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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.114 OF 2017

MRS. JYOTI KAMAT MANGESHKER,
WIFE OF MR. LAXMIDAS MANGESHKAR
INDIAN NATIONAL, AGE 60 YEARS,
Resident of C-2, G-10, MUNJ VIHAR,
VIDHYANAGAR, GOGOL,
MARGAO GOA 403 601 … Petitioner

Versus

ORIENTAL INSURANCE COMPANY LTD.
HAVING DIVISION OFFICE AT:
3RD FLOOR, GOUVEIA CHAMBERS,
HELIDORO SALGADO ROAD,
PANAJI GOA ... Respondents

Mr Girish K. Sardessai with Ms S. Bangera, Advocates *for the Petitioner*.

Ms Christabel Afonso, Advocate *for the Respondents*.

CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.

DATED: 3rd May 2023

ORAL JUDGEMENT: (*Per M.S. Sonak, J.)*

1. Heard Mr G.K. Sardessai, who appears with Ms S. Bangera for the Petitioner and Ms Christabel Afonso for the Respondents.

2. This petition challenges the charge sheet dated 13.07.2016 issued to the Petitioner a few days before she was to retire on attaining the age of superannuation effective from 30.07.2016. Based on the charge sheet and the proposed inquiry, a gratuity amount of over ₹11,00,000/- was sought to be withheld from the Petitioner's terminal benefits. The only charge against the Petitioner was her alleged failure to report for duties to Mumbai, where she was transferred.

3. By Order dated 12.09.2017, this Court granted interim relief in terms of prayer clause (c), which reads as follows:-

> "(c) *For an order for staying the impugned charge sheet dated 13.07.2016 and all proceeding in furtherance of the impugned charge sheet till the hearing and final disposal of this petition.*"

4. The Order dated 12.09.2017 is transcribed below for the convenience of reference.

> "*IN THE HIGH COURT OF BOMBAY AT GOA*
> *WRIT PETITION NO. 114 OF 2017*
>
> *Jyoti Kamat Mangeshkar ... Petitioner*
> *Versus*
> *The Oriental Insurance Company Ltd. ... Respondents*
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> ***Mr. G. K. Sardessai and Mr. A. Carvalho, Advocates** for the Petitioner.*
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> ***Mr E. Afonso, Advocate** for the Respondents.*
>
> ***CORAM: G.S. PATEL &***
> ***NUTAN D. SARDESSAI, JJ***
> ***DATED: 12th September 2017***
>
> *PC:-*
>
> *1. Rule, returnable on 21st December 2017. Mr Afonso waives service on behalf of the respondents.*
>
> *2. In the meantime, there will be interim relief in terms of prayer clause (c). The Respondent will deposit the entire amount of gratuity regarding the Petitioner computed in view of the*

provisions of Gratuity Act without any deductions in this Court on or before 27th September 2017.

3. All concerned to act on an authenticated copy of this Order. Authenticated copy to be issued expeditiously.

4. List the matter for Orders and compliance on the supplementary board. On deposit, the amount is to be invested in accordance with the usual practices of the registry.

sd/-	*sd/-*
NUTAN D. SARDESSAI J.	*G.S. PATEL, J.*"

5. In compliance with the interim directions, the Respondents have deposited in this Court an amount of ₹11,51,250/- on 04.10.2017. The amount is presumably invested.

6. After serving the Respondents for almost 33 years, the Petitioner retired on attaining the superannuation age effective from 30.07.2016. Barely a few days before she could retire, the impugned charge sheet dated 13.07.2016 was served upon her. The charge sheet alleges unauthorized absence and failure to join duties despite transfer.

7. Since the charge sheet was stayed, no further inquiry could be held. Ms Afonso argues that the transfer was in accord with the transfer policy guidelines, and there was a lapse on the Petitioner's part in not reporting for duties to the transferred post and consequently remaining unauthorizedly absent.

8. Mr Sardessai refers to the transfer policy guidelines concerning transfer/posting female employees in public sector insurance companies with posting/transfer away from their husbands or parents to distant locations. He submits that the Petitioner was facing genuine difficulties because of her health issues and the health issues of her mother, whom she cared for. Mr Sardessai pointed out that several representations were not adequately considered.

9. Mr Sardessai, without prejudice and based on express instructions, submitted that the Petitioner was under the bona fide belief that, pending the consideration of her representations, she was not required to report to the transferred place. Further, Mr Sardessai, again on express instructions, submits that the Petitioner apologizes for her actions but submits that the very continuance of inquiry at this stage would be harsh and disproportionate. Mr Sardessai also submits that withholding of gratuity under such circumstances is improper and in any case, would be harsh and disproportionate. Finally, he points out that the Petitioner has already retired about seven years ago after attaining the age of superannuation, and it would not be in the interests of anyone to start the enquiry at this stage.

10. Ms Afonso, learned Counsel for the Respondents, submits that discipline is crucial in public-sector insurance companies. Since this is a case of breach of discipline, the inquiry could be allowed to proceed even at this stage. She submitted that the estimated cost for conducting the inquiry would be ₹42,500/- because an officer must come from Mumbai to Goa to conduct such an inquiry.

