

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

WRIT PETITION NO. 6907 OF 2014

Shivaji s/o. Laxmikant Koleshwar .. Petitioner
Age. 48 years, Occ. Service,
R/o. "Prayag", Plot No.9,
Vyankatgeshwar Colony, Station Road,
Near Vedant Hotel, Deogiri College Road,
ITI College, Road, Aurangabad-431005.

Versus

1. National Insurance Company Limited .. Respondents
(A Government of India Undertaking)
Divisional Office,
Through its – Branch Manager,
Hazari Chambers, Station Road,
AURANGABAD – 431 005.
(Maharashtra State)
2. National Insurance Company Limited
(A Government of India Undertaking)
Through its – Divisional Manager,
Aurangabad Division Office,
Hazari Chambers, Station Road,
AURANGABAD – 431 005.
(Maharashtra State)
3. National Insurance Company Limited
(A Government of India Undertaking)
Pune Regional Office
Through its – Regional Manager,
Fourth Floor, Bhau Saheb Shirole Bhavan,
Pune Municipal Transport Building,
Deccan Gymkhana, Pune – 411 004.
(Maharashtra State)

4. National Insurance Company Limited,
(A Government of India Undertaking)
Through its – Chairman-cum-Managing
Director, 3, Middleton Street,
Prafulla Chandra Sen Sarani,
Kolkatta – 700 071.
(West Bengal State)

(Respondent No.4 is deleted as per order
passed on 27.02.2015 by this Court).

Mr.G.N.Chincholkar, Advocate for the petitioner.
Mr.A.B.Kadethankar, Advocate for respondent Nos.2 & 3.
Respondent No.4 is deleted.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**

**RESERVED ON : 16.01.2018
PRONOUNCED ON : 12.04.2018**

J U D G M E N T [PER : S.M. GAVHANE, J.] :-

1. By this petition, the petitioner has claimed
following substantive reliefs:-

(i) Quash and set aside impugned order No.
PRO:PL:G-47/97 issued by the respondent No.1
dated 07.05.1997 issued by the respondent.

(ii) Quash and set aside impugned Order
No.270600/Actt./Auditrec./2011 dated 03.05.2011
issued by the respondent and illegally recovered
amount of Rs.301124.00 from the petitioners
salary for non-performance;

(iii) Direct the respondents to refund to the petitioner amount of Rs.301124.00 within a period of six weeks together with interest @ 18% per annum and restore his pay scale prior to decrements and by granting increments retrospectively as per rules;

(iv) Direct the respondents to provide any light suitable job commensurate with his disability.

(v) Alternately if no suitable job is available with the respondents then direct the respondents to keep the petitioner on supernumerary post until then such post is available in the future;

(vi) Grant interest @ 18% per annum from the date petitioner paid such sums and respondents recovered from the salary of the petitioner.

(vii) Allow the petition with full reliefs.

(viii) Saddle the cost on the respondents.

2. This Court vide order dated 05.02.2016 issued rule in this petition and listed the petition for final hearing.

3. Case of the petitioner is that he joined services of the respondent on 22.12.1987 as a Development Officer, Grade-II. Thereafter, he was promoted to Grade-

I category of the same post. The nature of his duties was to solicit insurance from the customers for the company business. Lastly, he was posted as Assistant in Grade-III post on 01.04.2013. He is permanent employee of the respondent. His service record is clean and excellent.

4. It is further case of the petitioner that while on duty during the course of employment, he met with unfortunate road accident on 13.12.1995 and sustained severe injury to his head, limb and legs. He remained in coma for two months in hospital. Thereafter, he had to undergo various operations and series of surgeries and remained out of duty for two years. The injuries sustained in road accident culminated in blindness of left eye, defective right eye, more than 12 teeth destroyed, throat surgery resulted in huge difficulty while speaking. Total disability of the petitioner is 40% for life. The respondents have duly reimbursed medical bills of the petitioner.

5. The petitioner further contents that immediately after recovering from the accident, he resumed his duty on 12.06.1997. Though he was not fully fit to resume duty, he resumed duties by seeking alternate job commensurate with his disability. However, before joining duty, the petitioner requested for alternate job. The respondents rejected the claim of the petitioner as per letter dated 10.04.1997 from the Manager to Divisional Manager, Aurangabad. The respondents transferred the petitioner from time to time, his scale of pay was also reduced and was punished with four decrements in his scale. Basic pay of the petitioner from Development Officer Grade I scale to Development Officer Grade II scale was fixed after four decrements with effect from 01.04.2010. Thereafter, vide impugned letter reference Order No. 270600/Actt./Auditrec./2011 dated 03.05.2011, the respondents not only decremented and fixed the petitioner in lower scale but also effected recovery of Rs.3,01,124.00 from his salary.

