
(2024) 11 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : CWP No. 260 Of 2022

Om Chand Sharma

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 22-11-2024

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2024) 11 SHI CK 0001

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Dhiraj Thakur, Nand Lal Thakur

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

The Case:

1. After remaining continuously absent from duties for about four years, petitioner reported back to his employer. The employer neither permitted him to join nor took any action against him. According to the petitioner, frustrated by dilly-dallying of the employer, he submitted his resignation through telegraphic message, the employer though denies receiving petitioner's resignation message. While this was going on, petitioner attained the age of superannuation. Nine months later, the employer terminated the service of the petitioner from a retrospective date that dated back four years in time. As terminal benefits payable to the petitioner the employer offered to release only the petitioner's share in the Provident Fund & accumulated interest upon it. Petitioner refused to accept the same. It is his contention that even if his termination is held to be valid, then also he is entitled to employer's contribution to the Provident Fund with interest alongwith Gratuity over & above the amount which the employer/respondents have offered.

2. The case set up by the petitioner is that:-

2(i) Petitioner joined as Electrical Officer on regular rolls with respondent No. 2- Shipping Corporation of India Ltd. on 23.12.1994. He worked continuously thereafter with the respondents. The job profile of petitioner required him to stay either on or away from ship for long duration.

2(ii) Petitioner's son was facing certain marital issues with his wife. Petitioner on duty could not resolve these issues. Dispute between petitioner's son & daughter-in-law was about to reach the Court. In this background, he requested for leave on 9.10.2014. On 17.05.2015 petitioner requested respondent No. 2 to sign him off from the vessel on compassionate grounds from third week of June, 2015 at any Indian Port. Petitioner's request for signing off on compassionate grounds from third week of June, 2015 was acknowledged by respondent No. 2 on 17.05.2015. Petitioner signed off on 6.7.2015.

2(iii) H.M. Petition No. 37 of 2015 instituted by petitioner's son on 11.08.2015 was allowed and decree of divorce was granted by the learned District Judge Hamirpur, H.P. on 28.03.2019.

2(iv) Petitioner reported for duty to his head office at Mumbai on 21.05.2019 and requested for regularizing his leave on compassionate grounds. At that time he was left with four months to superannuate on 5.10.2019 on attaining the age of 60 years. The matter was taken up by the officials of respondent No. 2. Documents like Court orders passed in matrimonial matter, Continuous Discharge Certificate/ Seaman Identity Record and passport, as asked for by the respondents were furnished by the petitioner to establish that he had not been employed elsewhere during the period.

2(v) Petitioner repeatedly called the respondents to know the fate of his request for reporting back but nothing concrete was informed to him. In a state of fix and frustration, petitioner sent a telegraphic message from his native place to respondent No. 2 on 7.08.2019 tendering his resignation in terms of Clause 117 of the Maritime Union of India – Indian National Shipowners' Association Agreement (2015-2019) (in short the 'MUI-INSA Agreement'). As per this Clause, an officer desirous of leaving the service can give three months' notice in writing provided that notice of resignation cannot be served while the officer is on medical/unpaid leave. Petitioner did not receive any communication from the respondent to his telegraphic message.

2(vi) On 24.07.2020, respondents issued an order terminating petitioner's services under Clause 29 of the MUI-INSA Agreement. In terms of Office Order dated 24.07.2020, on account of petitioner's unauthorized absence from duty w.e.f. 7.07.2015, respondents terminated his services under Clause 29 of the MUI-INSA Agreement retrospectively w.e.f. 7.07.2015.

