

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

Hon'ble Justice Partha Sarathi Sen

W.P.A No. 16629 of 2012

Siddhartha Sar

-Versus-

Life Insurance Corporation of India & Ors.

For the Petitioner : Mr. Arun Kumar Chowdhury, Adv.,

**For the Respondents : Mr. Amitabh Shukla, Adv.,
Mr. P.C Pandey, Adv.**

Heard on: : 18.05.2023

Judgment on. : 06.06.2023

PARTHA SARATHI SEN, J. : -

1. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has challenged the charge sheet dated 22.06.2009 as submitted by the respondent no.4 as against him, the findings of the enquiry officer dated 08.11.2010, the show cause notice dated 12.02.2011 as issued by the manager (P&IR) of respondent no.1/organization, the final order of punishment dated 15.03.2011 as issued by the Sr. Divisional Manager(Disciplinary Authority) of the respondent no.1 and the order of Appellate Authority dated 01.09.2011 as well as the order of the Revisional Authority dated 07.04.2012 of respondent no.1-organization affirming the punishment upon the writ petitioner.

2. Before Enquiry Authority the present writ petitioner being the delinquent has faced the following charges namely:-

- I. *“THAT, as per your verbal statement on 01.06.2009 you had gone to Election Office on 11.04.2009 , 13.04.2009, 17.04.2009 and many other days to make the Sr. Branch Manager send the remaining names of employees to the Election Commission . on all the above dates you were present in the office as per the Attendance Register but found to have gone to Election Office without the explicit permission of the Competent Authority . By doing so you have breached the office discipline.*
- II. *THAT, you have also given a letter dated 13.04.2009 to Election Office wherein you informed the names of the six employees whose names were not sent to the Election Office. Your sole intention was to put the Sr. Branch Manager in trouble. You are also found to have received a letter dated 17.04.2009 directly from Election Authority addressed to Sr. BM. This is a clear act of indiscipline thereby tarnishing the image of the Corporation.*
- III. *THAT, you were also found to have visited the Election Office several times just to fulfill you desire to get the remaining persons drafted for Election duties. By doing so you have not only violated the CO instructions in this regard but have also connived with an external agency which is detrimental to the interest and image of the Corporation.*
- IV. *THAT, you vide your letter dated 11.04.2009 have requested the Sr. BM to inform the names of the employees whose names have been sent to Election Office. Your giving such letter is unwarranted.*
- V. *THAT, you have contacted Press and informed them about facts which were published in a local daily. As per your statement the Press had got the information initially from the Election Office, and then contacted you, which seems to be unlikely. It was not clear*

why the Press contacted you. The distorted figures published in the newspaper as also facts which are not real and true, has tarnished the image of the Corporation.

VI. THAT, on 30.05.2009 you had indeed used foul language against Ms. Champa Ganguly, AAO,F&A using the word "DALAL". The use of any filthy, abusive and insulting language towards a lady officer in an open floor is a gross misconduct on your part.

3. The delinquent/writ petitioner has submitted his statement of defence and thereafter the enquiry proceeding proceeded against him and on conclusion of the same though Charge nos.I and III have not been established but Charge no. II, IV,V and VI as mentioned above have been established as a result whereof the respondent/authorities by its final order dated 15.03.2011 imposed the penalty of reduction of basic pay by two stages in time scale of pay as applicable to him in terms of Regulations 39(1)(d) of Life Insurance Corporation of India (Staff) Regulations, 1960. The said final orders were given effect on and from 16.03.2011 and thereby the writ petitioner's basic pay was reduced by two stages i.e. from Rs.19, 370/- to Rs.17, 690/-.

4. Feeling aggrieved with the decisions of the respondent/authorities and the punishment as imposed upon him, the petitioner has filed this writ petition.