6. According to the petitioner, without showing any regard to his disability, respondent treated him at par with people without disability. He was punished with decrements and fixation in lower scale of salary from Grade I scale to Grade II scale w.e.f. 01.04.2010 and the respondents recovered illegally entire amount of Rs.3,01,124/- from August, 2006 till 03.05.2011 and also continued thereafter till 01.04.2013 without affording opportunity to the petitioner to show cause. Therefore, all the actions on the part of the respondents amount to arbitrary/oppressive and penal in nature resulting in huge loss to the petitioner and hence unsustainable in law.

7. It is contended that in view of clear mandate of Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, there is obligation on the employer not to reduce rank or pay-scale of the

petitioner due to his disability to work. Respondents were duty bound in law to have either provided petitioner with alternate job commensurate with his disability or should have kept him on supernumerary post until suitable post is available by fully protecting his scale of pay.

8. Reply affidavit dated 16.09.2015 is filed on behalf of the respondents of Nalini Shridhar Lele, Sr. Divisional Manager, National Insurance Co. Ltd., Station Road, Aurangabad. In the said affidavit, the contentions of the petitioner which are adverse to the respondents are denied. It is stated that the petitioner himself produced certificate of fitness from time to time. Hence, he is now estopped from saying that he was not fully fit to resume duties. Since, the petitioner resumed duties as a medically fit person, his service conditions (benefits, remuneration and other pay benefits, service benefits etc.) were subject to his service performance as per the General Insurance (Rationalization of Pay Scales and Other Conditions of

Service of Development Staff) Scheme, 1990 – revised from time to time. The appointment order of the petitioner dated 06.07.1988 also speaks clearly about applicability of the scheme to the petitioner. The post of the Development Officer is a special post, rather it is not an administrative/clerical post. It is a marketing post. The service benefits and service terms of a Development Officer corresponds to his performance. The respondent company has laid down a General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 1990 that regulates the service conditions of a Development Officer. Paragraph/Section 11 of the scheme speaks about consequences upon failure of a Development Officer to meet the yearly object. In nut-shell, firstly the non-core benefits go affected for first performance year. If the cost ratio exceeds even within the second performance year, the non-core benefits continues to reduce and there is warning to face decrements in basic pay. Even in third performance year the cost ratio continues to exceed

of a Development Officer and if reduction in non-core benefits fall short to meet the excess cost ratio, there would be actual decrements.

9. It is further stated that the petitioner was given maximum opportunity to maintain the business during his service tenure. Till the petitioner resumed the duties as a medically fit person, no deduction of whatsoever nature was effected upon him nor any adverse action was inflicted upon him. Only upon his joining as medically fit person, his service terms were observed as per the applicable rules as mentioned above. There is no malafide intention in the mind of either of the respondents, unlike alleged by the petitioner. The conduct and act of the petitioner goes to show that he continued to demonstrate that he was capable and medically fit person to work as a Development Officer. Resultantly, the performance of the petitioner was expected to the mark.

10. Further it is stated that in 2003 the respondent company launched scheme giving option to the Development Officer to opt for alternate/administrative jobs. But the petitioner did not opt for it, rather adhered to the job of Development Officer. Until in 2011 recovery was effected, he enjoyed the benefits earned by him as Development Officer. In the year 2013, another scheme has been launched by the respondent company for about placement to an administrative post to which the petitioner opted. He is accordingly already accommodated on clerical post and he is protected. As such there is no violation of section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 at the hands of the respondent company. Neither his services are dispensed with nor he is reduced in rank. The petitioner's grievance as regards to Section 47 of the Act is misconceived. No discriminatory treatment has been given to the petitioner at any point of time. Since he adhered to work as Development Officer, his performance is

necessarily accountable for the purpose of his service benefits. Due to exceeded cost ratio, decrements were effected through recovery. It is not that taking to any disability petitioner's performance was counted. The petitioner is estopped from raising grievance against recovery against exceeded cost ratio that too at such later stage. It is stated that the petition is liable to be dismissed.

