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IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

DATED THIS THE 21ST DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 101897 OF 2022 (S-RES)

BETWEEN:

T RAMESH BABU,
AGE: 64 YEARS, OCC: RETIRED EMPLOYEE NO 1011,
R/O. H. NO. 99, 3RD CROSS, PADAMARAJ,
GOKUL ROAD, HUBBALLI-580030.

...PETITIONER

(BY SRI. VITTHAL S. TELI, ADVOCATE)

AND:

1. THE INQUIRY AUTHORITY,
UNITED INDIA INSURANCE COMPANY LTD,
RO-HYDERBAD, SITTING AT ENKAY COMPLEX,
DOOR NO. 2, FLOOR NO.1, KESHWAPUR,
HUBBALLI, DIST: DHARWAD-580023.
2. THE PRESENTING OFFICER,
UNITED INDIA INSURANCE COMPANY LTD,
RO-HYDERBAD, SITTING AT ENKAY COMPLEX,
DOOR NO.2, FLOOR NO.1, KESHWAPUR,
HUBBALLI, DIST: DHARWAD-580023.
3. GENERAL MANAGING, DISCIPLINARY AUTHORITY,
UNITED INDIA INSURANCE CO. LTD,
RO-HYDERBAD, HEAD OFFICE,
24 WHITES ROAD, CHENNAI- 600014.





4. THE CHAIRMAN CUM MANAGING DIRECTOR,
UNITED INSURANCE CO. LTD, HEAD OFFICE,
24 WHITES ROAD, CHENNAI-600014.

...RESPONDENTS

(BY SRI. ARUN L. NEELOPANT & K. S. JADHAV, ADVS. FOR R1,
SRI. N. R. KUPPELLUR, ADV. FOR R3 & R4,
NOTICE TO R2 SERVED)

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF
CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OF
CERTIORARI OR APPROPRIATE ORDER QUASHING THE ORDER
DATED 28-03-2022 IN INQUIRY PROCESS AS PER HO ORDER
NO. REF HO 2021-008,486,2021 DATED 03.01.2022 IS
PRODUCED AT ANNEXURE-B PASSED BY THE RESPONDENT
NO.1 AND 2

THIS PETITION, COMING ON FOR ORDER, THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

Petitioner is before this Court calling in question an order
dated 3-01-2022 passed by respondents declining to accede to
the request of the petitioner for engaging the services of a
Legal Practitioner to defend him in the departmental enquiry.

2. Heard Sri.Vittal S Teli, learned counsel appearing for
petitioner and Sri.Arun L Neelopant and Sri.K.S.Jadhav, learned
counsel representing the respondent No.1; Sri.N.R.Kuppellur,
learned counsel for respondent Nos.3 and 4.

3. Facts adumbrated are as follows:



The petitioner is an employee of the United India Insurance Company Limited (hereinafter referred to as 'the Company' for short). He joins the service of the Company on 14-10-1982 as a Development Officer and was serving as a Divisional Manager at the relevant point in time. When the petitioner was in the cadre of Divisional Manager, he was to retire on attaining the age of superannuation on 31-03-2021. Two proceedings emerge prior to his retirement, one registration of a crime in Crime No.10 of 2019 for offences punishable under Sections 197, 209, 120B, 420, 109, 468, 471, 465, 464 r/w 34 of the IPC. Investigation in the said case was pending. At that point in time, charge sheet is issued against the petitioner for conduct of a departmental enquiry on the same set of facts. The charge alleged against the petitioner was that he had, in violation of Company guidelines, settled several matters in a Mega Lokadalath. The petitioner then replies to the charge sheet so issued to him on 17-12-2021. Not being satisfied with the reply submitted by the petitioner, the Disciplinary Authority appointed an Enquiry Officer to conduct the enquiry and a Presenting Officer to present the



case on behalf of the Management. The issue in the *lis* does not concern the veracity of any of the aforesaid facts.

