

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.1256 of 2017
WMP Nos.1182 & 1183 of 2017

B.Shanmugam

.. Petitioner

Vs

1. The General Manager,
The New India Assurance Company Limited,
Having its Head Office at
No.87, M.G. Road, Fort,
Mumbai -400 001.

2.The Deputy General Manager(Disciplinary Authority),
The New India Assurance Company Limited,
Having its Regional Office at,
No.770A, Anna Salai,
Chennai-600 002.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records in CHNRO/DGM Sect./2014 dated 27.10.2014 on the file of the second respondent and quash the same and to consequently, direct the respondents to settle all retired benefits with accrued interest and appropriate pension and other pensionary benefits forthwith.

For Petitioner : Mr.L.Chandra Kumar for
M/s.S.Thiruvengadam

For RR1 & 2 : Mr.V.Vijay Shankar

ORDER

This writ petition has been filed with a prayer to quash the charge memo issued to the petitioner by the second respondent, vide charge memo No.CHNRO/DGM Sect./2014 dated 27.10.2014, and consequently, direct the respondents to settle all the monetary and retirement benefits due to the petitioner with accrued interest.

2. According to the petitioner, such a charge memo for initiation of the disciplinary proceedings is not permissible against the petitioner, a superannuated employee.

3. It appears that the petitioner while serving with the respondent superannuated on 30.09.2014. But soon after his superannuation, he was issued with a impugned charge memo dated 27.10.2014, alleging therein that the petitioner while working as Divisional Manager in Alwarpet Divisional Office, Chennai Regional Office of the respondent has committed mis-conduct in terms of The New India Assurance Company Limited(Conduct, Discipline & Appeal) Rules 2014, by booking the premium in respect of Banker's Indemnity Policy of the Insurance Company through an agent, though the same should have been booked directly and thereby caused loss to the Bank.

4. According to the petitioner, such a charge memo is without any substance, so also the same being related to the incident of the year 2010-2011 and the General Insurance employees Pension Scheme - 1995 under Clause 47 being providing that though no departmental or judicial proceeding is not initiated while the employee in service shall be instituted in respect of the cause of action, which arose in respect of an event which took place more than four years before and hence, the same is impermissible and as such liable to be quashed and he is entitled to the relief sought for.

5. The same however, has been contested by the respondent with the averment that the aforesaid cause of action for the aforesaid incident arose when the fact came to the knowledge of the respondent just some days before the retirement of the petitioner, such a contention therefore, challenging the initiation of the proceeding is devoid of merit.

6. Heard Mr.Mr.L.Chandra Kumar for M/s.S.Thiruvengadam, learned counsel for the petitioner and Mr.V.Vijay Shankar, learned counsel for the respondents.

7. As it appears in this case, that the aforesaid incident occurred more than four years before the retirement of the petitioner is not in dispute. So far as the cause of action is concerned, it can be said very well that it is very well known to the Bank that when the premium was paid as they had booked the same directly, but higher amount was charged. Despite of the same, they having not drawn the notice of the same to the respondent and also the respondent while issuing the policy appears to have not take note of the aforesaid fact, this Court is of the view that the date of incident was also the date of cause of action. The same as such have occurred in this case

more than four years before the retirement of the petitioner. When the incident occurred four years before the retirement of the petitioner, the disciplinary proceedings therefore, could not have been initiated against the petitioner after his retirement taking note of such an incident, in view of the provision to Clause 47, which speaks as thus":

'47:Recovery of Pecuniary loss caused to the Corporation or a Company:- (1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Corporation or a Company if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service:

Provided that the Board of the Corporation or a Company shall be consulted before any final orders are passed:

Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under this paragraph and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service:

Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

8. I would therefore, allow this writ petition and quash the charge memo dated 27.10.2014 issued against the petitioner and direct the respondent herein after to release the retiral benefits in favour of the petitioner, to which he is entitled to, in accordance with law, if there is no other legal impediment in this regard. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To,

1. The General Manager,
The New India Assurance Company Limited,
Having its Head Office at
No.87, M.G. Road, Fort,
Mumbai -400 001.
- 2.The Deputy General Manager(Disciplinary Authority),
The New India Assurance Company Limited,
Having its Regional Office at,
No.770A, Anna Salai,
Chennai-600 002.

+1cc to Mr.V.VijayShankar, Advocate, S.R.No.28698

W.P.No.1256 of 2017

RRK(27/04/2018)



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