5. Mr. Arun Kumar Chowdhury, learned advocate for the writ petitioner in course of his argument at the very outset draws attention of this Court to the photocopy of the charge sheet which has been annexed with the instant writ petition with the mark Annexure P1. Drawing

reference to the charges as framed against the present writ petitioner/delinquent it has been contended by Mr. Chowdhury that since the writ petitioner was at that material time was a portfolio holder of a minority trade union of his office, the respondent/authorities succumbed to the pressure of the the then majority trade union and thus wrongly submitted charge sheet as against the present writ petitioner on account of enmity between the two rival unions. Drawing attention to the copy of the enquiry report dated 08.11.2010 which has been annexed with the instant writ petition with the mark annexure P6, it is contended by Mr. Chowdhury that the findings of the Enquiry Authority is violative of principle of natural justice and the same has been vitiated by circumstances extraneous to the evidence and the merits of the case. According to Mr. Chowdhury it is a fit case for quashing all the charges as well as the punishment as imposed upon the writ petitioner by the respondent/authorities.

6. Per contra, Mr. Amitabh Shukla, learned advocate for the respondents submits before this court that from the materials as placed before this Court it would be clear that the respondent/authorities has followed the proper procedure in the disciplinary proceeding as against the present writ petitioner and thus it cannot be said that the principle of natural justice has been violated at the instance of the present respondent/authorities. It is submitted further on behalf of the respondents that in absence of sufficient materials it is not proper to say that the decision of the respondent/authorities has been vitiated by

circumstances extraneous to the evidence. Placing reliance upon the reported decision of ***Union of India vs. P. Gunasekaran*** reported in **(2015) 2 SCC 610** it is contended by Mr. Shukla, learned advocate for the respondent/authorities that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not supposed to act as an Appellate Court and therefore the findings of the facts as has been arrived by the respondent/authorities at its different forum as against the present writ petitioner is not open to challenge before this Court in this writ petition. It is thus contended by Mr. Shukla that it is not a fit case for allowing the writ petition and accordingly the instant writ petition may be dismissed.

7. This court has meticulously gone through the entire materials as placed before this Court. This Court has given its anxious considerations over the submissions of the learned advocates for the writ petitioner and the respondents. In order to reach at a logical conclusion of the instant writ petition, this Court feels it obligatory to look to some of the celebrated reported decisions of the Hon'ble Supreme Court of India which deals with the scope of a writ Court while dealing with decisions of the departmental authorities in departmental proceedings.

8. In the reported decision of '**High Court of Judicature at Bombay - vs- Sashikant S Patil**' reported in **(2000) 1 SCC 416** the Hon'ble Supreme Court of India has expressed the following view :

“16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the

order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

17. *In State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25] this Court has stated so and further observed thus:*

“The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably

support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.”

18. *The above position has been reiterated by this Court in subsequent decisions. One of them is B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44].”*

9. Similar view was taken by the Hon’ble Supreme Court in the reported decision of **Union of India vs. P. Gunasekaran (supra)** wherein the Hon’ble Apex Court held thus:-

“.....

13. *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:*

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair*

conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under [Article 226/227](#) of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

.....

23. The jurisdiction to issue a writ of certiorari under [Article 226](#) is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. [See Syed Yakoob v. K.S. Radhakrishnan](#)".

10. Keeping in mind the aforementioned propositions of law as enunciated in the aforementioned reported decisions as discussed hereinabove if I look to the factual aspects as involved in this case, it reveals to me that the charge nos. II, IV and V are interrelated while charge no. VI is independent. On conjoint perusal of the charge nos. II, IV and V it reveals that such charges relate to issuance of a letter by the delinquent/writ petitioner to the election commissioner stating inter alia that the names of the 6 employees were not sent by the then Sr. Branch Manager of the respondent no. 1 / organization where at that material time the writ petitioner was posted as an Assistant at Serampore Branch

of the respondent no.1-organization. From the aforementioned three charges namely; Charge nos. II,IV and V it reveals that as per the respondent/ authorities, by issuing a letter of complaint to the election commission, the writ petitioner has tarnished the image of the respondent no.1/authority which is itself an indiscipline on the part of the writ petitioner and is thus unwarranted. It reveals further from charge no.V that the aforementioned alleged inaction and/or non-action on the part of the Sr. Branch Manager was also communicated to the press for which also the image of the respondent/authorities have been tarnished to a great extent. According to the respondent/authorities the aforementioned act tantamounts to misconduct on the part of the writ petitioner for which submission of charge sheet followed by initiation of disciplinary proceeding and imposition of penalty are absolutely justified.

