HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NOS. 7367/2018 WITH WRIT PETITION NO.6168/2018

WRIT PETITION NO.7367/2018

Laxminarayan s/o Sarjuprasad Jaiswal,
Aged 53 years, (DOB:23-1-1965), Occ. Nil.
R/o. 24-A, New Colony, Dastur Nagar,
Amravati.

..... PETITIONER

...V E R S U S...

1. The Chairman cum Managing Director,
Life Insurance Company of India,
Central Office, “Yogakshema” Nariman Point,
Mumbai.

2. The Senior Divisional Manager,
Life Insurance Corporation of India,
Amravati Division, Shrikrishnapeth,
Amravati.

3. Zonal Manager (Appellate Authority)
Life Insurance Company of India,
Central Office, “Yogakshema”, Nariman Point,
Mumbai-21

4. Central Government Industrial Tribunal,
Nagpur,
Through its Presiding Officer.

..... RESPONDENTS

Shri R.M.Bhangde, Advocate with Shri Tushar Darda, Advocate for petitioner.
Shri S.P.Dharmadhikari, Senior Advocate with Shri R.N.Deshpande, for respondent nos. 1 to 3.

WRIT PETITION NO.6168/2018

1. The Senior Divisional Manager,
LIC of India, Divisional Office Jeevan Prakash
Near Dafrin Hospital, Shrikrushnapeth,
Amravati-444601

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2. The Chairman cum Managing Director,
Life Insurance Corporation of India,
Central Office, "Yogakshema" Nariman Point,
Mumbai-400 021

..... PETITIONERS

...V E R S U S...

Laxminarayan s/o Sarjuprasad Jaiswal,
Aged 50 years, Occ. Not known
R/o. 24-A, New Colony, Dastur Nagar,
Amravati, Dist. Amravati (MS).

..... RESPONDENT

Shri S.P.Dharmadhikari, Senior Advocate with Shri R.N.Deshpande, Advocate for petitioners.
Shri R.M.Bhangde, Advocate with Shri Tushar Darda, Advocate for respondent sole.

CORAM : A.S.CHANDURKAR, J.

DATE ON WHICH THE ARGUMENTS WERE HEARD : 13.09.2019
DATE ON WHICH THE JUDGMENT IS PRONOUNCED : 08.11.2019

JUDGMENT

Since both these writ petitions raise challenge to the award as passed by the learned Presiding Officer of the Central Government Industrial Tribunal, Nagpur, dated 11.01.2018 they are being decided together by this common judgment.

2. **Rule.** Heard finally with consent of counsel for the parties.

3. The facts in brief are that the petitioner in Writ Petition No.7367/2018 was employed with the Life Insurance Corporation of India. He was appointed on the post of Higher Grade Assistant in the year 1990. During the course of service

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while he was working at Achalpur Branch of the Corporation, he was placed under suspension for the period from 27.11.1998 to 23.01.2000. He was issued a show cause notice on 17.02.2000 with regard to certain alleged irregularities committed by him during the course of his employment. A reply was submitted by the petitioner on 12.09.2000. The Corporation thereafter held a departmental enquiry and the Enquiry Officer submitted his report on 15.02.2001. As per that report, the Enquiry Officer found the petitioner guilty of all the charges as mentioned in the charge-sheet. Thereafter another show cause notice dated 25.09.2003 was issued to the petitioner proposing to impose the penalty of dismissal along with recovery of Rs.71,750/- being loss caused to the Corporation. A reply was given by the petitioner dated 14.10.2003. After considering the same, the Corporation issued an order of dismissal to the petitioner along with recovery of amount of Rs.71,750/-. The appeal preferred by the petitioner was dismissed. Being aggrieved by that order the petitioner approached the Conciliation Officer by raising the dispute with regard to his dismissal from service. The appropriate government referred the said dispute to the Tribunal under the provisions of Section 10(2)(A) of the Industrial Disputes Act, 1947 (for short, 'the said Act'). The Corporation opposed the said reference. By the order dated 24.07.2014 the departmental enquiry was held to be legal and proper by the learned Presiding Officer. Thereafter by award dated 11.01.2018, it was held that by not leading any evidence and by not proving the documents on record, the Corporation did not follow the procedure prescribed. It was held that there was a defect in the said enquiry proceedings. However as the order of termination was found to be legal and valid, it was directed that compensation of Rs.50,000/- in lieu of reinstatement be awarded to the petitioner.

