

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.11.2017

Delivered on: 21.12.2017

Coram

The Honourable Mr. Justice V. PARTHIBAN

W.P. No.8662 of 2012

A.Ravindran

... Petitioner

versus

1. The United India Insurance Co.Ltd.,
No.24, Whites Road,
Chennai-600 014.

2. The Deputy General Manager/Disciplinary Authority,
"Sillingi Building",
134, Greaves Road,
Chennai-600 006. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records pertaining to the proceedings in HO:2008-46:24:2011, dated 1.2.2011 issued by the 2nd respondent and quash the same as illegal arbitrary and unconstitutional.

For Petitioner : Mr.L.J.Krishnamoorthy
For Respondents : Mrs.Chitrasampath, SC
for Mr.S.K.Krishnamurthy-R1
Mr.T.S.Baskaran -R2

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorari, to call for the records pertaining to the proceedings in HO:2008-46:24:2011, dated 1.2.2011 issued by the 2nd respondent and quash the same as illegal arbitrary and unconstitutional.

2. The petitioner joined the first respondent company as a Clerk on 1.8.1979. After several promotions, the petitioner was finally promoted as Senior Assistant and joined in the Branch Office at Arni on 1.8.1991. He was eventually transferred to Kalpakkam on 13.2.2002 and posted as Officer-in-charge at Kalpakkam. According to the petitioner, it was One Man Office at Kalpakkam, where the petitioner was put in-charge of company business, but was not provided with adequate infrastructural facilities. Further, he was assigned the job of developing business in the said place. The petitioner, on his own, identified the place for setting up of office without much help of the employer and set up the office with minimum

amenities for day today administration of the office. Since no adequate resources were made available by the employer during the initial period of setting up of office at Kalpakkam, according to the petitioner, he had utilized some amounts initially which were collected from the customers towards premium of insurance of vehicles and spent the same on developing infrastructural facilities in the office. According to the petitioner, this was also known to the superior officials concerned. In spite of lack of facilities and man power, the petitioner had developed business at Kalpakkam to the satisfaction of all concerned. It appears that the petitioner had also expressed certain difficulties to run office at Kalpakkam through his letters dated 26.09.2005, 19.12.2005 and 21.12.2005. The petitioner was transferred to Ranipet on 18.1.2006 and before his transfer, the petitioner appeared to have deposited all the amounts collected towards premium to the tune of Rs.1,09,847/- on 17.1.2006 itself with the respondents. The amount represented the collection of various premiums from the customers of the respondent company. Therefore, according to the petitioner, there was no loss caused to the respondents and the amounts which were collected were temporarily utilized for office purpose only in the interest of organization and there was no intention on the part of the petitioner for appropriating the premium amounts for any personal use.

3. While matters stood thus, the petitioner was issued with a charge memorandum dated 25.11.2008 for the acts of misconduct allegedly committed by him. The petitioner in response to the charge memorandum, submitted his explanation accepting the charges unconditionally. Thereafter, the Enquiry Officer, who was appointed to enquire into the charges, did not proceed with the enquiry and submitted a report on the basis of the acceptance of the petitioner. In the meanwhile, the petitioner was also placed under suspension by the first respondent vide order dated 18.6.2009. The second respondent finally passed order on 8.4.2010 imposing the penalty of removal from service. As against the order of Disciplinary Authority, the petitioner preferred an appeal to the Appellate Authority, however, the Appellate Authority confirmed the order of penalty by order dated 1.2.2011. The order imposing the removal from service, is now put to challenge in this writ petition.

4. Mr.L.J.Krishnamurthy, learned counsel appearing for the petitioner, at the outset, would submit that the acceptance of the charges by the petitioner was only in regard to the circumstances as explained above, when the petitioner had merely utilized the funds received from the customers for setting up a proper infrastructure for the office at Kalpakkam. There was no intention on the part of the petitioner to mis-utilize the amounts for any personal purpose. Therefore, the charges as framed are misconceived and cannot give rise to disciplinary action more particularly the action of the second respondent in removing the petitioner from service.