11. On conjoint perusal of the entire materials as available in the writ petition as well as in the affidavit-in-opposition of the respondent/authorities it reveals to this Court that at that material time i.e. in the year 2009 SDO Sreerampore had made requisition of the employees of the Sreerampore Branch of the respondent n.1/authority for the purpose of the then ensuing election and accordingly the Branch Manager has forwarded the names and details of the employees of the said Branch of the respondent no.1/authority to the SDO Sreerampore. It reveals further that on 13.04.2009 the present writ petitioner made a communication with the SDO Sreerampore, Hooghly stating inter alia that

the then Branch Manager excluded 6 names of the employees while sending the details of the employees to the District Election Commission.

12. In course of time the allegation as made by the writ petitioner before the SDO, Sreerampore, is found to be correct since by issuing a letter dated 06.05.2009 the the then Sr. Branch Manager of Sreerampor Branch of the respondent no.1/authority stated thus:-

“ However , as the branch-in-charge of such a public sector financial organization of eminence, having been bogged down with huge year end operation, fully unintentionally and inadvertently, I could not exercise my vigil on the entire list of employees as a result of which the names of 5 employees as pointed out remained skipped from the list.

Though such unintentional and inadvertent mistake has been committed, I take this opportunity to furnish below some information regarding those unlisted employees:

1.	Sankar Das (Assistant)	342759	An acute blood cancer patient exempted earlier by the medical board of Election Commission.
2.	Prabir Pal (Assistant)	337964	Acute patient of blood cancer currently under-treatment at CMRI.
3.	Shyamal Dutta (Assistant	212515	An employee on the verge of retirement and a patient of chronic hypertension and blood sugar.
4.	Swapam Debnath (HGA)	337722	He joined his branch

			<i>only after the submission of list on transfer from LICI, Arambagh Branch.</i>
5.	<i>Asish Kr. Goswami (Assistant)</i>	336553	<i>He is suffering from acute neuro-illness with GAD under treatment of neuro-psychiatrist and MD physician of sub divisional hospital for last 5 years.</i>

Notwithstanding anything above , as per your letter dated 21st March, 2009, I presented myself in the meeting regarding the duties of sponsoring authorities and performed my duties. Assuring you regarding avoidance of any future recurrence of such mistake, I earnestly request you for a lenient view over the incident.”

13. In considered view of this Court the then Sr. Branch Manager, Sreerampor Branch of the respondent no.1/authority at the very first instance could have sent the entire names and other details of the employees of its branch disclosing therein the physical ailments of the five persons whose names have been purposely excluded by him for the best reason known to him but subsequently included in his letter dated 06.05.2009 especially when he was asked to reply such non-submission of names by the SDO, Serampore. In view of such circumstances this Court has every reason to believe that for some reason or other the then Sr. Branch Manager of the Sreerampore Branch of the respondent no.1/

authority purposely excluded the names of the aforementioned five employees of the said branch which is why under cover of his aforementioned letter dated 06.05.2009 he tendered his apology on account of his mistake which however according to him is unintentional and inadvertent.

14. In considered view of this Court on account of suppression by the then Sr. Branch Manager, Sreerampore Branch of the respondent no.1 that too with a Constitutional Authority, the image of the respondent no.1/authority has been tarnished but not on account of the issuance of the letter dated 13.04.2009 by the present writ petitioner. This Court further considers that apart from discharging his duty as an employee of the respondent no.1/authority as well as a portfolio holder of a minority trade union of the office of the respondent no.1/authority, the present writ petitioner being a responsible citizen communicated the truth to a Constitutional Authority being the election commission for which the respondent no.1/authority and its officials ought not to be revengeful to the writ petitioner and at the same time ought not to have submit the charge sheet against the present writ petitioner.