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Being aggrieved by the said award the petitioner has challenged the same in the Writ Petition No. 7367/2018. The Corporation being aggrieved by the direction to pay compensation of Rs.50,000/- has challenged that part of the award by filing Writ Petition No.6168/2018.

4. Shri R.M.Bhangde, learned counsel for the petitioner-employee submitted that the learned Presiding Officer having found that there was a defect in the conduct of the enquiry proceedings erred in upholding the order of termination. According to him, during the course of the enquiry proceedings various documents were placed on record by the Corporation. No witness was examined to prove the contents of the said documents and hence there was no opportunity for the employee to cross-examine any witness so as to challenge the veracity of those documents. Despite noting this defect in the enquiry proceedings, there was no reason to come to the conclusion that the termination of the services of the employee were legal and valid. In fact, the employee's services were terminated after holding a departmental enquiry and if it was found that there was a defect in the said enquiry, there was no basis to hold that the order of termination was valid. According to the learned counsel mere production of documents would not be sufficient to prove the contents thereof. Absence of opportunity to challenge the contents of those documents caused prejudice to the employee. In that regard, the learned counsel placed reliance on the decisions in *K.L.Shinde Vs. State of Mysore, (1976) 3 SCC 76, State of Uttaranchal and others Vs. Kharak Singh (2008) 8 SCC 236, Roop Singh Negi Vs. Punjab National Bank and others, (2009) 2 SCC 570, Life Insurance Corporation of India and another Vs. Ram Pal Singh Bisen (2010) 4*

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SCC 491, S.C.Girotra Vs. United Commercial Bank (UCO Bank) and others, 1995 Supp (3) SCC 212 as well as the judgment of the Calcutta High Court in *Gour Gopal Mondal Vs. The United Bank of India & others, 2017 SCC Online CaL 11119.* On this count, the enquiry proceedings having been vitiated, the order of termination was unsustainable.

It was then submitted that as the departmental enquiry was found to be defective, it was a case of no enquiry at all. Referring to the decision in *Workmen of the Motipur Sugar Factory Private Ltd. Vs. The Motipur Sugar Factory, AIR 1965 SC 1803,* it was submitted that since the order of termination was based on an enquiry that was found to be defective, it was clear that the employee's services had been terminated without holding any enquiry.

Without prejudice to the aforesaid contentions, it was submitted that in case this Court found that an opportunity to prove the misconduct was liable to be granted to the Corporation, the employee would be entitled to be paid subsistence allowance during that period. Since the order of termination would be rendered illegal, the employee would be entitled to be reinstated in service. He could be continued to be placed under suspension and by paying him subsistence allowance the Corporation could prove the misconduct before the Tribunal. In that regard, the learned counsel referred to the decisions in *Fakirbhai Fulabhai Solanki Vs. Presiding Officer and another, (1986) 3 SCC 131, Ram Lakhan and others Vs. Presiding Officer and others, (2000) 10 SCC 201, Bharat Co-operative Bank Ltd. & anr. Vs. K.L.Baria, Judge, Labour Court and anr. (1998) 2 CLR 105, Vidya Vikas Mandal and another Vs. Education Officer and another, 2007 (3) Mh.L.J. 801, Shri Samarth New Education Society, Gondia and others Vs. Pushpa d/o Shantilal*

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Dakhane and others, 2012 (5) Mh.L.J. 324 and *Khan Imran s/o Khan Umar Vs. Gulshan Shikshan Prasarak Mandal, Aurangabad and others, 2017 (2) Mh.L.J. 277.* It was thus submitted that the impugned award was liable to be set aside.

5. Shri S.P.Dharmadhikari, learned Senior Advocate for the employer-Corporation supported the impugned award. According to him, since the employee did not object to the documents in question being taken on record for consideration, it was not permissible for the employee to contend that the contents of those documents had not been proved. Referring to the minutes of the enquiry proceedings dated 05.01.2002 at Exhibit 40, it was submitted that the employee had verified all the documents and thereafter the same were taken on record for due consideration. Having admitted the contents of the said documents, it was not now open for the employee to make grievance in that regard. He then referred to the proceedings in S.C.S.No.147/2006 (Old)/ R.C.S.No.66/2012 (New). It was submitted that all these documents had been duly proved in the said civil suit and there was no relevant cross-examination conducted by the employee on the contents of the said documents. The said suit had been decreed on 15.02.2013 and hence it was clear that even the Civil Court had accepted the case as pleaded by the Corporation. Since all the documents were proved before the Civil Court, nothing further remained to be proved by the Corporation. The degree of proof required was much lesser in the enquiry proceedings. The Enquiry Officer was therefore justified in relying upon the said documents.