4. In the Departmental Enquiry, the petitioner submits a representation on 28-03-2022 placing a request to engage the services of a Legal Practitioner for the reasons indicated in the representation. This is turned down on the very same day, on the score that the Rules do not permit to engage the services of an Advocate in the Departmental enquiry to defend a delinquent/Charge Sheeted Officer ('CSO' for short). This drives the petitioner to this Court in the subject petition. This Court, in terms of its order dated 26-05-2022 grants an interim order of stay of further proceedings in the departmental enquiry. The interim order is in subsistence even as on date. The respondents enter appearance and have filed application seeking vacation of the interim order. Therefore, the matter is considered for its disposal on the consent of the parties.

5. The learned counsel appearing for the petitioner would contend that the petitioner has hearing disability; he is aged 64 years; he is facing criminal proceedings on the same charge. It is in that light he requested for engaging the services of an



Advocate in the departmental enquiry. The request is turned down on the same day without application of mind on the ground that the Rules do not permit. He would submit that the petitioner is entitled, in the peculiar facts of the case, to engage the services of an Advocate to defend him in the enquiry.

6. On the other hand, the learned counsel representing the Company would refute the submissions to contend that the petitioner is aware of the facts against him, he would not require any assistance to defend him in the enquiry, much less. the assistance of an Advocate. He would submit that the Courts have consistently held that right of a CSO to engage the services of a Legal Practitioner shall be only in accordance with the Rules; if there are no Rules, there can be no assistance. He would submit that in the case at hand the Rules specifically prohibit engagement of an Advocate to defend the CSO in an enquiry.

7. I have given my anxious consideration to the submissions made by the respective learned counsel for the parties and have perused the material on record.



8. Before noticing the Rule and embarking upon the journey of its interpretation, the problem of the petitioner requires to be considered. The petitioner has appended an audiology report which depicts him to be having certain hearing disability. A charge sheet is issued against him a week prior to his retirement on 23-03-2021. The petitioner is now aged about 63 years. On the same set of facts, the petitioner is facing a criminal proceeding, which is pending investigation in Crime No.10 of 2019. The petitioner, therefore, submits a representation on 28-03-2022 requesting engagement of an Advocate to defend him in the enquiry. The representation reads as follows:

Respected sir.

Subject: Humble request for engaging a lawyer to defend me in the proposed inquiry.

With reference to the above, I submit that I have retired from services from United India Insurance Co.Ltd nearly about 4 years ago. My retirement benefits have been withheld and on the contrary huge amount in lakhs have been deposited by me towards option pension. As a result, I am suffering mentally and physically and therefore, I am not in a position to defend by myself. That apart, my eye sight is poor and my hearing capacity is impaired, which are big hurdles for defending myself personally. I do not have contacts with anybody who is competent to defend me effectively and legally. I have made attempts to secure assistance of some of the employees who have



flatly refused to assist me. Even I have requested some of the retired employees to assist me but to no avail. Under the circumstances, I have no other alternative except to seek legal assistance of a lawyer I have requested one Mr. Shrikant Sattigeri, Advocate from Belagavi, who has assured me to help in the matter. He is ready to give his consent in this regard. However, he asked me to take permission from the enquiry authority to take his services. Once I am permitted to do so, on the next date I will produce his consent in writing.

If I am not permitted to take legal assistance of a lawyer, I will not be able to defend myself, in which event, the proposed inquiry will be contrary to the principles of natural justice, equity and good conscience.

I hope sir, kindly understand my difficulty and allow my prayer to engage a lawyer to defend me in the enquiry. For the Act of Kindness I shall remain ever grateful to you Sir.

Hubballi.

Dt: 28.03.2022.

*Yours faithfully,
Sd/-
(T. Ramesh Babu)*

This is, on the very same day, turned down by the respondents by issuing a communication of denial, which reads as follows:

Further CSE has handed over a letter dtd. 28.03.22 asking for permission to take the services of an Advocate by name Mr Shrikant Sattigeri to defend him in this Inquiry process.

It was informed to CSE that an Advocate from outside cannot be allowed to be the Defence



Assistant as per rules and regulations of the company..