2(vii) It is the case of the petitioner that he did not receive the order dated 24.07.2020 terminating his services. Petitioner rather kept on following his telegraphic message of resignation dated 7.08.2019 and for his graceful release from service of respondent No. 2 as per his representation dated

20.11.2020/30.11.2020 and some other correspondence placed on record. Pursuant to response of respondents to one of his e-mails and on becoming aware of his having been terminated from service w.e.f. 7.07.2015 under order dated 24.07.2020, petitioner received copy of termination order dated 24.07.2020 at his native place. In October 2020, petitioner received a request from the Accounts department of the respondents through post at his native place in Himachal Pradesh to sign full & final settlement receipt whereunder an amount of Rs. 13,36,172.00 in all was to be paid to him. This amount included Rs. 3,82,131.58 as petitioner's contribution towards Provident Fund and Rs. 9,90,409.23 as interest accumulated thereupon. The other retiral benefits like Gratuity, employer's contribution to the Provident Fund, interest thereupon were denied. Petitioner did not accept the monetary benefits offered by respondents. He instead instituted this writ petition on 6.01.2022 seeking following substantive reliefs:-

"A. That the termination order dated 24.07.2020 (annexure P-11) being against law, may kindly be quashed and set aside.

B. That the petitioner may kindly be granted service benefits including commutation of pension benefits, gratuity, provident fund, leave encashment and all other benefits accruing out of the services he has rendered to the corporation continuously for more than 20 years, after accepting his resignation and/or considering that he had superannuated in the normal course.

C. That the petitioner has filed an application, along with this writ petition, seeking interim relief, same may kindly be allowed and respondents No. 1 & 2 may kindly be directed to immediately release to the petitioner his service benefits as per Final Settlement Receipt (annexure P-6) along with up to date interest during the pendency of present Writ Petition."

3. Maintainability of the writ petition:

3(i) Before the merits of petitioner's claim are examined, it will be appropriate to first take note of following two preliminary objections raised by the respondents to the maintainability of the writ petition:-

a) Petitioner had been serving with respondent No. 2 in its Mumbai office. Petitioner had been reporting at the registered office of respondent No. 2 at Mumbai, Maharashtra hence, this Court does not have the territorial jurisdiction to adjudicate the issue raised in the petition.

b) During course of hearing, learned Counsel for respondents raised another objection that in light of following Clause No. 138 of the MUI-INSA Agreement, the dispute raised by the petitioner was liable to be referred to the Negotiating Committee for settlement and on failure to reach settlement, the dispute was to be referred to an Arbitrator to be appointed by mutual consent:-

"138. Any disagreement arising out of the interpretation or relating to any provisions of these Service Conditions shall as far as possible be settled by and

between the Companies and the Union, failing which it shall be referred to the Negotiating Committee for settlement. Only on failure to reach settlement at the level of the Negotiating Committee, shall the dispute be referred to an Arbitrator appointed by mutual consent and his award shall be final and binding on both the parties.”

3(ii) Territorial Jurisdiction

3(ii)(a) Learned Counsel for the petitioner contends that part of cause of action had arisen in the State of Himachal Pradesh since order of termination of the petitioner’s services was communicated to him at his native place’s address in Himachal Pradesh. Learned Counsel further submitted that petitioner is presently aged 64 years, no longer in service of the respondents, therefore, principle of ‘forum conveniens’ would also get attracted. He submitted that petition does not suffer from any defect and this Court has the jurisdiction to proceed with the matter.

3(ii)(b) There is force in the contention of the petitioner:-

- In *Om Prakash Srivastava vs. Union of India & anr.* (2006) 6 SCC 207, it was held that Article 226 of the Constitution of India gives clear indication that High Court can exercise power to issue direction, order or writs for enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court’s jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

- *Rajendran Chingaravelu vs. R.K. Mishra, Additional Commissioner of Income Tax & ors.* (2010) 1 SCC 457, holds that even if fraction of a cause of action accrues within the territory of the State, the High Court of that State will have jurisdiction. In the said case genesis for the entire episode of search, seizure & detention was the action of security/intelligence officials at Hyderabad Airport (Andhra Pradesh) who alerted their counterparts at Chennai Airport. It was held that part of cause of action arose in Hyderabad. Rejection of writ petition for want of jurisdiction by High Court of Andhra Pradesh was held to be not justified.