11. We have considered the material on record, and according to us, the interest of justice will be served if the impugned charge sheet is quashed in the peculiar facts and circumstances of the present case. This could be done after accepting the Petitioner's apologies and requiring the Petitioner to forego the amount of ₹25,000/- from out of the amount deposited by the Respondents in this Court. The broad reasons for the above approach in the peculiar facts and circumstances of the case are indicated hereafter.

12. After serving the Respondents for 33 years, the Petitioner retired on 30.07.2016 after attaining the age of superannuation. About four years before she was to retire, the Respondents transferred her to Mumbai. So the Petitioner represented against the transfer relying on the transfer policy guidelines and the health/domestic issues. The record does prima facie show that the Petitioner's representations were not adequately considered.

13. The transfer/posting guidelines issued by the Government of India, Ministry of Finance on 23.09.2014 read as follows:-

"No.S-11012/04/2014-Ins.1
Government of India
Ministry of Finance
Department of Financial Services
Insurance-I Section
*****

2nd Floor, Jeevan Deep, Parliament Street
New Delhi, dated the 23rd September, 2014

To,

1. *The Chairman, Life Insurance Corporation of India*
2. *The CMD, General Insurance Corporation of India*
3. *The CMD, National Insurance Company Limited*
4. *The CMD, New India Assurance Company Limited*
5. *The CMD,Oriental Insurance Company Limited*
6. *The CMD, United India Insurance Company Limited*
7. *The CMD, Agricultural Insurance Company Limited*

Subject: Transfer/Posting of female employees in Public Sector Insurance Companies.

Sir,

It has been brought to the notice of this Department that female employees of Public Sector Insurance Companies, married or unmarried, when posted/transferred away from their husbands or parents, as the case may be, to distant locations face genuine hardships and develop a feeling of insecurity. Keeping this in view, it has been decided:

i) to accommodate as far as possible transfer/posting of a married female employee, on her request, at a place where her husband is stationed or as near as possible to that place or vice versa; and

ii) to accommodate as far as possible transfer/posting of an unmarried female employee, on her request, at a place where her parents are stationed or as near as possible to that place.

2. Life Insurance Corporation (LIC) and the Public Sector General Insurance Companies are, therefore, advised to frame a policy on the subject with the approval of their Boards, suitably incorporating the above guidelines and to take immediate action for implementation and compliance. Pending requests may also be considered under these guidelines. A line of confirmation may also be sent to this Department immediately after adoption of the policy by the Boards of the respective Insurance Companies.

3. This issues with the approval of the Competent Authority.

Yours faithfully,
sd/-
(S.K. Mohanty)
Under Secretary to the Govt. of India
Phone: 23748788

Copy to:

The Chief Executive, GIPSA"

14. From reading the guidelines above, it was expected that the public sector insurance companies have regard to the same and, as far as possible, show utmost consideration regarding the transfer and posting of female employees, mainly when they are due to retire. Besides, insurance companies are expected to regard health issues for the employee and the immediate family members. Of course, it is not as if all such reasons must, in every case, be accepted. However, there must be some genuine consideration of the difficulties that are expressed. Then, after weighing such difficulties against the exigencies of service, an appropriate decision must be made.

15. In this case, it does not appear that the Petitioner's representations in which all the particular difficulties she faced were adequately considered. The disposal of the representations also does not reflect adequate consideration of the transfer/posting guidelines dated 23.09.2014. The guidelines may not be binding. Although considering the exigencies, some departures may be justified. But at least as far as possible, and without any overriding exigencies, some accommodation could always be extended. Upon a cumulative consideration of all such factors, it would be harsh and equitable to allow the Respondents to proceed with the inquiry at this stage. Even if the inquiry proceeds, we do not think any case is made out for awarding a significant or major penalty.

16. The holding of inquiry at this stage would be counter-productive to the interest of the Respondents while considering not only the expenses involved but also the fact that several officers of the Respondents would have to be involved in such inquiry. The Petitioner, at this stage, should not be forced to suffer such an inquiry almost seven years after her retirement. Withholding of gratuity for all these years is a sufficient penalty, if at all. Further, the Petitioner has also tendered her apology. We think that the interest of justice would be met if the Respondents are permitted to retain ₹25,000/- from out of the amount deposited by the Respondents in this Court towards dues payable to the Petitioner. Mr Sardessai, on instructions, agrees to the Respondents retaining an amount of ₹25,000/-.

17. Accordingly, we dispose of the Rule in this petition by making the same absolute in terms of prayer clause (a) and partly absolute in terms of prayer clause (b).

18. The above means that the impugned charge sheet stands quashed. Further, the Registry to permit the Respondents to withdraw an amount of ₹25,000/- from the amount deposited by the Respondents on 04.10.2017, and the balance amount along with the interest that shall have accrued thereon should be paid to the Petitioner. The Petitioner must furnish her identification and bank details so that the Registry can directly transfer this amount into her bank account. The apology tendered by the Petitioner is also accepted. This Order is made in the peculiar facts and circumstances of the present case.

19. The Rule is disposed of in the above terms without any cost order.

20. All concerned are to act on an authenticated copy of this Order.

VALMIKI SA MENEZES, J. **M.S. SONAK, J.**

JOSE FRANCISCO DSOUZA
Digitally signed by JOSE FRANCISCO DSOUZA
Date: 2023.05.04 10:10:58 +05'30'