

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3960 OF 2006
WITH WP/6049/2010

BHIMSING JULASING SOMWANSHI
VERSUS
UNITED INDIA INSURANCE CO & ORS

Mr.S.S.Jadhavar, Advocate for the petitioner
Mr.A.B.Gatne, Advocate for respondent Nos. 1 and 2

**CORAM : S.V. GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 06.10.2018

P.C. :-

. The petitioner was working as a Senior Divisional Manager with the respondent.

2. The petitioner came to be superannuated on 31.10.2003. The retirement benefits were not paid to the petitioner. Subsequently, it appears that this Court in writ petition No.4160/2005 under order dated 13.09.2005 directed the employer to release the amount and the petitioner was directed to give bank guarantee.

3. Writ Petition No.3960/2006 is filed by the petitioner for interest on the delayed payment of

the retirement benefits.

4. The departmental enquiry came to be initiated against the petitioner under letter dated 01.02.2006. The Disciplinary Authority held the petitioner guilty and imposed the punishment of deduction of Rs.650/- per month from pension for a period of four years. The said punishment is assailed in the writ petition No.6049/2010.

5. Mr.Jadhavar, learned counsel for the petitioner submits that the petitioner retired from service on 31.10.2003. Articles of charge are framed against the petitioner for the compromises effected by the petitioner on 23.06.2002, 09.03.2002 and 25.07.2002 almost four years prior to the initiation of departmental enquiry. Rule 47 of the General Insurance (Employees) Pension Scheme, 1985 does not permit conducting enquiry after retirement of an employee beyond four years of cause of action. It is only because the petitioner had filed writ petition No.3960/2006 claiming interest on delayed payment, the respondent initiated enquiry against the petitioner.

6. Learned counsel further submits that after Articles of charges were framed and served against the petitioner, the petitioner applied for the documents as the charges were four years old. Documents were not supplied. The petitioner was required to file written statement in absence of the documents. The principles of natural justice are violated. The Learned counsel further submits that the Enquiry Officer did not indict the petitioner. No punishment was proposed by the Enquiry Officer. The Disciplinary Authority however deferred with the report of the Enquiry Officer and imposed punishment upon the petitioner. Learned counsel further submits that as the departmental enquiry is without following the principles of natural justice the same stands vitiated and deserves to be set aside. The Enquiry Officer has not come to a definite conclusion that loss has been sustained because of the compromise entered into by the petitioner with the claimants. The compromises were entered into based on the legal advice of the Advocate on Panel of the respondent-Corporation. In view of that the petitioner cannot be held for any misconduct. The said aspect is not considered by the respondent.

7. Mr.Gatne, learned counsel for the respondent employer submits that every opportunity has been given to the petitioner. After the petitioner had put in his defence, the Management examined one witness. Thereafter, the defendant examined himself. His oral statement is recorded and inspection of documents is also provided to him, same is clear from the record. According to the learned counsel the Enquiry Officer has also not exonerated the petitioner. With regard to Article 1 the Enquiry Officer has concluded that compromise is wrongly entered into and in respect of Article 2 it has been held by the Enquiry Officer that the petitioner committed undue haste. On the date he has been relieved the petitioner entered into compromise. This Court would not sit in the appeal over the decision of the Disciplinary Authority.

8. We have considered the submissions canvassed by the learned counsel for the respective parties.

9. It is trite that the jurisdiction of this Court in entertaining the writ petition arising out of the disciplinary proceedings is in a narrow

compass the same is not to be exercised as the appeal in disguise. This Court would be more concerned with the due adherence to the procedure in conducting departmental enquiry.

10. Disciplinary enquiry is initiated on 01.02.2006 i.e. within four years from the date of cause of action as contemplated under Rule 47 of the General Insurance (Employee) Pension Scheme, 1995. The cause of action for the Article of charges is 23.06.2006, 09.03.2002 and 25.07.2002.

11. As per rule 25 of the General Insurance (Conduct Discipline and Appeal) Rules, 1975 the procedure is prescribed for imposing major penalties and conducting the departmental enquiry. Explanation to Sub-Rule 3 of Rule 25 provides that after the Article of charges are served and before the written statement is filed, it is not necessary to show documents listed with the charge-sheet or any documents to the employee at the said stage. In view of that if request is made for inspection of documents and same is not considered that would not vitiate the enquiry more particularly in view of explanation to sub-rule-3 of Rule 25. The petitioner

had given his statement of defence. The respondent examined the witness. Opportunity is given to the petitioner. The petitioner also examined himself. The proceeding shows that the documents were supplied to the petitioner.

12. In view of that procedure has been followed.

13. After perusal of the enquiry report it is manifest, the Enquiry Officer has not exonerated the petitioner. While giving finding on Article 1. The Enquiry Officer has observed thus:

“I am therefore of the opinion that although this case could have been avoided by Shri Somvanshi for taking up in Lok Adalat on grounds of overloading. However, in legal terms the Court would not have entertained this defense and liability would have certainly been attached to our company had it gone to final hearing.”

14. In respect of Article 2 the Enquiry Officer has clearly indicted the petitioner. The enquiry Officer while giving his finding on Article 2 has observed thus :

“I am of the opinion that although the insurance policy was perhaps wrongly issued for Passenger carrying Commercial

vehicle the CSO Mr.Somvanshi should have got the R.C. of vehicle verified from RTO and ascertain the fact that it was essentially a private car before going in for compromise settlement in Lok Adalat. Once it was confirmed by the RTO that vehicle in question was private car then definitely it was not a fit case of compromise as there was clear violation for limitation as to use for which the defense was very much available under Section 149 (2) of M.V. Act. The Presenting Officer has also mentioned in his written brief that there was undue haste in effecting these compromise settlements by Shri Somvanshi. We observe that the accident has taken place on 31.05.2002 and the Advocate was appointed by Aurangabad D.O. on 22.07.2002 R.C./D.L. particulars were given for verification on 23.07.2002 and verification report was obtained on 24.07.2002. No written statement was filed on behalf of our company and before that the cases were finally compromised on 26.07.2002 which also happened to be the date of relieving of Shri Somvanshi from D.O. Aurangabad, All the dates mentioned above and the sequence of events definitely prove that there was undue haste in compromising the 3 T.P. cases. There was no need for affecting these compromise when even W.S. was not filed on behalf of company and Mr.Somvanshi was already under transfer.”

15. Perusal of the aforesaid paragraphs, it is clear that the petitioner is not exonerated. The Disciplinary Authority has subsequently followed the procedure. Issued the show cause notice. Called for the explanation of the petitioner and thereafter imposed the punishment of deducting Rs.650/- per month from the pension for a period of four years.

16. We do not find the said punishment is also disproportionate to the charges.

17. In light of the above no case is made out for interference. The writ petition is disposed of. Rule discharged. No costs.

18. In view of the disposal of the writ petition No.6049/2010, nothing survives for adjudication in the writ petition No.3960/2010 and same also stands dismissed. No costs.

[S.M.GAVHANE,J.]

[S.V. GANGAPURWALA,J.]