11. After aforesaid reply affidavit, the petitioner has filed rejoinder affidavit dated 04.02.2016, more or less reiterating the same contentions as referred earlier in the petition. It is stated that the respondent recovered amount of Rs. 5,57,892/- and not paid basic difference near about Rs.1,33,97,371/-. Such act of the respondents is against the provisions of Section 47 of the Act of 1995.

12. We have heard learned advocates appearing for the petitioner and respondent Nos.1 and 3. With their

assistance we have perused pleadings of the parties and the copies of documents produced on record by the parties.

13. There is no dispute that the petitioner joined service of the respondent on 22.12.1987 as Development Officer Grade II. While he was on duty during the course of employment, he met with unfortunate road accident on 13.12.1995 and there were severe injuries. After recovery from the accident, the petitioner remained in coma for two months in the hospital and he suffered 40% disability.

14. Considering the reliefs claimed by the petitioner and the admitted facts referred to above, including the fact that the petitioner was appointed on 22.12.1987 as a Development Officer, Grade-II, it is necessary to refer to the definition of the Development Officer and the nature of work of said post as given in paragraph Nos.3(9A) and 11. Said paragraph Nos. 3(9A) and

11 of Pay Scales and other Conditions of Service of Development Staff, read as under :-

"3(9A) "Development Officer" means members of the Development staff, who immediately before the commencement of the Amendment Scheme, 1987 were categorised or appointed as Inspector Grade-I and Inspector Grade-II and on such commencement designated respectively as Development Officer Grade-I and Development Officer Grade-II."

"11. Cost Control:(1) Every Development Officer shall work with such cost as to maintain his cost ratio, within the limits stipulated in sub-clause (C) of Clause (17) of paragraph 3.

(2) If the cost ratio in respect of a Development Officer for a particular performance year exceeds the stipulated limits, the non-core Allowance payable to him in the following performance year shall be reduced to the extent of the amount by which his cost ratio exceeded the stipulated limits.

(3) If in respect of a Development Officer, cost ratio is in excess of stipulated limit for second performance year in succession, he may be issued a letter of warning for third or subsequent performance years in succession, his non-core allowance shall continue to be reduced in the following year to the extent necessary to bring his cost ratio within stipulated limits and, if there are non-core allowances to be reduced, he shall be liable to decrements in

basic pay as indicated in the Table below sub paragraph (4).

(4) If in respect of a Development Officer cost ratio is in excess of stipulated limit for the third or subsequent performance years in succession, the non-core allowance payable to him, if any, in the following performance year shall be reduced to the extent of the amount by which his cost ratio exceeded the stipulated limits.

x x x x x x x x x x"

15. Upon reading of above paragraphs, it is seen that the post of Development Officer is a special post, rather it is not an administrative/clerical post. It is a marketing post and the service benefits and service terms of Development Officer corresponds to his performance, as stated in the reply affidavit of the respondents filed on 16.09.2015, referred earlier in detail.

16. Considering the reliefs claimed and the above referred paragraph No.11 regarding nature of duty of Development Officer, it is necessary to refer the medical certificates produced by the petitioner while joining

duty after treatment after he met with accident, regarding fitness to join duties. Certificate Exh. "R-2" page 29 issued by Consultant Neuro Surgeon in Marathwada Medical and Search Institute shows that the petitioner was under treatment in the said institute from 13.12.1996 to 07.02.1996. He was advised light duty from 08.02.1996 to 09.05.1997 and he was fit for duty w.e.f. 10.05.1997. Certificate at page 32 issued by the same Medical and Research Institute shows that the petitioner was under treatment from 13.12.1995 to 07.02.1996 and he was fit for light duty w.e.f. 10.04.1997 and he will be fit for routine duty from 10.05.1997. So also certificate dated 24.06.2009 issued by the Medical Board in the Government Medical College and Hospital, Aurangabad shows that the petitioner was examined by the said Board on the said date and the Board was of the opinion that he was fit for duty. So also the Medical Certificate issued by the above said Board on 14.09.2011 shows that the petitioner is having 40% visual disability and he is fit for the post of Development Officer.

