

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3259 OF 2018**

Mr. Charanjit Singh Bright

...Petitioner

**Vs.**

National Insurance Company Ltd. and Another

...Respondents

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Mr. Rishi Ashok a/w. Mr. Amogh Patkar i/b. Bekay Legal, for the Petitioner.

Mr. Vipul Shukla i/b. S. Shenoy and Associates, for Respondent Nos.1 and 2.

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**CORAM : R. I. CHAGLA AND**

**FIRDOSH P. POONIWALLA, JJ.**

**RESERVED ON : 29<sup>th</sup> AUGUST 2026**

**PRONOUNCED ON : 9<sup>th</sup> OCTOBER 2026**

**ORAL JUDGEMENT (per FIRDOSH P. POONIWALLA, J.)**

1. This Writ Petition has been filed seeking the following reliefs:

(a) *This Hon'ble Court be pleased to set aside and quash the Inquiry Orders passed by the Respondents dated 01.04.2009.*

(b) *This Hon'ble Court be pleased to set aside and quash the Ex-parte Inquiry Order passed by the Respondents dated 30.11.2009.*

(c) *This Hon'ble Court be pleased to set-aside and quash the order dated 8.4.2013 passed by the Respondents terminating the Petitioner from Respondent No.1's service w.e.f 08.04.2013 and the Respondents be directed to pay full back wages and consequential benefits till age of*

*superannuation of the Petitioner.*

*(d) This Hon'ble Court pleased to pass an order, writ and direction against Respondents to release all retirement benefits including pension withheld by Respondents on his superannuation from services with an interest of @ 18% from the aforesaid date till the date of filing of this Petition on the basis of his actual salary structure without any deductions as imposed by the Respondents.*

*(e) That the Hon'ble Court be please to direct to release the Provident Fund dues of the Petitioner alongwith the interest as per the trust rules of the Respondents company.*

*(f) The Respondents be directed to pay the pension with arrears to the Petitioner as per the prevailing practice.*

*(g) Ad-Interim and interim reliefs in terms of the aforesaid; and*

*(h) Such other reliefs as this Hon'ble Court may deem fit and proper in the interest of justice and in the facts and circumstances of the case.*

*(i) This Hon'ble Court be pleased to set aside and quash the Order dated 5<sup>th</sup> June 2017 (31<sup>st</sup> May 2017) passed by the Appellate Authority and the Respondents be directed to pay retiral dues and consequential benefits.*

## **FACTS**

2. The facts as stated by the Petitioner in the Petition are as follows:

3. The Petitioner joined Respondent No.1 as Development Officer, Grade II. Since then, the Petitioner has served Respondent No.1 in various positions such as Assistant Administrative Officer, Assistant Manager etc., According to the Petitioner, his above service record in Mumbai was clean and unblemished. He had gained wide appreciation and goodwill from the

Manager and other Senior Officers of Respondent No.1. According to the Petitioner, he had given 36 years of service to Respondent No.1.

4. In 2005-06, the Petitioner was undergoing several serious health related issues and diseases for which the Petitioner was required to take treatment from specialist and renowned doctors and medical practitioners in Mumbai. The Petitioner was suffering from heart disease, hypertension, obesity, degenerative spinal disease, sleep apnea, fatty lungs, kidney related issues and is still undergoing regular medication, treatments, medical checkups etc. in Mumbai. The Petitioner had further undergone a surgery for osteoarthritis on both knees at Seven Hills Hospital in Mumbai.

5. In 2005, Respondent No.1 issued an order of transfer from Mumbai to Vapi in the State of Gujarat.

6. Although, the Petitioner was transferred to Vapi Gujarat, before the Petitioner could join the transferred place of work, he was issued another transfer order to report at Pune, Maharashtra.

7. As per the directions of Respondent No.1, the Petitioner reported at the office of Respondent No.1 at Pune i.e. Regional Office of Respondent No.1. The Petitioner immediately made arrangements for settling at Pune by shifting his family from Mumbai to Pune. As a matter of shock, Respondent No.1 again issued a transfer order, after 15 days of the Petitioner working at Pune Regional Office, to the Pimpri Divisional Office. The Petitioner was mentally stressed due to the frequent transfers inflicted

by the Respondents. The Petitioner, however, accepted the said third transfer and accordingly reported at the Respondent No.1's Divisional Office at Pimpri, Maharashtra. The Petitioner was not at all keeping good health and was required to travel to Mumbai to take medical treatment. The Petitioner was not getting proper care at Pimpri and his health condition further deteriorated.

