



W.P.No.7646 of 2004

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.7646 of 2004

K. Palanisamy

... Petitioner

Vs.

1. The Chairman cum Managing
Director, National Insurance
Company, Head Office, No.3,
Middleton Street, Kolkatta 700 071.

2. The Regional Manager,
National Insurance Co, Ltd.,
Regional Office,
Door No.684, Trichy Road,
Coimbatore 641 005.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorari and to call for the records of the first respondent dated 12.09.2003 and quash the same and consequently direct the respondents to reinstate the petitioner together with all attendant service benefits including monetary benefits with effect from 28.06.1999.

For Petitioner :Mr.A.Sivaji

For Respondents : Mr.S.Haroon
Senior Counsel
for Mr.Anand Gopalan



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ORDER

This writ petition has been filed to call for the records of the first respondent dated 12.09.2003 and quash the same and consequently direct the respondents to reinstate the petitioner together with all attendant service benefits including monetary benefits with effect from 28.06.1999.

2. The facts of the case in a nutshell:-

The petitioner was appointed on 04.10.1978 as Development Officer in the respondent Insurance Company. In 1986 he was promoted as Assistant Administrative Officer and in 1993 he was further promoted as Administrative Officer. On 01.04.1997 he was charge sheeted for having misappropriated a sum of Rs.1,25,920/- and the petitioner has replied to the charge memo dated 29.06.1997 and on 03.07.1997 enquiry was ordered and enquiry authority submitted the report on 29.04.1999. Based on the report dated 04.05.1999 show cause notice was issued to him to submit his reply to the enquiry report and the same was submitted on 25.05.1999. The General Manager passed an order on 28.06.1999 removing the petitioner from service together with recovery of a sum of Rs.1,25,920/-. The petitioner also preferred an appeal before the first respondent on 24.07.1999. In the meanwhile, a criminal case was registered



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against the petitioner in C.C.No.8 of 1999 before the learned III Additional District Judge, Coimbatore and the same ended in acquittal on 13.11.2002. Thereafter the petitioner submitted various representations dated 19.02.2003, 11.04.2003, 19.05.2003 & 27.05.2003 to the respondents and from the year 1999 onwards the petitioner was out of employment. The first respondent passed an order on 12.09.2003 confirming the order passed by the second respondent dated 28.06.1999 removing the petitioner from service together with recovery of a sum of Rs.1,25,920/-. Aggrieved by the said order the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner submitted that the petitioner was working without any black mark and to the satisfaction of the superiors and the public at large except the punishment under question. The charge sheet was served to the petitioner charging that he has misappropriated a sum of Rs.1,25,920/- and an enquiry was conducted and based on the enquiry report he was removed from service by order dated 28.06.1999 passed by the General Manager, National Insurance Company Ltd., Calcutta. Thereafter the petitioner preferred an appeal before the first respondent on 24.07.1999. In the meanwhile a criminal case was registered against the petitioner in C.C.No.8 of 1999 before



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the learned III Additional District Judge, Coimbatore which ended in acquittal on 13.11.2002 and after obtaining a copy of the judgment on 13.01.2003 the petitioner sent various representations to the respondents viz., 19.02.2003, 11.04.2003, 19.05.2003 & 27.05.2003, but the same was not considered by the respondents. The learned counsel further submitted that based on the criminal Court judgment the appellate authority/first respondent ought to have passed the final order in the petitioner's appeal when his attention was drawn to the judgment of the criminal Court. On account of delay in not passing orders in the appeal filed by the petitioner he was forced to file W.P.No.21417 of 2003 before this Court for issuance of writ of mandamus to the first respondent to pass orders on the above said petition. The first respondent without giving any opportunity and without looking into the materials on record including the rejection of appeal, passed an order on 12.09.2003. Hence he prays to allow this writ petition.

4. Per contra, the learned counsel for the respondents submitted that the petitioner claims that he has been acquitted by the criminal court on similar charges and the punishment imposed in disciplinary proceedings should be interfered with is not sustainable. In support of his contention he relied upon



the judgment of *State of Rajasthan and Others Vs Phool Singh*, reported in 2002 SCC online SC 1140. The learned counsel further submitted that the contention of the petitioner is that the Assistant General Manager was the competent disciplinary authority and the Appellate authority was the General Manager and that he has lost a right of appeal to the General Manager. The appointing authority for the petitioner was the General Manager and a person lower than the appointing authority cannot impose an order of dismissal, hence General Manager imposed the punishment. The appeal against the order to the Chairman cum Managing Director/first respondent was rightly preferred by the petitioner and the same was dismissed by order dated 12.09.2003 hence it is not correct on the part of the petitioner to state that a right of appeal was lost. The learned counsel further submitted that even in the appeal preferred by the petitioner before the first respondent the above ground that he has lost right of appeal was not raised and there is no prohibition in service jurisprudence for a higher authority to pass orders and the petitioner had a right of appeal and he has rightly exercised it. Hence the contention of the petitioner is not justified.

5. The learned counsel further submitted that the charges against the petitioner were very serious and grave in nature and had also misappropriated



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the funds of beneficiaries and the same has been admitted in the petitioner's affidavit filed in support of this writ petition in ground "O" that he has repaid money to the beneficiaries and this itself is sufficient to prove that the petitioner had misappropriated. The learned counsel for the respondents relied upon the following citations in support of his contention.

i. Mihir Kumar Hazara Choudhury Vs Life Insurance Corporation and another, reported in 2017 9 SCC 404

ii. LIC of India Vs R.Dhandapani, reported in 2006 13 SCC 613.

