

---

**(2019) 08 CAL CK 0326**

**In the Calcutta High Court**

**Case No : Writ Petitions (WP) No. 13902 (W) Of 2019**

Sajal Kumar Banerjee

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

---

**Date of Decision : 30-08-2019**

**Acts Referred:**

General Insurance (Conduct, Discipline & Appeal) Rules, 1975 — Rule 23, 23(g)

**Citation : (2019) 08 CAL CK 0326**

**Hon'ble Judges : Amrita Sinha, J**

**Bench : Single Bench**

**Advocate : Subir Sanyal, Sutirtha Das, Ranjay De, Basabjit Banerjee**

**Final Decision : Disposed Of**

---

## **Judgement**

Amrita Sinha, J

The petitioner was serving as Development Officer of the United India Insurance Company Limited. While he was in service a disciplinary proceeding was initiated against him. A charge-sheet was issued on 11th March, 2004. By an order dated 3rd October, 2008 the penalty of removal from service without disqualification of future employment in terms of Rule 23 (g) of GI (CDA) Rules 1975 was imposed upon the petitioner.

The Appellate Authority by an order dated 21st May, 2009 affirmed the order of penalty. The petitioner thereafter filed a memorial application which was also rejected on 29th July, 2010.

During the entire period of the disciplinary proceeding, the respondent authorities never suspended the petitioner and permitted him to continue with his regular duties.

The petitioner being aggrieved by the order passed in the disciplinary proceeding filed a writ petition before this Court. The said writ petition being W.P No. 7262 (W) of 2011 was disposed of by a learned Single Judge of this Court on 25th

September, 2013. The order of the Appellate Authority dated 21st May, 2009 was set aside and quashed. The Court was of the opinion that a re-adjudication was necessary by the Appellate Authority. The Appellate Authority was directed to re-hear the appeal and to make a fresh decision with reasons within three months of communication of the order. The Court was of the opinion that the Company will be entitled to, if the case so deserves, impose any punishment except the punishment of dismissal or removal from service. The Court directed that till disposal of the appeal the writ petitioner will be deemed to remain suspended.

Being aggrieved by the order passed by the Learned Single Judge, the Company preferred an appeal before the Hon'ble Division Bench. It has been submitted that at the initial stage the order of the Learned Single Judge was stayed.

By a judgement dated 20th March, 2018 the Hon'ble Division Bench dismissed the appeal. The Appeal Court was of the view that the issue in this appeal once and for all deserves a dignified quietus. After nearly three decades of service it will tantamount to denial of substantive justice, if the proceeding is kept pending against the writ petitioner.

During the pendency of the appeal, the petitioner attained his normal age of superannuation on 23rd April, 2014.

The Company preferred a Special Leave Petition before the Hon'ble Supreme Court which stood dismissed by an order dated 28th September, 2018.

The petitioner filed an application for contempt before the Hon'ble Single Judge on 11th September, 2018. The contempt petition is still pending.

The Company by a communication dated 20th February, 2019 directed the petitioner to appear for a hearing in compliance of the order dated 25th September, 2013 passed by the learned Single Judge. The petitioner appeared on the scheduled date of hearing without prejudice to his rights and contentions in the pending contempt application.

The Appellate Authority by an order dated 15th March, 2019 imposed the penalty of placing the petitioner at the minimum pay scale in the entry level of the Development Officer Grade-1 in terms of Rule 23 of GI (CDA) Rules, 1975 with a direction that he shall remain suspended from the date of removal from service till the date of superannuation.

Being aggrieved by the aforesaid order passed by the Appellate Authority, the petitioner has filed the instant writ petition.

The petitioner submits that the Appellate Authority could not have reconsidered his case in terms of the order passed by the learned Single Judge. The order passed by the learned Single Judge stood merged with the order passed by the Hon'ble Division Bench. The Hon'ble Division Bench categorically held that the proceeding if kept pending against the petitioner after his retirement will tantamount to denial of substantive justice.

The Hon'ble Division Bench categorically observed that the removal of the writ petitioner from service after contributing to the Company for 28 years without any evidence of misappropriation, as admitted in the disciplinary proceeding represents a situation which has the potential of shocking the conscience of the Court upon noticing the eventuality of an unjust result.

The Hon'ble Division Bench took note of the fact that in the 28 years of the service tenure of the petitioner there has been no charge of misappropriation or corruption against him. The Court held that in the disciplinary proceeding it has not been conclusively proved that the writ petitioner individually benefited from the miniscule amount received as premium which became the subject matter of attention in the disciplinary proceeding.

The petitioner prays for a direction upon the respondent authorities to release his arrear salary from the date of his suspension till the date of retirement and to release all the retiral dues and consequential benefits in his favour upon quashing of the order dated 15th March, 2019 passed by the Appellate Authority.

The learned advocate appearing on behalf of the respondents submits that though there is an order passed by the Hon'ble Division Bench requiring a dignified quietus to the proceeding in question the petitioner himself by his conduct has induced the respondents to reopen the disciplinary proceeding and necessary order passed therein. The petitioner himself by a notice requested the authorities to act in accordance with the order passed by the Learned Single Judge.