8. Considering the advice from his doctors and medical practitioners to shift to Mumbai on account of severe health issues and to avoid long distance travel, the Petitioner, on several occasions, requested the Respondents to transfer the Petitioner to Mumbai. However, there was no response from the Respondents and, hence, the Petitioner continued to attend the Pimpri Office ignoring the severe ailments suffered by him. The Petitioner has annexed as Exhibit A (Colly) to the Petition the copies of initial medical reports pertaining to the Petitioner's ailments.

9. In 2006, while attending Respondent No.1's Pimpri Office, the Petitioner felt uneasiness, fainted and fell unconscious. When the Petitioner regained consciousness, he was feeling very uneasy, badly perspiring and was having severe difficulty in breathing. According to the Petitioner, none of the officials at Pimpri office either helped or hospitalized the Petitioner. They did not call for the doctor and remained as mute spectators despite witnessing the Petitioner struggling for his life. It is the case of the Petitioner that, after sometime, the Petitioner himself contacted his doctor

and medical practitioners in Mumbai and they advised the Petitioner to immediately take two tablets of Sorbitate, which the Petitioner requested his Office Assistant to buy on his behalf and paid the Office Assistant the requisite amount for buying the aforesaid tablets. After the consumption of the aforesaid tablets, the Petitioner felt temporary relief and immediately thereafter hired an ambulance and attended a nearby Government Hospital at Pimpri, namely LTMJ Hospital. At LTMJ Hospital, the Petitioner was given preliminary and first aid treatment.

10. During the course of his treatment at LTMJ Hospital, the Petitioner was first advised to be shifted to any reputed hospital in Mumbai. The family members of the Petitioner shifted the Petitioner to a Mumbai Hospital for better and advanced treatment. The Petitioner suffered a severe setback on his health. The Petitioner had undergone mental and physical depression due to the pathetic situation in and around Pune region. The Petitioner realized that he had to take better medical care from specialized doctors in Mumbai. The Petitioner made a fervent request to his superiors and requested them to transfer him to Mumbai for taking medical care. The Petitioner repeatedly appraised his superiors about his health condition from time to time and requested for medical leave to the maximum extent.

11. After the aforesaid incident at Pimpri, the Petitioner was physically weak and his health condition deteriorated substantially. The Petitioner was further diagnosed with multiple sicknesses and was running

after doctors for regular medical treatment. Most of the time, Petitioner was bedridden as he was suffering from obesity and hypertension.

**12.** It is the case of the Petitioner that, due to the health reasons, he could not attend his job at Pimpri and remained on medical leave. During the relevant time, the Respondents appointed a retired Assistant Commissioner of Police (ACP) to inquire into the genuineness of the Petitioner's health issues and the reason for his absenteeism. The said ACP visited the Petitioner in Mumbai and witnessed the severe bedridden condition of the Petitioner. Since the Petitioner was unable to move around, the said ACP extended help to the Petitioner to take him to the Holy Spirit Hospital, Mumbai. The said ACP thereafter submitted his Inquiry Report to the Respondents, which was neither disclosed nor shared by the Respondents at any point of time. The Respondents ignored the said Report of the ACP and started harassing the Petitioner without considering his request to transfer him from Pimpri to Mumbai. The Petitioner could not abide by the aforesaid directions of the Respondents to report to the Pimpri Office on account of Petitioner's serious health condition and the same was explained to the Respondents.

**13.** Thereafter, Respondent No.1 issued a Charge Sheet vide Memorandum dated 10<sup>th</sup> July 2007 *inter alia* leveling the following charges against the Petitioner.

a. The Petitioner colluded with the officials and private parties and did not disclose vital information regarding Claim to his Superior Officer and allowed approval of forged claim and release of claim amount.

b. The Petitioner, as an Authorised Signatory, colluded with the other Signatory and Private Party and signed a cheque for Rs.79,000/- in favour of Popular Car Bazaar, though the Disbursement Voucher was drawn and authorized in favour of Shri. K. R. Thampi, thus causing loss to Respondent No.1.

14. In this regard, the inquiry officer submitted a Report to the Disciplinary Authority, who passed an Order dated 1<sup>st</sup> April 2009 imposing a penalty of "Reduction in basic pay by 2 stages."

15. Thereafter, Respondent No.1 issued another Charge Sheet to the Petitioner. The Petitioner, through his Advocate's letter dated 23<sup>rd</sup> August 2008, requested the Respondents to conduct an Inquiry at Mumbai so as to participate effectively in the same. The Petitioner also requested to appoint a Commission to record his evidence at his residence/ hospital. However, despite the said Notice, the Respondents arbitrarily proceeded with an ex-parte inquiry and imposed a penalty vide Order dated 13<sup>th</sup> November 2009. The penalty imposed by the said Order dated 13<sup>th</sup>

November 2009 was "Reduction of basic pay by four stages."