It is also informed to CSE to make arrangements for Defence by next hearing.

The day's proceedings have been closed and next hearing is on 22.04.2022 and is agreed by Presenting Officer and CSE.

The reply is that an Advocate, as a Defence Assistant, cannot be allowed in terms of the Rules. Therefore, I deem it appropriate to notice the Rules. Disciplinary proceedings, against an employee of the Company, is governed under the United India Insurance Company (conduct, discipline and appeal) Rules, 2014.

9. The Rule that requires to be noticed is sub-rule (6) of Rule 25 and it reads as follows:

The employee may take the assistance of any other employee of the company but may not engage a legal practitioner for the purpose, In case, the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, the employee may also be allowed a legal practitioner as Defence Assistant. However, employees from other organizations, including PSGICs, cannot act as Defence Assistant in any disciplinary proceedings initiated against any employee of the Company.



The Rule directs that an employee who is facing disciplinary proceedings may engage the services of any other employee of the Company, but may not engage a Legal Practitioner for the purpose. In case the Presenting Officer is a Legal Practitioner the employee derives a right to be defended by an Advocate. This is the tenor of the Rule. The language of the rule is, the employee may not engage the Legal Practitioner for the purpose. Therefore, the provision though in the first blush would look mandatory, it is not that it is inflexible, it has to be interpreted on a case to case basis. In the considered view of this Court, it does not place an unambiguous embargo for engaging an Advocate as a Defence Assistant.

10. The circumstance under which the petitioner has sought the assistance of a Legal Practitioner needs consideration. The petitioner suffers certain amount of hearing disability; he is a hexagenarian; his entire retirement benefits are withheld; he is facing two proceedings; both criminal and the impugned departmental proceeding. If all these circumstances are taken note of, including the fact that there is no co-employee who is coming forward to defend the



petitioner, since he is already retired from service, they would all become factors to be taken note of for permitting engagement of a Legal Practitioner to defend the petitioner in the enquiry. Though it would not be, or cannot be permitted, as a matter of course, the course will have to be adopted on fact to fact basis/case to case basis.

11. In the teeth of the aforesaid facts, it becomes apposite to refer to the judgment of the Apex Court in the case of **Ramesh Chandra v. Delhi University, reported in (2015) 5 SCC 549**, wherein the Apex Court has held as follows:

27. On 19-12-2009 the enquiry officer concluded the inquiry pursuant to the memoranda dated 27-8-2007 and 16-10-2007 and submitted his reports, both dated 23-2-2010. A copy of the inquiry report pursuant to the memorandum dated 16-10-2007 was forwarded to the appellant asking him to submit his reply within twenty-one days. The appellant requested the Registrar, University of Delhi to supply certain documents which were referred to by the enquiry officer and submitted interim reply on 18-3-2010. Subsequently, the Executive Council passed Resolution No. 281 dated 25-3-2010 disengaging the appellant from the services with immediate effect and subsequently a memorandum dated 26-3-2010 was issued to the said effect. The



aforesaid decision was communicated to the appellant by the Registrar.

28. This Court on 5-4-2010 [Ramesh Chandra v. University of Delhi, SLP (C) No. 13753 of 2009, order dated 5-4-2010 (SC), wherein it was directed: "The special leave petitions are dismissed reserving liberty to challenge the termination. All contentions and question of law are left open. We are sure that if and when the petitioner challenges the termination, it will be disposed of expeditiously."] Ramesh Chandra v. University of Delhi, SLP (C) No. 13753 of 2009, order dated 5-4-2010 (SC), wherein it was directed: dismissed SLPs (C) Nos. 13753 of 2009 and 14150 of 2009 filed by the appellant challenging the High Court order dated 21-5-2009 in Ramesh Chandra v. University of Delhi [Ramesh Chandra v. University of Delhi, 2009 SCC OnLine Del 1541 : (2009) 111 DRJ 175] but granted the liberty to the appellant to challenge the punitive orders. The appellant was permitted to take all the pleas taken in the SLP including the challenge to the validity and propriety of the inquiry proceedings conducted by University of Delhi. Pursuant to the said order, the appellant filed Writ Petition No. 2547 of 2010 before the High Court of Delhi at New Delhi which was dismissed by the impugned judgment dated 1-3-2012 [Ramesh Chandra v. University of Delhi, 2012 SCC OnLine Del 1286 : (2012) 187 DLT 741] .