Without prejudice to the aforesaid contentions, it was submitted that before the Tribunal, the Corporation had in fact in its written statement dated

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18.12.2009 raised a plea that in case the Tribunal found that the enquiry was not fair and proper, an opportunity was sought to adduce evidence for justifying the validity of the enquiry. Since the enquiry had been found to be legal and valid, there was no occasion for the Tribunal to have considered the request made in the written statement. It was therefore clear that the Corporation was always ready to justify the order of termination.

It was further submitted by the learned Senior Advocate that even if the Tribunal was directed to re-consider the proceedings, there was no basis for directing payment of subsistence allowance to the employee. A distinction was sought to be indicated between the provisions of Section 33(1) and Section 10 of the said Act. While the provisions of Section 33(1) of the said Act were applicable in respect of an employee who was in service, the provisions of Section 10 of the said Act were attracted in case of an employee whose services had been terminated. The facts of the present case indicated the nature of misappropriation committed by the employee and hence directing payment of subsistence allowance to such an employee would be unwarranted. It was thus submitted that considering the entire material on record there was no reason to interfere with the conclusion recorded by the learned Presiding Officer that the order of termination was valid. Having found the order of termination to be valid, there was no occasion to direct the Corporation to pay an amount of Rs.50,000/- to the employee as compensation. That direction being contrary to law was liable to be set aside.

6. In reply, learned counsel for the employee submitted that the civil suit referred to had been filed subsequent to the holding of the departmental enquiry.

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The suit having been filed on 20th July 2006 and the enquiry proceedings having been completed in the year 2003, there was no legal basis to rely upon the evidence led in the said civil suit. Moreover, the witnesses examined in the civil suit were not the witnesses who were examined in the enquiry proceedings. It was also submitted that the reliance placed on the minutes of the enquiry proceedings Exhibit 40 pertained to another enquiry and not the present proceedings. There was no legal basis to make a distinction between the provisions of Section 33(1) and Section 10 of the said Act. The employee was entitled to receive subsistence allowance.

7. I have heard the learned counsel for the parties at length and I have also gone through the documents placed on record. Since the Tribunal has held that departmental enquiry to be defective on account of lack of evidence, that aspect of the matter requires consideration at the inception. It is an admitted position that in the enquiry proceedings the Corporation did not examine any witness and various documents were placed on record by it. Though the employee examined himself as a witness, it is his case that he had no opportunity to challenge the veracity of the contents of the documents placed on record by the Corporation. For considering this aspect of the matter, it would be necessary to refer to the various decisions relied upon by the learned counsel for the employee in that regard. In *K.L.Shinde* (supra), it was observed by the Hon'ble Supreme Court by referring to its earlier decisions that though the strict rule of evidence would not be applicable in enquiry proceedings, it would be necessary to grant an opportunity to the delinquent to challenge the evidence/statements sought to be relied upon in

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such proceedings. He has to be given an opportunity to cross-examine the witness in that regard. In *State of Uttaranchal and others* (supra), it has been observed that in enquiry proceedings the employer should take steps to lead evidence against the delinquent and give him an opportunity to cross-examine the witnesses of the employer. Only thereafter the delinquent can be asked whether he wants to lead evidence and whether he desires to give any explanation about the evidence led against him. In *Roop Singh Negi* (supra), it was held that departmental proceedings are quasi-judicial proceedings and material collected during the investigation by the Investigating Officer could not be treated to be evidence in the disciplinary proceedings. In absence of any witness being examined to prove various documents, the contents thereof could not be relied upon. In *Life Insurance Corporation of India and another* (supra), it was held that mere fact that certain documents were admitted by the other side were then marked as exhibits would not dispense with the proof of contents of those documents. The same was required to be done in accordance with law. In *S.C.Girotra* (supra), it was held that when there is refusal of permission to cross-examine any witness, it would amount to denial of reasonable opportunity of defence to the delinquent.

