IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 13230 of 2021

Krishna Kumar Bhattacharyya

-Vs-

Chairman, Life Insurance Corporation of India & Ors.

For the Petitioner	: Mr. Rajsekhar Basu Mr. Anirban Banerjee Mr. Sayantan Banerjee
For the respondent No.1 & 2	: Mr. D. K. Kundu
Heard on	: 03.03.2025, 21.08.2025
Judgment on	: 02.09.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner has sought to assail the action of the Life Insurance Corporation of India (hereinafter referred to as "the Corporation"), whereby his services were terminated and his pensionary claims had been denied.

2. The petitioner asserted to have entered the services of the Corporation upon compassionate appointment in the cadre of Assistant upon the unfortunate demise of his father who was himself in the service of the Corporation. He averred in the ordinary course of his tenure he discharged his duties to the satisfaction of his superiors and by reasons of seniority and merit, he earned promotion to the higher post of Higher Grade Assistant.

3. The petitioner contended during his continuance in service, he was compelled on occasions to absent himself owing to circumstances beyond his control. He had specifically averred his aged and ailing mother required his constant attendance and in the absence of alternative familial support, he was constrained to remain away from duty and such absence was not an act of deliberate indiscipline rather a situational compulsion dictated by humanitarian considerations.
4. The petitioner asserted for a period of absence between 1st October, 2002 to 18th May, 2003, the respondents initiated disciplinary proceedings. Although he explained his inability, the proceedings culminated in the imposition of penalty of reduction in the basic pay by one stage in the time scale of pay with effect from 21st July, 2004. Even after being subjected to such punishment, the petitioner continued to serve faithfully, yet the authorities, harbouring an obdurate view of his service record, was invidious.
5. The petitioner further contended on account of another spell of absence, a fresh charge-sheet was issued to him. He asserted the enquiry which ensued was perfunctory, mechanical and vitiated by lack of adherence to the principles of natural justice. He was denied reasonable opportunity to present his defence or to produce cogent evidence in support of his explanation. However, the Enquiry Officer found the charges proved whereupon the Disciplinary Authority, by Order dated 29th November, 2005, imposed the extreme penalty of h is dismissal from service.
6. The petitioner preferred a departmental appeal against such order of dismissal narrating in detail the extenuating circumstances that

occasioned his absence. However, the said appeal came to be rejected on 17th January, 2007 on the ground of the same been filed beyond the statutory period prescribed under Regulations 41, 42 and 43 of the Life Insurance Corporation of India (Staff) Regulations, 1960. Such rejection on a technical ground without consideration of the substantive merits of the appeal was arbitrary, unjust and contrary to law.

7. The petitioner further contended the denial of pensionary benefits by invoking Rule 23 of the Life Insurance Corporation of India (Employees') Pension Rules, 1995, was wholly unjustified. He had urged that pension was not a mere *ex gratia* payment but a vested right accrued by virtue of long years of service rendered to the employer. To deprive him of pension on the ground of dismissal amounted to strip him of his life's earnings, reducing him to penury in his old age. He submitted Rule 23 insofar as it purported to extinguish pensionary claims upon dismissal deserved to be construed or interpreted in a manner consistent with constitutional guarantees of fairness, equity and social justice under Articles 14 and 21 of the Constitution of India.

8. The petitioner had also sought to explain the delay in approaching this Court. He contended that owing to financial distress, coupled with lack of proper legal advice, he could not earlier ventilate his grievances. It was upon recent knowledge regarding his entitlements that he approached this Court in the year 2021 seeking disbursal of pension with interest.

9. The Learned Advocate representing the petitioner submitted as follows:-

(i) The Disciplinary Authority in absence of strong reasons and without consideration of relevant factors determined misconduct for overstaying the leave in imposing the major punishment. The slipshod process of enquiry found the petitioner guilty of the charge devoid of assessment of evidence, by applying the evidentiary principles of preponderance of probabilities. There had been denial of opportunity of being heard by the Inquiry Officer. The award of punishment had been issued on the basis of the report returned by the Inquiry Officer without application of an independent mind exemplifying arbitrariness and disproportionality in the order of punishment with real likelihood of bias in desideration of reasonableness.

