BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.9246 of 2016
and
M.P.(MD).No.7363 of 2016
and
W.M.P.(MD).No.972 of 2017

S.Alagaraj ...Petitioner

Vs.

1.The General Manager/Disciplinary Authority,
United India Insurance Company Limited,
No.24, Whites Road,
Chennai-600 014.

2.Dr.G.M.J.Kamalakumar,
Regional Manager/Enquiry Officer, Madurai,
United India Insurance Company Limited,
Regional Office, No.7-A, West Veli Street,
Madurai-625 001.

3.The Chief Regional Manager,
United India Insurance Company Limited,
No.7-A, West Veli Street,
Madurai-625 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the first respondent in Ho.2015-16 :2016 dated 21.04.2016 issued to the petitioner and to quash the same and consequently direct the first respondent to drop the disciplinary action taken against the petitioner, since the petitioner was retired from service as the Service Rules does not enable the first respondent to take disciplinary action against the retired employee.

For Petitioner : Mr.G.Arunachalam
For Respondents : Mr.C.Karthik for R1 to R3

ORDER

Heard the learned counsel on either side.

2.The petitioner was an employee of the United India Insurance Company Limited. The petitioner retired from service on 30.04.2014. The petitioner is also getting full pension. Subsequently, the petitioner was issued with charge memo dated 02.03.2015. The petitioner submitted his explanation. Enquiry was conducted. Enquiry report was submitted. The Disciplinary Authority took a prima facie view that he is in agreement with the findings of the enquiry authority. A copy of the enquiry report was furnished to the petitioner and he was permitted to submit his representation on 21.04.2016. It is at this stage, that the Writ Petition came to be filed before this Court. This Court granted interim order of stay.

3.When the matter was taken up for final hearing, the learned counsel appearing for the petitioner placing reliance of the judgment of the full Bench of this Court reported in (2015) 4 CTC 1 (S.Andiyannan Vs. The Joint Registrar, Cooperative Societies, Madurai Region, Madurai) contended that since the petitioner had already retired from service, disciplinary action initiated against him cannot be initiated. The proposition laid down in the said decision is that unless there is a rule empowering the Disciplinary Authority to take action, even against the retired employee, no such action can be taken.

4.But as rightly pointed out by the learned Standing Counsel appearing for the respondents/Corporation that the petitioner is covered by the General Insurance (Employees') Pension Scheme 1995 and as per clause 47 of the said scheme, departmental proceedings can be initiated even if not initiated while the employee was in service provided that the cause of action arose within four years from the date of such institution.

5.In the present case, the cause of action arose in 2011-2012 and 2012-2013. The petitioner retired in the year 2014. Therefore, the cause of action in this case arose within four years from the date of issuance of charge memo. Therefore, the aforesaid Full Bench decision on which reliance was placed will not clearly apply in this case. In the present case, there is a provision authorising the employer to take action even against the retired employee.

6.It is made clear that the Authority will not pass any final orders without hearing the petitioner. The rights of the petitioner in respect of other matters are left open.

7.The learned counsel appearing for the petitioner placing reliance on the decision of the Supreme Court reported in (2007) 4 L.L.L.N.108 (Ramesh Chandra Sharma and Pubjab National Bank and another) contended that the enabling clause in the pension scheme is not sufficient. The Hon'ble Supreme Court observed as follows:

> "The question, thus, as to whether continuation of a disciplinary proceeding would be permissible or the employer will have to take recourse only to the Pension Rules, in our opinion, would depend upon the terms and conditions of the services of the employee and

the power of the disciplinary authority conferred by reason of a statute or statutory rules."

8.As rightly pointed out by the learned counsel appearing for the respondents that Rule 1(4) of the United India Insurance Company (Conduct, Discipline & Appeal) Rules, 2014, reads as follows:-

"(4)These rules shall also apply to a person governed by General Insurance (Employees') Pension Scheme 1995 to the extent provided under the said scheme."

9.This Rule came into force on 07.04.2014. This is clear from the materials enclosed in the additional typed set of papers. The petitioner retired from service only on 30.04.2014. Therefore, looked at from any angle, there is no merit in the contention of the learned counsel appearing for the petitioner.

10.The Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

+1cc to M/S.G.Arunachalam, Advocate SR.No. 52818
+1cc to M/S.C.Karthik, Advocate SR.No. 52839

W.P.(MD).No.9246 of 2016
05.03.2018

tsg
JM/SV MMS/SAR 4/11.05.2018/3P/3C