- In *Nawal Kishore Sharma vs. Union of India & ors.* (2014) 9 SCC 329, the respondent-Shipping Corporation of India had permanently declared the

appellant unfit for sea service due to Dilated Cardiomyopathy (heart muscle disease). The Shipping Corporation of India issued an Order on 12.4.2011 cancelling appellant's registration as a Seaman. The letter/order was sent to the appellant at his native place in Bihar where he had been staying after he was found medically unfit. The appellant sent a representation from his home in State of Bihar to the respondents claiming disability compensation. The representation was replied to by the respondents. The reply was addressed to the appellant at his home address in State of Bihar, rejecting his claim for disability compensation. After considering several precedents, Hon'ble Apex Court held that a part/fraction of cause of action arose within the jurisdiction of Patna High Court where appellant received letter of refusal disentitling him from disability compensation. The view of the High Court that no cause of action, not even fraction of cause of action had arisen within its territorial jurisdiction was not affirmed. Relevant extract from the judgment reads as under:-

"7. The short question that falls for consideration in the facts of the present case is that as to whether the Patna High Court is correct in taking the view that it has no jurisdiction to entertain the writ petition. For answering the said question we would like to consider the provision of Article 226 of the Constitution as it stood prior to amendment. Originally, Article 226 of the Constitution read as under:-

"226. Power of High Courts to issue certain writs. –

(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them or the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause

(1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

8. – 15. xxx xxx xxx

"16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to

hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."

Scanning the relevant facts of the case in the backdrop of above legal position, petitioner had received correspondence from respondent No. 2 at his address in State of Himachal Pradesh. Respondent-Shipping Corporation of India had terminated the services of the petitioner on 24.07.2020 and this communication/order was addressed to the petitioner at his home address in District Mandi in Himachal Pradesh. Petitioner is aggrieved against order dated 24.07.2020 terminating his services and denial of terminal benefits to him. Respondents' communications to the petitioner about releasing only part of his retiral benefits was also addressed at & received by the petitioner at his native place in State of Himachal Pradesh. Part of cause of action had arisen in State of Himachal Pradesh. This Court therefore has the jurisdiction to entertain the writ petition.

Further it is to be noticed that: (a) respondents terminated the services of the petitioner on 24.07.2020 w.e.f 07.07.2015 (b) petitioner was 62 years when he filed this petition on 06.01.2022. He is now 64 years and statedly unemployed. Hence, in view of principle of 'forum conveniens' the petitioner can maintain the writ petition in this Court.

In *Sri Nasiruddin vs. State Transport Appellate Tribunal* (1975) 2 SCC 671, it was held that if the cause of action arises in part within the specified areas it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court.

The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court.

In *Shanti Devi @ Shanti Mishra vs. Union of India & ors.* (2020) 10 SCC 766, the Hon'ble Apex Court applied the principle of 'forum conveniens' in a case where petitioner was a resident of Bihar. His pension had been stopped and he was being asked to refund an amount of more than Rs. 8 Lakh. It was held that these actions had serious adverse effect on the petitioner, who was staying at his native place Darbhanga. That a retired employee, who is receiving pension, cannot be asked to go to another court to file the writ petition, when he has a cause of action for filing a writ petition in Patna High Court. For a retired employee convenience is to prosecute his case at the place where he belonged to and was getting pension. Principle of forum conveniens was applied to hold maintainability of the writ petition.

In view of above, objection of the respondents territorial jurisdiction is turned down.

3(iii) Arbitrability of Dispute/Cause of action

During course of hearing, learned Senior Panel Counsel for the respondents took an objection that this writ petition is not maintainable in view of the existence of following Arbitration Clause in the MUI-INSA Agreement:-

"138. Any disagreement arising out of the interpretation or relating to any provisions of these Service Conditions shall as far as possible be settled by and between the Companies and the Union, failing which it shall be referred to the Negotiating Committee for settlement. Only on failure to reach settlement at the level of the Negotiating Committee, shall the dispute be referred to an Arbitrator appointed by mutual consent and his award shall be final and binding on both the parties."