17. Thus, from the above certificates, it can be said that after the petitioner met with accident on 13.12.1995 and after he was treated in the hospital as contended by him, he was fit to resume his routine duty from 10.05.1997. Particularly, it can be said that he was fit to his routine duty as Development Officer. Therefore, it can be said that after he was cured, the petitioner started working as Development Officer. His conduct of producing above referred medical certificates also shows that all the while, he demonstrated that he was capable and mentally fit to work as Development Officer as contended in reply affidavit of the respondents. Therefore, the petitioner was required to do his work in accordance with the service conditions attached to the post of the Development Officer, as per paragraph No.11 of the General Insurance Amendment Scheme, 1990 referred to earlier. Naturally, therefore, on his failure to do work as per the service conditions as per paragraph No.11 and as per his appointment order

Exh.R-1, particularly as per term No.8 of the appointment order dated 06.07.1988 that his appointment will be governed by the General Insurance (Rationalization of Pay-scales and other conditions of Service of Development Staff (Scheme 1976) as amended from time to time and General Insurance (Conduct Discipline and Appeal) Rules 1975, there would be decrements in his pay-scale as per percentage given in the table below paragraph No.11 of General Insurance Amendments Scheme, 1990. It appears from the affidavit-in-reply of the respondents that the General Insurance Amendments Scheme 1990 relates to the service conditions of Development Officer. Paragraph No.11 of the said scheme speaks about the consequences upon failure of Development Officer to meet yearly object. The petitioner was given maximum opportunity to maintain business during his service tenure. Till the petitioner resumed the duty as a medically fit person, no deduction of whatsoever nature was effected upon him, nor any adverse action was taken against him. Only upon his joining as a medically fit person, his service terms were

observed as per the applicable rules as mentioned above. The petitioner resumed his duty in 1997 after the accident. Up till 2011 no adverse action was initiated against him, even though he was non-performer. The above contents of affidavit shows that sufficient opportunity was given to petitioner to improve his performance.

18. It appears from the impugned order Exh.A-2 dated 03.05.2011 that there was recovery when non-core benefits exceeded cost calculation sheets and therefore the petitioner was instructed to deposit recovery amount of Rs.3,01,124/- immediately before the salary for the month of May, 2011, otherwise they would deduct the same from his salary. It is case of the petitioner that the respondents have illegally recovered amount of Rs.3,01,124/- from August, 2006 till 03.05.2011 and also continued thereafter till 01.04.2013 without affording opportunity to him to show cause or after proper enquiry. When the petitioner resumed duty on 10.05.1997 as Development Officer after the accident and failed to

perform duty of Development Officer, as observed above, it cannot be said that there is illegality in the impugned order dated 03.05.2011 recovering the amount as above from the salary of the petitioner for non performance. Similarly when the petitioner submitted different medical certificates referred earlier showing his fitness to resume routine duty as Development Officer, no fault can be found with the impugned order dated 07.05.1997 (Exh.A) issued by the respondents informing him that his request for joining duty to do light work cannot be considered and advising him to join his normal duty as per doctor's instructions and certificate.

19. According to the petitioner he suffered 40% disability due to accident and therefore action of the respondent recovering amount as per the impugned order dated 03.05.2011 from him is not correct, in view of section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights And Full

Participation) Act, 1995. Said section 47 is as under: _

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service; Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability."

20. As per certificate Exh. A-3 dated 14.09.2011 as observed earlier the petitioner suffered 40% visual disability and he was fit for the post of Development Officer. As noted earlier on the basis of medical certificates referred earlier the petitioner was fit to resume duty as a Development Officer. Therefore, it is not the case that on the ground of disability, any discrimination has been made by the respondents, by

reducing him in rank etc. in the light of section 47 referred to above or that he has been denied any promotion on the ground of disability. Therefore, above said provision under section 47 is of no help to the petitioner to get relief claimed in the present petition.

21. It is also pertinent to note that the petitioner met with an accident on 13.12.1995. Thereafter, he resumed duty on 10.05.1997. An amount of Rs.3,01,124/- was recovered from the petitioner as per the impugned order dated 03.05.2011. The present petition was filed on 23.07.2014. There is an inordinate delay in claiming the reliefs by way of this petition. Considering these circumstances and for all the reasons discussed above, we hold that the petitioner is not entitled to any of the reliefs claimed in the petition. Therefore, the petition being devoid of merits, same is liable to be dismissed. Accordingly we dismiss the same with no order as to costs. Rule discharged.

22. Needless to observe that the petitioner is at liberty to avail remedy, if any, as available in law in respect of disability suffered by him.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]