5. According to the petitioner, the respondent company had not suffered any loss which was an admitted fact, since the amount which was utilized by the petitioner during the relevant period, had been

deposited immediately before the petitioner was relieved from duty at Kalpakkam on 17.1.2006. This fact was not seriously disputed by the respondent company. The petitioner having enjoyed unblemished record throughout his career, cannot be visited with the extreme punishment of removal from service for solitary act of misconduct even assuming the same is a misconduct. The aspect of proportionality in regard to punishment, has not been dealt with both by the Disciplinary Authority and by the Appellate Authority in proper perspective. Therefore, the learned counsel for the petitioner would submit that the punishment imposed on the applicant, can be moderated to enable the petitioner to enjoy the fruits of long years of service put in as a faithful employee from 1979 onwards till date of his removal from service on 8.4.2010.

6. Upon notice, Mr.S.K.Krishna Murthy, learned counsel entered appearance for respondent No.1 and Mr.T.S.Baskaran, learned counsel entered appearance for respondent No.2.

7. Mrs.Chitra Sampath, learned senior counsel appearing for the respondents would strongly resist the claim of the petitioner on the ground that the petitioner employed by the respondent, was holding the position of trust and such trust was not kept up by the petitioner and he misappropriated the amounts collected from the customers towards premium payable to the company. According to the learned senior counsel, premiums collected must be deposited with the company in the company's account immediately and any delay would only be construed as temporary misappropriation. She would further submit that the fact that the petitioner has made good the amount to the respondent company does not absolve of his complicity in the act of misconduct. The charge, as admitted by the petitioner is very grave in nature and therefore, the punishment of removal from service is proper and commensurate and the same cannot be faulted with.

8. Although it is a fact that the petitioner had admitted utilization of the amounts collected from the customers for whatever reasons, nevertheless, it has to be seen that the petitioner in the past did not come under any adverse notice of the respondent company during his entire period of service for nearly 30 years. This was not the case of the respondents also. That being the case, the punishment of removal from service imposed on the petitioner appears to be little excessive considering facts and circumstances of the case in its entirety.

9. Although this Court is conscious of the fact that the petitioner had misused the trust reposed in him by the company, a humane approach is to be taken in such matters which shall be the hallmark of justice delivery system. One misconduct like this, though calls for severe penalty, does not call for removal or dismissal from service. Such harsh penalty completely wipes out the entire service put in by the petitioner for nearly 30 years which was admittedly, blemishless.

10. In the light of the above, to strike a balance between the

interest of organization and also the interest of the individual employee, the Court is entrusted with the task of rendering justice with humane consideration. Since the respondent company has lost confidence in the integrity of the petitioner in view of his own conduct, this Court cannot brush aside their perception and order reinstatement. At the same time, this Court has to take into consideration the long service put in by the petitioner and also the family members behind him, who were deprived of the fruits of his service particularly after his retirement from service. It appears that during the pendency of writ petition, the petitioner had attained the age of superannuation. In the circumstances, this Court thinks that it is appropriate case that the punishment of removal from service has to be interfered with.

11. This Court was informed that one of the major punishments which are provided under Rule 23 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, apart from removal and dismissal from service, is compulsory retirement. In fact, as per Rule 37 of the said Rules, the Appellate Authority has to give a specific finding in regard to type of penalty imposed on the petitioner, whether it is excessive or adequate etc., such findings have not been rendered by the Appellate Authority.

12. In view of the above, the punishment imposed on the petitioner removing him from service vide order dated 8.4.2010 by the Disciplinary Authority, which was confirmed by the Appellate Authority vide order dated 1.2.2011 is set aside and in its place, order of compulsory retirement on the petitioner with effect from 8.4.2010 is substituted. It is made clear that the petitioner is entitled to all the consequential benefits which are otherwise admissible on account of compulsory retirement from service imposed on him. The respondents are directed to pass orders in implementing the above direction and grant all attendant benefits to the petitioner, within a period of two months from the date of receipt of copy of this order. No costs. The Writ Petition is ordered accordingly.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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1. The Deputy General Manager/Disciplinary Authority,
"Sillingi Building",
134, Greaves Road, Chennai-600 006.
+2 CC TO MR.T.S.BASKARAN Advocate SR.NO. 91284 & 84940
+1 cc TO MR.L.J.KRISHNAMURTHY Advocate SR.NO. 91238

order in W.P.No.8662 of 2012

RD 03/02/2018

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