16. Despite imposing the aforesaid two punishments on the Petitioner, Respondent No.1, without notice and without conducting an inquiry, passed an Order dated 8<sup>th</sup> April 2013 against the Petitioner. According to the Respondents, the Petitioner remained absent for more than 600 days for the period from 2008 till then. The Respondents also rejected the Voluntary Separation Scheme applied for by the Petitioner. As per the said Order, the Respondents imposed a penalty of "Removal from service which shall not be a disqualification for future employment."

17. Aggrieved by the aforesaid Order dated 8<sup>th</sup> April 2013, the Petitioner filed an Appeal before the Appellate Authority.

18. Since the Respondents were not giving any response to the Appeal of the Petitioner, the Petitioner was constrained to file a Writ Petition before this Court, being Writ Petition No. 14377 of 2016, and this Court was pleased to pass an Order dated 4<sup>th</sup> May 2017 directing the Respondents to decide the pending Appeal.

19. The Petitioner served a copy of the said Order dated 4<sup>th</sup> May 2017 to the Respondents and called upon them to decide the pending appeal vide his letter dated 31<sup>st</sup> May 2017. By an Order dated 5<sup>th</sup> June 2017, the Petitioner's Appeal was rejected.

20. In these circumstances, the Petitioner filed the present Writ Petition.

21. By an Order dated 6<sup>th</sup> January 2020, this Court issued Rule in the present Writ Petition.

22. The Respondents have filed an Affidavit-in-Reply of one Pramod Kumar, Regional Manager of Respondent No.1, Pune Regional Office, affirmed on 27<sup>th</sup> July 2023.

**PETITIONER'S SUBMISSIONS :**

23. Mr. Rishi Ashok, the learned Counsel appearing on behalf of the Petitioner, submitted that the impugned Order of Removal dated 8<sup>th</sup> April 2013 is illegal and void as it was passed without holding any Departmental Inquiry. Mr. Ashok submitted that the impugned Order dated 8<sup>th</sup> April 2013 imposes a major penalty of Removal from Service solely on the allegation that the Petitioner remained absent from duty after 2008. Further, before imposing such penalty, the Respondents did not issue any Charge Sheet regarding the period of absence, did not appoint any Inquiry Officer, did not record any oral or documentary evidence, did not examine witnesses and did not afford the Petitioner an opportunity to defend himself. The mandatory disciplinary procedure was completely bypassed. Mr. Ashok submitted that the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (hereinafter referred to as "**the 1975 Rules**") contemplate that a major penalty such as Removal from Service can only be imposed after a regular Departmental Inquiry conducted in accordance with

the principles of natural justice. The Respondents could not lawfully dispense with the inquiry altogether while imposing the graver punishment of Removal from Service. Mr. Ashok submitted that the impugned Order is therefore vitiated by complete violation of the principles of natural justice, the Rule of *audi alteram partem*, the mandatory disciplinary procedure prescribed in the 1975 Rules and Articles 14 and 21 of the Constitution of India. Mr. Ashok submitted that an Order imposing a major penalty without holding a Departmental Inquiry is a nullity in law.

**24.** Further, Mr. Ashok submitted that the Respondents have sought to justify the impugned Order of Removal dated 8<sup>th</sup> April 2013 by invoking Rule 30(ii) of the 1975 Rules which permits dispensing with the Departmental Inquiry only when the Competent Authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an Inquiry in the manner prescribed under the Rules.

**25.** Mr. Ashok submitted that the plain reading of Rule 30(ii) of the 1975 Rules makes it abundantly clear that the power to dispense with a Departmental Inquiry is an exception to the normal rule and can be exercised only upon the Competent Authority recording specific, objective and cogent reasons in writing demonstrating why it was not reasonably practicable to hold such Inquiry. The requirement of recording reasons is mandatory and is not an empty formality. Mr. Ashok submitted that, in the present case, the impugned Order of Removal dated 8<sup>th</sup> April 2013 is

conspicuously silent on this mandatory requirement. The Disciplinary Authority has neither recorded any reasons nor disclosed any circumstances, whatsoever, to indicate why it was allegedly not reasonably practicable to conduct a regular Departmental Inquiry. Mr. Ashok submitted that the mere invocation of Rule 30(ii), without recording the requisite satisfaction founded on objective material, is fully insufficient in law and vitiates the impugned Order.

