

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.03.2020

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.10188 of 2018

S.Mahadevan

...Petitioner

Vs.

The General Manager,
(Appellate Authority)
Personnel Department,
Head Office,
United India Insurance Company Ltd.,
No.24, Whites Road, Chennai - 600 014.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondent herein to consider petitioner requisition dated 01.08.2017 to reinstate the petitioner into the service of the company with continuity of service in the company along with backwages and all other benefits from the date of suspension i.e., 19.02.2000.

For Petitioner : Mr.R.Sankarasubbu
for Mr.L.Ramu

For Respondents : Mr.K.S.Giri Prasath

ORDER

The petitioner was working as Assistant (Typist) in the respondent/insurance company. He was appointed on 13.01.1986 and worked till 15.11.2001. According to the petitioner, there was no complaint against him during the discharge of his official duties as an employee of insurance company. The petitioner appears to have involved in a financial business and invited deposits from public. Since, the depositors subsequently given complaint that on demand, deposits were not returned, a Criminal case was lodged against the petitioner's family including the petitioner under the provisions of Tamil Nadu Protection of Interest of Depositors Act (TNPID Act), 1997.

2.While lodging a criminal case, the petitioner was also arrested and was confined in jail on 19.02.2000 and he came out on bail on 20.04.2000. In these circumstances, the respondent/insurance company has issued a charge memorandum on 19.11.1999 for unauthorized absence for 89 days and also regarding the involvement of him in the criminal case under TNPID Act, 1997. On behalf of the petitioner, a reply was sent on 14.12.1999. However, not satisfied with the reply, an enquiry was initiated against the petitioner and he could not participate in the enquiry. Exparte enquiry was completed and on the basis of the findings of the enquiry report, he was removed from service on 15.11.2001.

3.The removal from service was put to challenge in W.P.No.418 of 2003. However, the writ petition was dismissed on 19.09.2008. Against the said order, W.A.No.284 of 2009 was also filed and the same was dismissed on 09.04.2009. The petitioner approached the Hon'ble Supreme Court of India by way of a Special Leave Petition in S.L.P.No.26315 of 2009, but the Special Leave Petition was also dismissed on 30.10.2009. In the meanwhile, the criminal case which was pending trial, was completed and a judgment was passed on 28.04.2017, wherein the petitioner herein was acquitted.

4.In view of the change of circumstances, the petitioner has given representation to the respondent/insurance company to consider him for reinstatement into service notwithstanding finality reached in the disciplinary proceedings against him by this Court as well as the Hon'ble Supreme Court. Since no decision was taken in response to the representation submitted by the petitioner on 01.08.2017, the petitioner is before this Court for issuance of writ of mandamus.

5.Mr.Sankara Subbu, learned counsel appearing on behalf of the petitioner would submit that although earlier to the judgment of Criminal Court dated 28.04.2017, the circumstances were different, as the petitioner was involved in the criminal case and was also charged for unauthorized absence, the Court has taken a view that the petitioner herein was not entitled to any relief. However, in view of the change in circumstances, when the judgment of the Criminal Court came to be rendered on 28.04.2017, wherein the petitioner was acquitted along with his family members, on such acquittal, the learned counsel would submit that petitioner herein was entitled to be reconsidered by the Management since the acquittal is not on the basis of benefit of doubt but on the conduct exhibited by the petitioner and his family members during the pendency of the trial. Therefore, the learned counsel would submit that a direction may

be issued to the respondent/insurance company to consider his representation sympathetically and pass appropriate orders.

6. At this, the learned counsel appearing on behalf of the respondent/insurance company submitted that once removal order was passed in pursuance to the disciplinary action initiated against him and the removal order has been confirmed by learned Single Judge and Hon'ble Division Bench in the intra Court Appeal and the rejection of Special Leave Petition by the Hon'ble Supreme Court of India, it is not open to the petitioner herein to resurrect the dead issue after a period of several years. According to the learned counsel that the acquittal by the Criminal Court in 2017 does not give any fresh cause of action to the petitioner to seek for his reinstatement before the respondent/insurance company.

7. Considered the submissions of Mr. R. Sankara Subbu, learned counsel appearing on behalf of the petitioner and Mr. K. S. Giri Prasath, learned counsel appearing on behalf of the respondent.

8. No doubt that the counsel for the respondent has contended that the disciplinary proceedings initiated against the petitioner has ended against him by affirmation of removal punishment by this Court as well as the Hon'ble Supreme Court of India. Yet, considering the subsequent development which came in the form of judgment of the Criminal Court on 28.04.2017, wherein the petitioner and his family members were acquitted, this Court is of the considered view that the request of the petitioner cannot be negated in view of the past proceedings. This is for the reason that when the petitioner has ultimately came out unscathed either acquittal on merits or by accepting his conduct during the pendency of the trial, yet the fact of the matter is that the petitioner is now exonerated of the charges and in these circumstances, his claim can be reconsidered by the Management atleast on sympathetic ground.

9. As far as the facts of this case are concerned, the petitioner was employed between 13.01.1986 and 15.11.2001 for a period of nearly 15 years. Valuable services rendered by the petitioner had unfortunately came to an end because of his involvement in the criminal case during the relevant time. A charge of unauthorized absence was also laid due to the involvement of the petitioner in the criminal case as he could not attend duty for almost 89 days because of his confinement in jail. That being the case, the insurance company may consider the claim of the petitioner on sympathetic grounds as the petitioner has almost attained the age of retirement.

10. When stigma has been removed namely involvement in the criminal case, which was the basis of the disciplinary action

initiated against which ended in removal from service, it is always possible for the management to have a re-look at the claim of the petitioner on the basis of the subsequent development which development unfortunately was not available to the petitioner when the disciplinary action was challenged before this Court as well as before the Hon'ble Supreme Court of India.

11. In the conspectus of the above, the respondent is directed to consider the representation of the petitioner dated 01.08.2017 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of this order. This Court hopes that the respondent/insurance company being a public sector undertaking may take into consideration the peculiar circumstances of the case and approach the issue with empathy and sympathy in order to appreciate the claim of the petitioner more liberally and compassionately.

12. The petitioner is also at liberty to make a fresh representation in regard to the subject matter of his claim to the respondent and in case he chooses so, the same shall be submitted to the competent authority within one week from the date of receipt of copy of this order.

13. With the above directions, the writ petition stands disposed of. No costs.

Sd/-
Asst. Registrar (CS III)

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

mrm

To

The General Manager,
(Appellate Authority)
Personnel Department,
Head Office,
United India Insurance Company Ltd.,
No.24, Whites Road, Chennai - 600 014.

WEB COPY

+1 cc to Mr.K.K.Sivashanmugam Advocate sr21816
+2 ccs to Mr.L.Ramu Advocate sr21982

W.P.No.10188 of 2018

aa19/03/2020



WEB COPY