(ii) Leaving his family, including his old widowed mother, wife and minor son at his Shibpur, Howrah residence, when posted as Assistant Administrative Officer in Udaipur Branch of LICI, Silchar, a city in Assam, on transfer from Haldia, West Bengal during a period of 12 months from 1st July to 30th June, 2003, the petitioner had been unable to avoid the ailing call of his mother. With leave on various accounts, namely, (1) Casual Leave, (2) Privilege Leave, (3) Sick Leave, (4) Extraordinary Leave, (6) Special Leave, (7) Quarantine Leave, etc., lying in his credit, of the total of 15 days as per the provisions of the Life Insurance Corporation of India (Staff) Rules, 1960, the petitioner had applied for and had been accorded 7 days casual leave.

(iii) Quarantined in an extraordinary exacerbation occurring to his mother and unable to report for duty, by consecutive communications explaining the reasons, the petitioner had sought consideration of grant of further leave.

(iv) The authority concerned had not bothered to respond to the same but had placed the petitioner under *dies non* for the period of his overstay, dunking him into the puddle of doubtful integrity all of a sudden without considering his past unblemished conduct and the scope for according leave in extraordinary situations as contemplated in the second proviso to Clause (2) of Rule 30 of Life Insurance Corporation of India (Staff) Rules, 1960, by issuance of a major punishment charge sheet.

(v) As required, explaining his conduct and the extraordinary situation he had to undergo, the petitioner had submitted his reply to the charge sheet.

(vi) Instead of conducting the inquiry himself, the Disciplinary Authority (DA) had appointed Shri D. Deb to conduct the inquiry and return his report within the given time.

(vii) The petitioner had not been informed of the appointment of any Presenting Officer and the names of the prosecution witnesses, and where overstay for exigencies had been admitted, and the Life Insurance Corporation of India (Staff) Rules, 1960, had qualified the petitioner for a total of 15 days Casual Leave as per Rule 62 of the said Rules, it had been imperative for the Inquiry Officer to enquire into existence of any extraordinary situation that had prevented the petitioner from reporting duty, requiring him to be treated even under extraordinary leave without pay. Instead, without recording the statements of prosecution witnesses and affording the petitioner defence assistance and opportunity to cross-examine them, and contrary to the evidentiary principles of preponderance of probabilities as laid down in *Dr. N.G. Dastane Vs. Mrs. S. Dastane, (1975) 2 SCC 326* and reaffirmed in *State of Uttar Pradesh and Others Vs. Saroj Kumar Sinhal, (2010) 2 SCC 772* and *State of Uttar Pradesh Through Principal Secretary Vs. Ram Prakash Singh, 2025 INSC 555*, the Inquiry Officer, without recording oral evidence and examining the documents, had disentitled himself to conclude that the charges had been proved against the petitioner, and by way of desk research had found the petitioner guilty and had returned his report.

(viii) In this regard, the decision in *Nirmala J. Jhala Vs. State of Gujarat and Another, (2013) 4 SCC 301* was relied upon where the concept of preliminary enquiry being distinct from a regular enquiry had been noticed and discussed.

10. The Learned Advocate representing the respondents submitted as follows:-

(i) The petitioner was a habitual absentee, whose indiscipline and disregard for service rules repeatedly came to the fore. The respondents relied upon records to demonstrate during his service tenure, the petitioner absented himself without sanctioned leave on multiple occasions contrary to commitment to the obligations of public employment.

(ii) The petitioner's absence between 1st October, 2002 and 18th May, 2003, subjected him to disciplinary proceedings. Upon conclusion of such proceedings, the penalty of reduction in basic pay by one stage in the time scale of pay was imposed upon him on 21st July, 2004. Despite such punishment, the petitioner did not mend his ways and, on the contrary, continued to remain absent unauthorisedly.

(iii) Upon the second episode of unauthorized absence, a charge-sheet was issued and enquiry was conducted strictly in conformity with the Life Insurance Corporation of India (Staff) Regulations, 1960. The petitioner was afforded due opportunity of hearing, permitted to submit his defence, and communicated the charges levelled against him. The Enquiry Officer, upon appreciation of the evidence, found the charges proved, whereupon the Disciplinary Authority, invoking Regulation 39(1)(g), passed an order of dismissal dated 29th November, 2005.

(iv) The departmental appeal preferred by the petitioner was barred by limitation, having been filed beyond the three-month period stipulated under Regulations 41, 42 and 43. Consequently, the appeal was rejected on 17th January, 2007.

The respondents asserted the petitioner accepted the said position and remained quiescent for nearly fourteen years, only to resurface in 2021 with a belated writ petition, which was barred by delay, laches, and acquiescence.