In the given facts and circumstances of the case, respondents cannot be permitted to take the above objection. The writ petition was instituted on 6.01.2022. Notice of the petition was accepted for the respondents on 7.01.2022. Reply was filed by the respondents on 18.07.2022. In the reply, no such objection to petition's maintainability on account of arbitrability of the issue had been raised. It is only during hearing of the case that this objection was taken for the first time. It is also not the case of the respondents that any application was moved by them under Section 8 of the Arbitration and Conciliation Act for referring the dispute to arbitration. Be that as it may. *Union of India & ors. vs. Tania Constructions Private Limited* (2011) 5 SCC 697, holds that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The respondents have not taken this objection in their reply. Petition is pending for more than two years. It is the case of an employee of respondent No. 2 who is seeking his terminal benefits withheld by respondent No. 2. Given the nature of

dispute, the objection taken during hearing of the case that existence of arbitration clause would bar the writ petition, is held not tenable.

4. Merits of petitioner's claim

4(i) Learned Counsel for the petitioner contends that:-Respondents have illegally withheld respondents' (employers') contribution to petitioner's Provident Fund and the interest accumulated thereupon; Petitioner's Gratuity has also been unlawfully denied to him; Petitioner had rendered more than 20 years of service with the respondents ever since his appointment on 23.12.1994; Respondents had illegally terminated services of the petitioner on 24.07.2020 under Clause 29 of the MUI-INSA Agreement; However, even if termination of the petitioner's service is assumed to be valid then also petitioner is entitled to the employer's contribution to the petitioner's Provident Fund and the interest accumulated thereupon; Respondents are also liable to pay Gratuity to him;

Respondents' primary defence is that the termination order dated 24.07.2020 was lawfully issued; It was in accordance with the applicable clauses of the MUI-INSA Agreement; In view of termination of petitioner's services, he was neither entitled to the employers' contribution to the Provident Fund and the interest thereupon nor to the Gratuity amount.

4(ii) Termination from service

The germane facts are that petitioner was appointed as Electrical Officer in respondent No. 2 - the Shipping Corporation of India on 23.12.1994. The job profile of petitioner's service required him to be on or away from ship for considerable period at a stretch. Petitioner applied for leave on 09.10.2014 for settling matrimonial issues of his son. Respondents have not disputed that petitioner in his application dated 09.10.2014 had requested for signing off from vessel for this very reason. According to them, no application was moved by the petitioner for taking leave from duty for long period. It is an admitted fact that the petitioner's application for signing off w.e.f third week of June, 2015 was acknowledged by the respondents on 17.05.2015. According to the petitioner he signed off on 06.07.2015 and reported back on duty on 21.05.2019. Respondents' stance is that viewing petitioner's unauthorized long absence from duty w.e.f. 07.07.2015 for over twelve months, termination order was issued on 24.07.2020 under Clause 29 of the MUI-INSA Agreement.

Clause 29 of the MUI-INSA Agreement reads as follows:-

"29. It is agreed between MUI and INSA that an Officer on permanent employment of the Company, while in service takes up employment elsewhere, if provided, Company may take appropriate action, including dismissal of such errant Officer without any terminal benefits being paid. It is further agreed that if an Officer on leave (except on medical leave) does not report to the Companies within a maximum period of 12 months, it will be presumed that the Officer has left the services of the Companies and the Companies may terminate the

services of such Officer without any further notice.”

The above Clause inter-alia allows the respondents to terminate the services of an employee who does not report for duty within a maximum period of twelve months. In such scenario, it is to be presumed that the concerned Officer had left the services of the respondent and accordingly respondents can terminate services of such officer without any further notice. Petitioner had signed off from vessel on 06.07.2015. Admittedly no action whatsoever was taken against him by respondent No. 2 till 23.07.2020. In the interregnum, petitioner submitted his joining report on 21.05.2019. Apparently, respondent No. 2 did not take any further action at that stage. Not getting any response to his joining report, the petitioner who was due to superannuate on attaining the age of 60 years on 05.10.2019, sent telegraphic message of his resignation on 07.08.2019. Respondents submit that this resignation statedly sent by the petitioner was never received by them. Petitioner has placed on record a copy of telegraphic message as issued by the Post Office Sarkaghat, Mandi. Petitioner’s case is that he had sent resignation under Clause 117 of the MUI-INSA Agreement. The said Clause reads as under:-

“117. An Officer desirous of leaving Company service shall give the Company atleast three months’ notice in writing (effective from the date of receipt by the Company) provided however that such notice of resignation shall not be served while he is on medical or unpaid study leave.