15. In view of the discussion made hereinabove this Court thus considers that the alleged action on the part of the writ petitioner under cover of charge nos.II, IV and V under no stretch of imagination can be considered as a misconduct for which the respondent/authorities are justified in submitting the charge sheets as against the present writ

petitioner and **thus charge nos. II,IV and V of the charge sheet dated 22.06.2009 as issued by the respondent no.4 are hereby quashed.**

16. On conjoint perusal of the charge no.VI as well as the findings of the Enquiry Committee it reveals to this Court that findings of the Enquiry Authority with regard to the charge no.VI is based on factual findings and therefore this Court being a Writ Court is not supposed to interfere with the said factual findings which has been affirmed by the Appellate Authority as well as by the Revisional Authority of the organization of the respondent no.1 unless it has been shown that while arriving at such a decision, the authorities have allowed themselves to be influenced by irrelevant and extraneous circumstances and/or the conclusions on the very face of it is so wholly, arbitrary and capricious that no reasonable person could ever have arrived at such conclusion.

17. On perusal of the enquiry report dated 08.11.2010 it reveals that while coming to a conclusion in respect of charge no.VI the Enquiry Officer relied on the evidence of the PW1, 2 and 4 but in its finding in respect of charge no.VI he had assigned no reason as to what prevented him to rely on the evidence of DW2 Debdas Bandyopadhyay who is an independent witness to the alleged incident on the fateful day and hour. Keeping in mind that this Court is not an Appellate Authority with regard to the factual findings as arrived at by the Enquiry Authority , Appellate Authority and the Revisional Authority of the respondent no.1 organization but the method of appreciation of evidence as made by the Enquiry Officer in respect of charge no.VI and as affirmed by the Appellate

Authority and the respondent/authority of the respondent no.1 organization it reveals to this Court that the said authorities of respondent no.1 concerned have allowed themselves to be influenced by irrelevant and/or extraneous circumstances which have already been discussed by this Court while coming to its finding in respect of Charge nos. II,IV and VI.

18. Apart from that this Court finds that the Enquiry Authority had erroneously failed to admit the material evidence as adduced by DW2 Debdas Bandyopadhyay, who in course of enquiry stated thus:-

“Siddharthababu asked Smt. Ganguly about what was going on. Madam then told Siddharthababu that doing AII(like words) and the service of LICI simultaneously is not possible. Siddharthababu told madam to behave like an officer.”

19. In view of the facts and circumstances as discussed hereinabove this Court thus considers that the action on the part of the respondent authorities as against the writ petition is not only erroneous but the same shows the arrogant, rancorous and vindictive attitude on the part of the respondent/authorities for which the present writ petitioner has been unnecessarily victimized.

20. As a result the instant writ petition succeeds. Consequently the charge sheet dated 22.06.2009, the findings of the enquiry officer dated 8.11.2010 , the show cause notice dated 12.02.2011 as issued by the respondent/authorities as against the present writ petitioner and the order of punishment as passed by the Disciplinary Authority vide its order

dated 15.03.2011 and the confirming order of the Appellate Authority dated 01.09.2011 and that of Revisional Authority dated 07.04.2012 are all hereby quashed and set aside.

21. The respondent/authorities are hereby directed to give all monetary benefit to the writ petitioner within a month from the date of communication of this order as if no order of penalty and /or punishment was imposed upon the writ petitioner by the respondent/authorities.

22. Considering the sufferings of the present writ petitioner on account of vindictive attitude of the respondent authorities, this Court further directs that the respondent/authorities shall pay a compensation of Rs.2 lacs to the writ petitioner and such compensation shall have to be paid also within a month from the date of communication of this order.

23. With the aforementioned observation the instant writ petition is disposed of.

24. Parties are directed to act on the server copy of this order.

25. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)