The petitioner even filed a contempt application before the learned Single Judge alleging violation of the order passed on 25th September, 2013. In the contempt application, the petitioner has prayed for reinstatement in service till the date of superannuation and thereafter, to release all consequential benefits including salary and allowances and retiral benefits in terms of the order passed by the learned Single Judge.

The conduct of the petitioner amounts to waiver of his right which accrued in his favour by virtue of the order passed by the Hon'ble Division Bench.

It has been submitted that as per the Rules, the Company is entitled to proceed with the disciplinary proceeding even after an employee retires from service. Moreover, the learned Single Judge directed the respondents to proceed with the disciplinary proceeding but not to pass any order of punishment of dismissal or removal from service.

The Company in terms of the order passed by the learned Single Judge has proceeded with the disciplinary proceeding and has passed order of placing the petitioner in the minimum pay scale and treated the period from the date of his dismissal till his superannuation under suspension.

The learned advocate relies upon the decision delivered by the Hon'ble Supreme Court in the matter of Punjab & Sind Bank - vs- Mohinder Pal Singh reported in

2005 (12) SCC 747 and the decision delivered by the Hon'ble Supreme Court in the matter of Ansal Proprieties & Industries Limited -vs- State of Haryana & Anr. reported in 2009 (3) SCC 553 on the point of waiver.

The learned advocate further refers to the judgement delivered by the Hon'ble Supreme Court in the matter of Krishna Bahadur -vs- M/s. Purna Theatre reported in 2004 (4) CALHN 118 on the point that a statutory right may also be waived by the conduct of a party. It has been submitted that the statutory right is the highest right that is enjoyed by a party and if by conduct the said right is waived by a litigant then the other party cannot be blamed for the same.

The respondent also relies upon a judgement delivered by a learned Single Judge of this Court on 14th August 2018 in the matter of Child In Need Institute (Cini) - vs- Fourth Industrial Tribunal & Ors. reported in LLJ (2018) 4 285 to highlight the issue of waiver.

What falls for consideration before this Court is whether the petitioner will get the benefit of the order that was passed by the Hon'ble Division Bench wherein the Court held that no proceeding should be kept pending against the writ petitioner who had retired from service after contributing to the Company for 28 years without any charge of misappropriation or corruption? Does the conduct of the petitioner amount to waiver of his right to pursue his claim in accordance with the direction passed by the Hon'ble Division Bench? Was the Appellate Authority justified in reopening the disciplinary proceeding of the petitioner in terms of the direction passed by the learned Single Judge ignoring the order passed by the Hon'ble Division Bench?

A three Judge Bench of the Hon'ble Supreme Court in the matter of Kunhayammed & Ors. -vs- The State Kerala & Anr. reported in (2000) 6 SCC 359 held that the logic underlining the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time. When an order passed by an inferior court is subjected to a remedy available under the law before a superior forum, though the order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way, it is the order of the superior court which is final, binding and operative wherein the order passed by the inferior court merges with the order passed by the superior court.

In view of the law laid down by the Hon'ble Supreme Court it can be safely concluded that after the order that was passed by the Hon'ble Division Bench in the matter, the only order that could have been enforceable was the order passed by the Hon'ble Division Bench. The order of the learned Single Judge stood merged with the order of the Hon'ble Division bench.

The submission of the respondents that the petitioner by his conduct has waived his right to act in accordance with the judgement passed by the Hon'ble Division Bench does not appear to be convincing.

In the contempt application the petitioner has prayed for reinstatement in service till the date of his superannuation and for releasing all consequential benefits such as arrear salary including all allowances and the retiral benefits.

The petitioner in the instant proceeding reiterated his prayer for releasing his arrear salary including allowances and the retiral benefits. As the petitioner had retired long ago, there is no scope of reinstatement in service.

The approach of the petitioner by filing the contempt application before the learned Single Judge may not to be proper but his conduct certainly does not amount to waiver of his right to get the benefit of the order passed by the Hon'ble Division Bench.

All along the petitioner has prayed for reinstatement in service along with all service benefits and after his retirement the petitioner has prayed for his retiral dues by treating him as 'on duty'.

The petitioner has never waived his right which accrued in his favour by virtue of the order that was passed by the Hon'ble Division Bench.

In view of the judgment passed by the Hon'ble Division Bench the Appellate Authority could not have reopened the issue all over again and pass any order therein as the court directed for a dignified quietus of the proceeding. The Hon'ble Supreme Court also declined to interfere in the matter only because of the reason that the petitioner had retired from service.

The impugned order passed by the Appellate Authority on 15th March, 2019 is accordingly set aside. The petitioner shall be entitled to all consequential benefits on account of setting aside the disciplinary proceeding.

The respondent Company is directed to take steps for releasing all the dues of the petitioner by treating him as on duty on and from the date of his termination till the date of his superannuation.

The respondents shall also take steps for releasing the retiral dues of the petitioner in accordance with law.

All in-service and retirement dues of the petitioner shall be cleared within a period of four months from the date of communication of a copy of this order.

W.P No. 13902 (W) of 2019 is disposed of.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.