29. The learned counsel for the appellant submitted that there was illegality and unfairness in the initiation and conduct of inquiry in regard to the allegations which led to the removal of the appellant. It was also submitted that the Chancellor



(Bundelkhand University) has not written to Delhi University suggesting action to be taken against the appellant. Despite the same, information regarding contents of charges was solicited unilaterally by the Registrar of Delhi University based on newspaper reports and the communication dated 4-8-2005 sent by UGC to the Vice-Chancellor of the University. The learned counsel further contended that in the absence of the Chancellor, Bundelkhand University suggesting action against the appellant, UGC need not have, even sent the above communication.

30. However, the aforesaid submission cannot be accepted as it was always open to the competent authority to initiate departmental proceedings against its employee, with regard to any misconduct or dereliction of duty if found during performance of duty while posted in the office or on deputation. In the present case, it was well within the jurisdiction of the University to initiate such a departmental enquiry when it is noticed that its employee was prematurely removed from an office to which he was deputed to on account of certain charges against him.

The Apex Court in **RAMESH CHANDRA** (supra) follows earlier judgments in the case of **Board of Trustees of the Port of Bombay V/s. Dilipkumar Raghavendranath and others** reported in **(1983)1 SCC 124** and in the case of **J.K.Aggarwal V/s. Haryana Seeds Development Corporation Ltd and others**, reported in **(1991)2 SCC 283**



to permit the employee who was facing departmental enquiry to be defended by an Advocate, on the score that the Enquiry Officer in an enquiry would generally be a legally trained mind. The judgment rendered in the case of **RAMESH CHANDRA** would become applicable to the facts obtaining in the case at hand.

12. Insofar as the judgments relied on by the learned counsel representing the respondents in the case of **Cipla Ltd. and others V/s. Ripu Daman Bhanot and Another**, reported in **AIR 1999 SC 1635** or the unreported judgment in the case of **Survanppa Veerabharppa Radder V/s. the General Manager, W.P.No.78200 of 2013** are concerned, there can be no qualm about the principles enunciated therein interpreting the extant rules obtaining in those organizations, but their applicability to the facts of the case is what is required to be noticed. They are all distinguishable with the facts obtaining in the case at hand without much *ado*. They are therefore, inapplicable to the facts of the case at hand, as the consideration of the issue in the *lis* is owing to the peculiarity of the facts of the case.



13. The petitioner, in the case at hand as well, would face serious civil and pecuniary consequences in the event the enquiry would go against him. What is to be noticed is, he is already driven to penury by withholding of all terminal benefits. Above all, an employee, at the age of 63, who is to face a departmental enquiry along with the criminal trial becomes "tongue tied" and therefore he would require the assistance of a Legal Practitioner. The factors that are in favour of the petitioner for grant of such benefit far outweigh the tenor and purport of the Rule which prohibits it, more so in the light of the rules not being inflexible. Therefore, in the peculiar facts of the case, I deem it appropriate to permit the petitioner to be defended by an Advocate in the departmental enquiry, as **"an hexagenerian cannot be left tongue tied"**

For the aforesaid reasons, I proceed to pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned order dated 03-01-2022 passed by respondents stands quashed.



- (iii) The petitioner is declared entitled to be defended by an Advocate in the departmental enquiry.
- (iv) It is needless to observe that the defence of an Advocate cannot become a ruse to protract the proceedings in the departmental enquiry.
- (v) The parties, the petitioner and his defence representative shall co-operate with the conclusion of the proceedings.

Sd/-
JUDGE

VB
List No.: 1 Sl No.: 25