**26.** In support of his aforesaid submissions, Mr. Ashok relied upon the following Judgements:

- a) **Union of India and Another Vs. Tulsiram Patel (1985) 3 SCC 398.**
- b) **Jaswant Singh and Others Vs. State of Punjab and Another 1991(1) SCC 362.**
- c) **Chief Security Officer and Others Vs. Singasan Rabi Das (1991) 1 SCC 729.**
- d) **Manohar Lal Vs. Commissioner of Police and Others 2026 SCC OnLine SC 363.**

**27.** Further, Mr. Ashok submitted that the Respondents have failed to satisfy the mandatory pre-condition prescribed under Rule 30(ii). The impugned Order does not disclose any reason, much less any compelling or exceptional circumstances, for dispensing with the Inquiry. Mr. Ashok

submitted that such mechanical invocation of Rule 30(ii), without compliance with its mandatory requirements and the constitutional safeguards underlying Article 311(2) of the Constitution of India, renders the Order of Removal arbitrary, illegal and violative of the principles of natural justice, and is therefore liable to be quashed and set aside.

**28.** Mr. Ashok submitted that the allegation of abandonment of service under Rule 30(iv) has not been proved and the very foundation of the Removal Order fails. In this context, Mr. Ashok submitted that the Respondents have proceeded on the erroneous assumption that prolonged absence automatically amounts to abandonment in service. Mr. Ashok submitted that such an approach is contrary to settled law. Abandonment of service is never presumed merely because an employee remains absent for a long time. The employer must establish by cogent evidence that the employee had a clear, unequivocal and conscious intention to permanently sever the employer-employee relationship.

**29.** Mr. Ashok submitted that the facts of the present case establish precisely the opposite. Throughout the relevant period, the Petitioner repeatedly requested transfer to Mumbai on medical grounds, continuously informed the Respondents of his deteriorating health, submitted medical certificates from specialist hospitals, sought medical leave, requested that the Inquiry be conducted at Mumbai or that evidence be recorded on Commission due to his inability to travel, and even applied under the

Voluntary Separation Scheme. Each of these acts demonstrate the Petitioner's continuing intention to remain in service and is inconsistent with the intention to abandon employment. Further, Mr. Ashok submitted that the Respondents themselves had deputed a retired ACP to verify the Petitioner's illness. The ACP personally visited the Petitioner, found him bedridden and submitted a Report to the Respondents. Instead of relying upon this material evidence, the Respondents withheld the Report altogether. In support of his submissions, Mr. Ashok relied upon the Judgement of this Court in **Noble Paints Private Limited Vs Mr. Ashok Tukaram Shinde LAWS(BOM) 2003-9-66**.

30. Further, Mr. Ashok submitted that the medical evidence consistently established that the Petitioner's absence was involuntary. In this context, Mr. Ashok submitted that the Petition is supported by extensive medical records demonstrating that the Petitioner suffered from ischemic heart disease, hypertension, obesity, degenerative spinal disease, sleep apnea, kidney ailments, orthopaedic complications, repeated hospitalization and was repeatedly advised against long-distance travel. Mr. Ashok submitted that the Respondents did not refer the Petitioner to an independent Medical Board nor produced any contrary medical evidence to establish that the absence was deliberate or wilful. Mr. Ashok submitted that hence the conclusion that the Petitioner intentionally absented himself is therefore unsupported by evidence. Mr. Ashok submitted that, for all the

aforesaid reasons, this Court may be pleased to allow the present Writ Petition.

**RESPONDENTS' SUBMISSIONS :**

31. Mr. Vipul Shukla, the learned Counsel appearing on behalf of the Respondents, submitted that the present Writ Petition is wholly misconceived, devoid of merit and is premised entirely on unsubstantiated, selective and misleading averments. Mr. Shukla submitted that the Petitioner had approached this Court with unclean hands, suppressing material facts that go to the very root of the controversy and has failed to establish any infringement of a constitutional or legal right such as would warrant invocation of the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. Mr. Shukla submitted that it is well settled that the writ jurisdiction is discretionary and equitable in nature, and is not available as a matter of course to a litigant who has approached the Court with distorted or incomplete facts. In this context, Mr. Shukla referred to the Judgements of the Hon'ble Supreme Court in **B. Singh (Dr.) Vs. Union of India, (2004) 3 SCC 363**; and **B.P. Singhal v. State of T.N., (2004) 13 SCC 673**.

