts.gov.in/hcservices/> is available to the Writ Petitioner/appellant otherwise, has been abandoned. No litigant can choose one ground



after the other, in a series of litigations to be invented by him. Therefore, in our opinion, the only issue, which can be considered, is whether the Corporation has acted arbitrarily or illegally in declining to convert the punishment of removal from service to that of compulsory retirement.

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5. The Corporation, as a measure of discipline, has found that the misconduct proved against the Writ Petitioner/appellant deserves infliction upon him the punishment of removal from service. As per the observations of this Court, rendered in W.A. (MD).No.475 of 2006, dated 24.01.2007, it had declined to convert the order of removal from service to that of compulsory retirement. Re-consideration of a punishment, that too, after the matter has already been decided, on merits, by a competent Constitutional Court, may not be really warranted. Therefore, viewed in that perspective and background, we cannot find, in principle, anything wrong in the first respondent Corporation in not acceding to the request of the Writ Petitioner/appellant to re-consider the punishment. It is a well known principle that a review is not some kind of appeal in disguise. Therefore, borrowing the same principle, a re-consideration arising out of the sympathetic consideration does not mean that the Writ Petitioner/appellant can recap all such contentions about the sustainability of the original order of punishment, that was already debated by the learned Single Judge, whose order has been confirmed by the Division Bench, by Judgment dated 24.01.2007 and the Writ Petitioner/appellant has not carried the matter in appeal further. Therefore, we do not find any justifiable reason on our part to entertain the Writ Appeal and accordingly, the Writ Appeal stands dismissed, at the admission stage, after hearing Mr.G.Prabhu Rajadurai, learned counsel for the respondents. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Chairman Cum Managing Director,
United India Insurance Company Ltd.,
Head Office, No.24, White Road,
Chennai 14.

2.The Deputy General Manager,
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3.The Chief Regional Manager,
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+1 CC to M/s.VICTORY ASSOCIATES, Advocate, SR No.38966
+1 CC to M/s.G.PRABHU RAJADURAI, Advocate, SR No.39066

JUDGMENT MADE IN
W.A. (MD) .No.1137 of 2016
22.07.2016

NB
SH/SKS-RR:24.08.2016:4P/6C