An Officer who has given notice of resignation shall be released from service on the expiry of three months’ notice or should sign off from his vessel, at the expiry of notice, be at sea or at a foreign port, as soon as possible on his vessel’s arrival at the first Indian port. Where, however, the vessel is not likely to call at an Indian port early, then the Officer will be relieved at the most convenient port overseas.”

As per above Clause, three months notice is required to be given for leaving service and further notice of resignation cannot be served while the employee is on medical or unpaid study leave. Petitioner neither had to his credit three months remaining service nor he was on duty at the time of his sending telegraphic letter of resignation. According to the respondents, petitioner was unauthorizedly absent from duty.

Petitioner attained the age of superannuation i.e. 60 years on 05.10.2019. It is not the case of the respondents that disciplinary/departmental or any proceeding worth the name was initiated against the petitioner prior to 05.10.2019. Clause 29 of the MUI-INSA Agreement empowered the respondents to terminate the services of an employee without issuing any notice, who on leave (other than medical leave) does not report back within 12 months. Even this recourse was not adopted to by the respondents prior to petitioner’s attaining the age of superannuation. It was on 24.07.2020 i.e. 09 months after the petitioner attained age of superannuation, that the respondents invoked Clause 29 and

terminated his service retrospectively w.e.f. 07.07.2015. Termination of service from retrospective date after superannuation is a concept alien to service jurisprudence, specially when no action had been initiated against the employee during his service tenure. After an employee attains the age of superannuation, the employer cannot terminate services of the said employee from retrospective date. In the instant case, termination order was issued on 24.07.2020 effective from 07.07.2015, or in other words, the termination order dates back to four years prior in time. 06.07.2015 is the date when petitioner had signed off. Petitioner had attained age of superannuation on 05.10.2019 without there being any adverse order/action against him. No specific orders are necessary for retirement on due date of an employee. Petitioner had rendered more than 20 years of service with the respondents. He had applied to the respondents for signing off on 09.10.2014. His application for signing off dated 17.05.2015 w.e.f. third week of June, 2015 was acknowledged by the respondents the same day. Petitioner signed off on 06.07.2015. He reported back for duty on 21.05.2019. There is no communication on record to show any correspondence exchanged between the parties in the interregnum. If respondents' action of issuing the order terminating petitioner's service from a retrospective date post his attaining the age of superannuation cannot be held to be valid, the action of the petitioner in remaining away from duty, unauthorizedly for full four years can also not be condoned. It is the case of the petitioner that since respondents did not let him join duties pursuant to his reporting on 21.05.2019, he sent a telegraphic message of resignation from the post on 07.08.2019. As noticed earlier, respondents have denied receiving such message/ letter of resignation whereas petitioner has placed on record copy of telegraphic message from post office Sarkaghat, Distt. Mandi, H.P. Be that as it may. As observed earlier, resignation option under Clause 117 of the MUI-INSA Agreement cannot be said to be stricto-sensu available to the petitioner. However, in the given peculiar facts & circumstances of case, keeping in view unblemished service rendered by the petitioner for more than 20 years an analogy, a legal fiction is being deduced that the petitioner had resigned/left the service of the respondents on 06.07.2015 i.e. the day when he signed off from the vessel. Adopting such a recourse would balance the scales of justice for both the parties viz. petitioner presently aged 64 years who rendered 20 years of service & did not get terminal/retiral benefits and the respondents whose services petitioner did not join for four long years.

4(iii) Petitioner's entitlement to retiral/terminal benefits

The contention of the learned Counsel for the petitioner is that even if termination of the petitioner under order dated 24.07.2020 with retrospective date of 07.07.2015 is held to be valid then also besides petitioner's own contribution to the Provident Fund and accumulated interest thereupon, which the respondents had offered to release, the petitioner is entitled to Gratuity, employer's contribution to Provident Fund alongwith interest.

