



W.A.No.749 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.749 of 2023
and C.M.P.No.7207 of 2023

S.Mahadevan
S/o.Late A.V.Sankararaman,
No.1-176/6, Prem Nagar 1st Street,
Kathaparai, Vennamalai Post,
Karur-639006.

.. Appellant

Vs.

The General Manager
Personnel Department, Head Office,
United India Insurance Company Ltd.,
No.24, Whites Road, Chennai-600014.

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the
order dated 31.03.2022 passed by this court in W.P.No.13136 of 2020.

For Appellant : Mr.G.Sankaran, Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondent : Mr.V.Perumal



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JUDGMENT

[Judgment of the Court was delivered by R.MAHADEVAN, J.]

Challenging the order dated 31.03.2022 passed by the learned Judge in W.P.No.13136 of 2020, the present appeal has been filed by the appellant.

2.The brief facts of the case are that the appellant was appointed as Assistant (Typist) in the respondent Insurance Company on 13.01.1986. While so, he appeared to have involved in a financial business and invited deposits from public. On the complaints made by the depositors that he had not returned the deposits on demand, a criminal case was lodged against him and his family members under the Tamil Nadu Protection of Interest of Depositors Act, 1997 and he was arrested on 19.02.2000 and thereafter released on bail on 20.04.2000. Consequently, the respondent issued a charge memorandum dated 19.11.1999 against the appellant for the unauthorized absence of 89 days and also for the failure on the part of his family members to repay the amounts collected from the public for the finance company run by them. During enquiry, the appellant was not able to participate in the same and therefore, an *ex parte* enquiry report was



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submitted holding that the charges framed against the appellant have been proved and on the basis of the same, the appellant was imposed with the punishment of dismissal from service on 15.11.2001. Subsequently, the appellant filed Writ Petition and Writ Appeal before this Court and thereafter a Special Leave Petition before the Hon'ble Supreme Court. All these proceedings ended in dismissal. In the mean while, the appellant was acquitted from the criminal case on 28.04.2017. In view of the change in circumstances, he submitted a representation to the respondent seeking reinstatement into service with consequential benefits, which was not considered by the respondent. Aggrieved by the same, the appellant filed a writ petition in W.P.No.10188 of 2018, in which this Court directed the respondent to re-look into the claim of the appellant on the basis of his acquittal from the criminal case, consequent to which, the appellant submitted a detailed representation to the respondent but the same got rejected and therefore, the appellant filed another writ petition in W.P.No.13136 of 2020 which also ended in dismissal, by the order impugned herein. Hence, this appeal.



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3.The learned Senior Counsel appearing for the appellant submitted that in the order passed in W.P.No.10188 of 2018, the learned Judge directed the respondent to consider the appellant's claim for reinstatement into service with continuity of service in the company and for other reliefs as prayed for. While so, it was clearly held that when stigma has been removed, viz. involvement in the criminal case, which was the basis of the disciplinary action initiated against him, which ended in removal from service, it is always possible for the management to have a re-look at the claim of the appellant on the basis of the subsequent development which development unfortunately was not available to the appellant, when the disciplinary action was challenged before this Court as well as before the Hon'ble Supreme Court. Thereafter, in view of the rejection of the representation made by the appellant, W.P.No.13136 of 2020 was filed, but the same was dismissed only based on misconception of facts that the writ petition filed for reinstatement consequent to acquittal of criminal case was dismissed by this Court, confirmed in the writ appeal as well as by the Hon'ble Supreme Court and hence, the prayer of the appellant to reconsider him for service based on acquittal in the criminal case, cannot be



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considered. Stating so, the learned counsel prayed this Court to set aside the impugned order passed by the learned Judge.

4.Mr.V.Perumal, learned counsel appearing for the respondent submitted that the first charge framed against the appellant viz., unauthorized absence for 89 days, has been proved. He further submitted that though the appellant is said to have exonerated from the criminal case, he has not been honourably acquitted and therefore, those facts have to be taken into account, while considering the claim of the appellant.

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

6.This is the second round of litigation. In the first round of litigation, the writ petition and writ appeal filed by the appellant before this Court as well as the SLP filed before the Hon'ble Supreme Court have ended in dismissal. However, in view of the change in circumstances due to the acquittal of the appellant from the criminal case, in the order passed in W.P.No.10188 of 2018 dated 11.03.2020, this Court gave a direction to the



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respondent to consider the representation of the appellant and pass orders on merits and in accordance with law. It was also observed in the said order that this Court hopes that the Insurance Company may take into consideration the peculiar circumstances of the case and approach the issue with empathy and sympathy. But, it is to be noted that the learned Judge had not given any positive direction to consider the claim of the appellant. Only the representation of the appellant was directed to be considered by the respondent Insurance Company. Consequent to the same, the Insurance Company has passed an order rejecting the claim of the appellant on the grounds that Regular Departmental Action (RDA) Proceedings initiated with the Memorandum of Charge cannot be mixed up with the criminal cases and that, RDA Proceedings and its conclusion after the penalty imposed on the appellant was conducted as per Rule 25 of General Insurance (Conduct, Discipline & Appeal) Rules, 1975; that the charge sheet described misconduct on the part of the appellant that are of grave nature; and that the misconduct was established in a fair inquiry conducted strictly as per CDA Rules and all common principles and standards of reasonableness and fairness. It is also to be pointed out that the Regular



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Departmental Action related to unauthorized absence for 89 days by the appellant and not the criminal case wherein the appellant was acquitted.

Therefore, this Court is not inclined to interfere with the impugned order passed by the learned Judge.

7.At this juncture, the learned Senior Counsel appearing for the appellant seeks liberty to the appellant to approach the authority concerned with mercy petition.

8.Granted such liberty, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
08.08.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To
The General Manager
Personnel Department, Head Office,
United India Insurance Company Ltd.,
No.24, Whites Road, Chennai-600014.

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