8. From the aforesaid decisions, it can be seen that it is for the employer to first lead evidence with a view to prove the charges levelled against the employee. Mere placing of documents on record and they being marked as exhibits would not dispense with the requirement of proving the contents thereof. Moreover an opportunity to the employee to counter such material and to challenge the veracity of that material has also to be granted. However, in the present case, the

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Corporation did not examine any witness whatsoever. Various documents were placed on record and after they were marked as exhibits, the Enquiry Officer proceeded to treat those documents as having been proved and the same have been taken into consideration. Such course is contrary to law as laid down in the aforesaid decisions.

The learned Presiding Officer has noted this aspect in paragraphs 11 and 12 of the impugned award. It has been observed that as no witness was examined by the Corporation, there was no opportunity for the employee to cross-examine any witness with regard to the contents of the said documents. It was thus noted that there was a defect in the enquiry proceedings. It is found that this aspect goes to the root of the matter and consideration of the documents which were not duly proved and lack of opportunity to cross-examine or challenge the veracity of those documents vitiates the enquiry proceedings. The finding recorded by the Tribunal of the departmental proceedings being defective is thus upheld.

9. Having recorded that finding the learned Presiding Officer ought to have considered the request made on behalf of the Corporation for permission to prove the alleged misconduct. However that aspect of the matter has not been gone into by the learned Presiding Officer. In *Workmen of the Motipur Sugar Factory Pvt. Ltd.* (supra), it has been held by the Hon'ble Supreme Court that where it is found that the enquiry is defective or it is a case of no enquiry, the entire case would be open before the Tribunal and the employer would have to justify on facts that the order of dismissal was legal and proper. It has been held in clear terms that a defective enquiry would stand on the same footing as a case of no enquiry

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and in either case the Tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the Tribunal that on facts the order of dismissal or discharge was proper.

Since in the present case it has been found that there was no proper procedure followed during the enquiry for proving the documents placed on record by the Corporation, it would have to be held that it was the case of no enquiry at all. In the light of the liberty sought by the Corporation in its written statement to lead evidence to justify the order of dismissal, it is found that in the facts of the present case such liberty is liable to be granted to the Corporation to prove the misconduct before the Tribunal. Such liberty is necessary in the light of the nature of the charges levelled against the employee, the punishment as proposed and thereafter imposed on the said employee. The learned Presiding Officer committed an error in not considering this aspect of the matter despite coming to the conclusion that the employee did not have due opportunity to challenge the veracity of the documents on record.

10. Since it has been found that the matter requires re-consideration by the Tribunal by granting an opportunity to the Corporation to prove the misconduct, the question whether the employee is entitled to receive subsistence allowance has to be adjudicated. It has been found that the Corporation without examining any witness has relied upon various documents and there was no opportunity to the employee to challenge the veracity of those documents coupled with the fact that based on such enquiry the employee was dismissed from service. Once the enquiry is found to be defective, the order of dismissal based on the findings of such enquiry

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would have to be kept in abeyance. The Corporation is entitled to treat the employee as being under suspension till the proceedings are adjudicated by the Tribunal. It is thus found in the facts of the present case that the employee would be entitled to receive subsistence allowance in accordance with the rules of the Corporation till the matter is finally considered by the Tribunal. Though the learned Senior Advocate for the Corporation sought to make a distinction between the provisions of Section 33(1) and Section 10 of the said Act, following the law as laid down in *Fakirbhai F. Solanki and Ram Lakhan* (supra), the employee would be entitled to receive subsistence allowance till the proceedings are adjudicated by the Tribunal. The employee cannot be blamed for the present state of affairs as it was for the Corporation to justify the order of dismissal inflicted by it upon the employee. Hence till the said aspect is finally adjudicated, the employee would be entitled to receive the subsistence allowance.

11. In that view of the matter the following order is passed:

(i) The award dated 11.01.2018 passed in CGIT/NGP/03/2009 is set aside. The proceedings are remitted to the Central Government Industrial Tribunal, Nagpur for fresh adjudication in the light of the observations made hereinabove.

(ii) The Corporation is at liberty to justify the order of dismissal dated 11.11.2003 passed by it. During the period the proceedings would be pending before the Tribunal, the employee is entitled to receive subsistence allowance from 11.11.2003 within a period of three months from today, in accordance with the rules of the Corporation.

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(iii) The parties shall appear before the Tribunal on 02.12.2019. The Tribunal shall decide the proceedings on their own merits without being influenced by any observations made in this order. The proceedings be decided preferably by the end of June 2020.

(iv) Rule in both the writ petitions is disposed of in aforesaid terms. The parties shall bear their own costs.

JUDGE

Andurkar..

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