4(iii)(a) Services of the petitioner were terminated by the respondents under order dated 24.07.2020 invoking Clause 29 of the MUI-INSIA Agreement as under:-

"In view of aforesaid clause and due to your unauthorized absence from duty since 07/07/2015, competent authority after careful perusal of your case has decided to terminate your services. Accordingly, your service stands terminated w.e.f. 07/07/2015 without any terminal benefits under Clause 29 of INSA-MUI agreement."

Respondents in their reply have refuted their liability to pay employer's share in Provident Fund & accrued interest to the petitioner by taking shelter of Clause 29 of the MUI-INSIA Agreement. Relevant extract from the reply reads as under:-

"12. That the contents of para 9 of the petition so far as the same pertains to matter on record requires no comments, rest of the contents are false, contrary to the facts and as such are denied. It is submitted that the petitioner did not get PF as he did not submitted his applicable PF. As a matter of fact, the petitioner refused to sign the full and final settlement slip amounting to Rs. 13,36,172. the same is exhibited by petitioner himself in his petition as Annexure P6. Also as per Clause 29 of INSA MUI Agreement clearly states that if an officer does not report for duty for more than 01 (one) year except for medical reasons, the respondent has right to terminate the employment of such errant officer without any terminal benefits being paid."

4(iii)(b) Clause 29 of the MUI-INSIA Agreement which has been invoked by the respondents for denying terminal benefits to the petitioner has been extracted in para 4(ii) above.

The part of the Clause which is attracted to the subject matter only provides that if an officer is on leave (except on medical leave) and he does not report to the Company within a maximum period of twelve months, it would be presumed that such Officer had left the service. In that eventuality the Company can terminate the services of the Officer without issuing any further notice. The Clause gives power & discretion to the respondents to terminate the services of an employee without issuing any notice in case the said Officer was on leave and does not report back within twelve months. Nothing more & nothing less can be construed from this Clause. The Clause does not put any embargo upon release of retiral benefits in favour of a person whose services have been terminated on account of long unauthorized absence. Hence this Clause cannot come to the aid of respondents in denying payment of employers' contribution to petitioner's Provident Fund, interest thereupon & Gratuity.

4(iii)(c) Clause 54 of the MUI-INSIA Agreement pertains to computation & payment of Gratuity to an employee. As per this Clause, Gratuity is payable even on termination of the services of an employee. The Clause reads as under:-

"54. On superannuation of an Officer, as per Clause 140 provided on the day of

his superannuation he has completed minimum of five years' continuous service, or on termination of service of an Officer by the Companies provided he has completed a minimum of 4 years' continuous service at the time of termination.

Gratuity payable shall be as under:-

(i) to (v)

(vi) For continuous service of 10 years or more – One month's basic wage for each completed year of service.

(vii)

Thus in terms of the above Clause even if service of an employee has been terminated by the Company, he would be entitled to Gratuity provided he had completed four years of continuous service at the time of termination. Respondents terminated the services of the petitioner on 24.07.2020 w.e.f. 07.07.2015. The petitioner had rendered more than 20 years of service by 07.07.2015. He thus is entitled to Gratuity in terms of Clause 54(vi) of the MUI- INSA Agreement. No provision was shown by the respondents denying Gratuity to the petitioner.

4(iii)(d) Apart from Gratuity the other claim which is to be deliberated upon is employer's contribution to the Provident Fund of the petitioner. Learned Senior Panel Counsel for the respondents has placed reliance upon Rule 38 of the "Provident Fund for the Employees of the Shipping Corporation of India Ltd. Rules" for denying its liability to release employer's contribution to the Provident Fund in favour of the petitioner. The relevant part of the said Rules relied upon by the respondents reads as under:-

"38. Consequences of discharge or dismissal:

(a) A member of the Fund discharged or dismissed by the Employer for misconduct or negligence or incompetence or for insubordination or for insobriety, breach of faith or any other cause of a like nature not amounting to misconduct or who retires from the service of the Employer in consequence, shall forfeit all claims on the Fund so far as the Employer's contributions are concerned with proportionate interest and dividend attributable, thereto which shall be forfeited to the Fund. A notice of the dismissal or discharge of a member shall be given by employer to the Trustees.