6. Heard both sides and perused the materials available on record.

7. The charge against the petitioner is that he has misappropriated a sum of Rs.1,25,920/- which is serious and grave in nature. Any person who is working in bank or insurance company or in financial institution must be a person of high integrity, since they are dealing with the money of the people who have deposited the same by having the confidence on the bank or the insurance company as the case may be. **The petitioner has also admitted in the affidavit filed in support of the writ petition that he has repaid the misappropriated amount of Rs.1,25,920/- to the beneficiaries.** The issue is that



the petitioner has committed the misconduct of misappropriation of public money which is no doubt grave and serious in nature as contended by the learned counsel for the respondent. The criminal case was also registered against the petitioner in C.C.No.8 of 1999 before the learned III Additional District Judge, Coimbatore and the same ended in acquittal on 13.11.2002 and based on his acquittal the contention of the petitioner is that the punishment imposed in disciplinary proceedings should be interfered with is not sustainable as the same will not be a ground to interfere for which the learned counsel for the respondents relied upon the judgment of the Hon'ble Apex Court in the case of *State of Rajasthan and others Vs Phool Singh*, reported in 2022 SCC online SC 1140 and the relevant portion is extracted as below:-

20. It is true that this Court, apart from the case of Capt.M.Paul Anthony has in a few cases not interfered with the reinstatement of an employee who was dismissed as a result of disciplinary proceedings, and was only reinstated in service because of his acquittal in criminal proceedings, but again the reasons which weighed with the Court in such cases were that in almost in all such cases, the acquittal was an honourable acquittal and not an acquittal on a technicality, or an acquittal given because of “benefit of doubt”.

21. In the case at hand, respondent was convicted by the Trial Court and in appeal the Appellate Court only acquitted him by giving him a “benefit of doubt”. The operative part of order dated 26.11.1994 of the Appellate Authority reads as under:-

“Hence, on the basis of aforesaid analysis the present appeal on



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behalf of the appellant accused against the respondent/prosecution is allowed and the judgment and sentence dated 21.03.94 passed by the Subordinate Court of Munsif & Judicial Magistrate Dholpur is hereby quashed and the above appellant/accused Phool Singh is acquitted for the charge u/s 392 IPC & u/s 3/25 of Arms Act by giving benefit of doubt”.

22. Therefore, in the present case the acquittal of the respondent is not an honourable acquittal, but an acquittal given due to a “benefit of doubt”. Under these circumstances and in view of the position of law as stated above, this appeal is allowed and the order dated 29.01.2014 of the learned Single Judge and the order dated 09.09.2020 of the Division Bench of Rajasthan High Court, Jaipur Bench are hereby set aside.

8. The punishment imposed by the respondents removing the petitioner from service is no doubt proportionate to the misconduct committed by the petitioner. The learned counsel also relied upon the judgment of the Hon'ble Apex Court in support of the above findings in the case of ***Mihir Kumar Hazara Choudhury Vs Life Insurance Corporation and another*** reported in (2017) 9 SCC 404 and the relevant paragraph is extracted hereunder:-

28. In our opinion, having regard to the seriousness of the charges coupled with virtually no defence taken by the appellant in answer to the charges and lastly, the findings of the enquiry officer, the punishment of dismissal was appropriate as provided in the service regulations and hence does not call for any leniency in awarding such punishment.



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29. The learned counsel for the appellant employee made sincere attempt in his oral as well as written submissions to find fault in the conducting of the departmental proceedings and also urging from interfering in the quantum of punishment by imposing lesser punishment but we are afraid we cannot interfere in either.

30. As held supra, the departmental proceedings were conducted strictly in accordance with law by following the principle of natural justice in which the appellant duly participated. The appellant neither set up any defence nor denied the factum of charges, yet the respondent proved the charges with the aid of relevant evidence, which found acceptance with the Division Bench and this Court too. As an appellate Court, neither we can sit over the findings of the enquiry officer and find fault in it nor can we reappreciate the evidence of witnesses examined in departmental enquiry

31. In the light of foregoing discussion, we find no merit in the appeal. The appeal thus fails and is, accordingly, dismissed.

32. It was, however, brought to out notice that the learned Single Judge during pendency of the writ petition by an interim order had directed the respondent LIC to pay a sum of Rs.50,000/- by way of ex gratia payment to the appellant. The respondent accordingly paid this amount to the appellant. Let this amount be remained with the appellant.

9. In view of the above factum of the case and the ratio laid down by the Hon'ble Apex Court, this Court is not inclined to interfere with the order passed by the first respondent/The Chairman cum Managing Director, National Insurance Company, Kolkatta, dated 12.09.2003 in rejecting the appeal filed by the petitioner and the same is hereby confirmed.



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10. In the result, this writ petition is dismissed with liberty to the petitioner to approach the authorities for settlement of provident fund amount if the same is permitted under the regulation of the Insurance Company Act and also under the National Insurance (Conduct, Discipline & Appeal) Rules 2012. No costs. Consequently connected miscellaneous petition is also closed.

13.04.2023

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Index : Yes /No

Speaking Order : Yes/No



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J. SATHYA NARAYANA PRASAD, J.

dpq

To

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Director, National Insurance
Company, Head Office, No.3,
Middleton Street, Kolkatta 700 071.
2. The Regional Manager,
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