(v) The respondents had also invoked Rule 23 of the Life Insurance Corporation of India (Employees') Pension Rules, 1995, which mandated that dismissal from service entailed forfeiture of the entire past service and disentitled an employee from claiming any pensionary benefit. It was argued that the said Rule had statutory force, being framed by the Central Government under Section 48 of the Life Insurance Corporation Act, 1956, and was binding upon all employees of the Corporation. The petitioner, having been dismissed, could not claim any vested right to pension, which stood automatically forfeited.

(vi) The Learned Advocate representing the respondents urged this Court to dismiss the writ petition on the following grounds:

(a) The claim was stale, being filed nearly sixteen years after the dismissal and fourteen years after the rejection of the departmental appeal;

(b) The petitioner had not chosen to challenge the dismissal order dated 29th November, 2005 or the appellate rejection dated 17th January, 2007, which stood unassailed and had attained finality; and

(c) By operation of Rule 23 of the LIC (Employees') Pension Rules, 1995, the petitioner had no right to pension or retiral dues.

11. The writ petition had been filed, *inter alia,* praying for the relief as stated below:-

> *"A writ of and/or Order and/or Direction in the nature of mandamus to be issued commanding the respondent authorities to make the necessary calculation and immediately release/disburse the pension amount due to the petitioner along with 12% per annum interest."*

12. The petitioner claimed to have been removed from his service in the respondent-Corporation after being employed for 23 years, being inducted as an Assistant in the year 1992, subsequently promoted to a Higher Grade Assistant in the year 1994 with a further promotion to the post of Assistant Administrative Officer in the year 1998.

13. The petitioner faced disciplinary proceedings for unauthorized leave due to his absence from 09.03.2004 till 02.11.2004. The petitioner had communicated the Branch Manager of Udaipur within Silchar Division on his transfer, his inability to resume his duty for certain reasons assuring to rejoin his services at a later date.

14. A departmental enquiry was initiated against the petitioner on 18.01.2005. The petitioner could not participate in the aforesaid disciplinary proceedings which resulted in *ex parte* enquiry conducted against him. A report dated 03.05.2005 endorsed the probity of charges framed against him. The petitioner submitted medical certificate

requesting the respondent-authorities to treat his absence for the entire period as medical leave for releasing his salary for the entire period of absence. However, despite show-cause notice being issued against the petitioner on 16.09.2005, the petitioner did not appear before the enquiry committee.

15. Ultimately in terms of Regulation 39(1)(g) of the Life Insurance Corporation of India (Staff) Rules, 1960, the petitioner was dismissed from his service vide an order of dismissal dated 29.11.2005. The petitioner filed an appeal against such order of dismissal vide a letter dated 05.05.2006 addressed to the Zonal Manager, Life Insurance Corporation of India, Eastern Zonal Office, Kolkata and a letter dated 18.05.2006 addressed to the Chairman, Life Insurance Corporation of India which was acknowledged by the competent Appellate Authority which was not considered by the respondent-Corporation since the appeal was not preferred within 3 months of the date of order of dismissal received by the petitioner in terms of Regulations 42(2) and 43 of the Life Insurance Corporation of India, 1960. The instant writ petition was filed after 16 years claiming for the retirement benefits and pension.

16. The petitioner had not challenged the order passed by the Disciplinary Authority dated 29.11.2005 or the communication dated 17.01.2007 through which the appeal had been rejected for non-compliance of Regulations 41, 42 and 43. Although such incidents had been within the knowledge of the petitioner as could be evident from Annexure P-3 and P-5 to the writ petition, no prayer was sought to quash the said documents

nor the propriety of such documents being P-3 and P-5 respectively had been challenged.

17. Rule 23 of Chapter-IV of the Notification dated 28th June, 1995 published in the Gazette of India issued by the Ministry of Finance (Department of Economic Affairs) (Insurance Division), Government of India, New Delhi stated as follows:-

> *"**23. Forfeiture of Service:** - Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."*

18. The petitioner had filed the instant writ petition after a lapse of 16 years claiming for pension without challenging the disciplinary proceedings and the penalty imposed upon the petitioner by way of dismissal from service. The petitioner's prayer cannot be granted since the penalty imposed upon him through dismissal from service disentitled him to claim for pension in terms of Rule 23 as stated above.

19. In view of the above discussions, the instant writ petition being WPA 13230 of 2021 stands dismissed.

20. There is no order as to costs.

21. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)