(b) – (f)"

Rule 38(a) does not lend support to the case of respondents for denying retiral benefits claimed by the petitioner. Rule 38 gives consequences upon 'discharge' or 'dismissal' of an employee. In case of 'discharge' or 'dismissal' the employer's contribution with proportionate interest is to be forfeited to the Provident Fund. An employee can be discharged or dismissed from service in terms of Clauses 126 – 130 of the MUI-INSA Agreement which read as under:-

"126. An Officer guilty of misconduct may be –

- (a) Warned or censured; or
- (b) Reduced in seniority for a specified period; or
- (c) Reverted to the next lower rank for a specified period; or
- (d) Deprived of his annual increment for a specified period not exceeding two years but which may be restored by the Company; or
- (e) Suspended from service for a period not exceeding three months; or
- (f) Discharged from service with or without notice; or
- (g) Dismissed from service without notice.

127. No action (b), (c), (d), (e), (f) and (g) above shall be taken unless the Officer concerned has been given a charge sheet setting out therein the charges against him and unless he has been given an opportunity to tender his explanation and an inquiry has been held in respect thereof.

128. In all cases under Clause 126 above, the Officer concerned shall be issued a charge-sheet within the shortest period possible of the incident or conduct of the Officer in respect of his disciplinary action is proposed to be taken and the entire process of charge-sheeting and inquiry shall be completed as early as possible.

129. While holding an inquiry, principles and rules of natural justice shall be followed and observed, and the Union shall have the right to be present at the Inquiry to ensure that the same is conducted in a satisfactory manner.

130. In awarding punishment, the Companies shall take into account the gravity of misconduct, the previous record of the Officer and other relevant circumstances."

As per Clause 127, an employee cannot be discharged or dismissed without issuance of a charge-sheet. In the instant case, petitioner has neither been dismissed nor discharged from service. He had not been issued any charge-sheet. His services were terminated by the respondents for remaining absent from duty. In the context Clause 36 of the Rules becomes relevant which reads as under: -

"36. Resignation or leaving service otherwise than on medical grounds:

If any member resigns or leaves his employment at his own request, otherwise than on medical grounds as in clause 35(b), he shall be entitled to receive the employer's contribution with proportionate interest and dividends attributable thereto in accordance with the following scale:-

Shore Employees:

Member of less than three years continuous service.

NIL

Member of three years and less than six years continuous service.	50%
Member of six years and less than nine years continuous service.	75%

Staff Afloat:

Member less than 2 ½ years continuous service	NIL
Member of 2 ½ years and less than five years continuous service	50%
Member of five years and less than six years continuous service	75%”

It has already been held above that in the facts of the case, it has to be presumed that the petitioner had left the employment at his own on 06.07.2015. He, therefore, would be entitled to employer’s contribution to Provident Fund with proportionate interest. Even the respondents have not been able to point out any particular clause of the MUI-INSIA Agreement or Rules prohibiting release of Gratuity/employer’s contribution to the Provident Fund and the interest accumulated thereupon, even if petitioner’s services are deemed to have been terminated w.e.f. 07.07.2015 on account of his long absence from duties.

No other point was urged.

5. In light of above discussion, this writ petition is allowed to the extent that respondents are directed to release the petitioner’s (employee's) share of the Provident Fund accumulated till 07.07.2015 alongwith up to date interest accrued thereupon; respondents’ (employers’) share of Provident Fund accumulated till 07.07.2015 alongwith proportionate up to date interest thereupon; and Gratuity admissible to the petitioner as on 07.07.2015 with interest @ 5% per annum from the due date till the date of actual payment. The benefits be released to the petitioner within four weeks.

Petition stands disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.