32. Mr. Shukla submitted that the present Writ Petition is not maintainable as the dispute is one of purely private contractual character. Mr. Shukla submitted that the relief claimed by the Petitioner relates

exclusively to alleged violations of the terms and conditions of his service, which is governed entirely by the law of contract as between the Petitioner and Respondent No.1. Mr. Shukla submitted that it is a settled principle of law that the enforcement of purely personal or contractual obligations arising out of a contract of service, even where the employer happens to be a statutory or public sector body, cannot be agitated or enforced through the extraordinary writ jurisdiction under Article 226 of the Constitution. Mr. Shukla submitted that what the Petitioner seeks to project as a public law grievance what is, in substance, and in truth, nothing more than a private law claim dressed up in constitutional vocabulary, and such an attempt does not, and cannot, clothe this Court with jurisdiction to interfere. In this background, Mr. Shukla placed reliance upon Judgement of the Hon'ble Supreme Court in the case of **K. K. Saksena Vs. International Commission on Irrigation and Drainage, (2015) 3 SCC 670** and **Ramesh Sanka Vs. Union of India, (2019) 3 SCC 589**.

**33.** Mr. Shukla submitted that the Petitioner has approached this Court with suppression and misrepresentation of material facts. In this context, Mr. Shukla submitted that the averments made in paragraph 7 of the Petition to the effect that his transfer from Mumbai to Pune was effected unilaterally and without cause, are factually incorrect and constitute a wilful and deliberate misrepresentation intended to mislead this Court. Mr. Shukla submitted that the record demonstrates that the said transfer was, in

fact, effected at the Petitioner's own request, on account of his medical constraints and the consequent need to remain closer to his family. The attempt to now portray a transfer sought and obtained by the Petitioner himself as an act of unilateral victimisation by the Respondents is a clear instance of the Petitioner seeking to build a case on a foundation of falsehood.

**34.** Mr. Shukla submitted that the Petitioner has conveniently and selectively omitted to disclose, in his narration of the transfer from the Pune Regional Office to the Pimpri Divisional Office, that he was in fact posted as Divisional Manager of the Pimpri Office, which was barely 15 kilometres from the Regional Office, and one that carried with it the added benefit of eligibility for a company car, a benefit for which he would not otherwise have qualified had he continued at the Regional Office. Mr. Shukla submitted that the Petitioner had, in fact, availed of a car loan for the purchase of a vehicle expressly for the purpose of commuting and for meeting prospective clients in the course of business development, an obligation squarely within the scope of his duties as Divisional Manager. Mr. Shukla submitted that, in these circumstances, the transfer occasioned no genuine hardship, whatsoever, and the grievance now sought to be raised is wholly incorrect.

**35.** Mr. Shukla submitted that, however, it is well settled that the transfer of an employee from one office to another, in the exercise of the

employer's administrative discretion and prerogative to meet operational and manpower requirements, is a matter falling squarely within the domain of management function, and is not amenable to adjudication in writ proceedings. Mr. Shukla submitted that the Petitioner has chosen not to disclose to this Court that he remained on unauthorised leave for a continuous period exceeding 437 days from March 2006 to December 2007, a fact which was expressly recorded in the Disciplinary Authority's Order dated 13<sup>th</sup> November 2009 and the same impaired the Respondent No.1-Corporation's operational efficiency. Mr. Shukla also submitted that the Petitioner had failed to register with the Regional Transport Office a company financed Tata Indica motor vehicle until as late as 31<sup>st</sup> March 2007, notwithstanding that he has already received reimbursement from the Respondents towards the registration charges and insurance premium of the said vehicle. Mr. Shukla submitted that such conduct involves the receipt of monetary benefit for a statutory obligation subsequently left unperformed for years, constituting grave misconduct in the course of employment, and is a further material fact conspicuously and tellingly absent from the Petition.

**36.** Mr. Shukla further submitted that disciplinary proceedings were conducted in accordance with law and on well founded charges. In this context, Mr. Shukla submitted that first inquiry arose out of a Memorandum of Charge Sheet dated 10<sup>th</sup> July 2007, alleging approval of a

forged claim and collusion by the Petitioner in signing a disbursement voucher in favour of Popular Car Bazaar, thereby causing financial loss to Respondent No.1. Mr. Shukla submitted that the Petitioner neither submitted a Reply nor responded to the said Memorandum, despite due opportunity, culminating in the Order dated 1<sup>st</sup> April, 2009 imposing a penalty of reduction in basic pay by two stages.

**37.** Next, Mr. Shukla submitted that the second inquiry was held pursuant to a Memorandum of charges dated 4<sup>th</sup> July 2008 concerning the Petitioner's unauthorised absence for 437 days, culminating in the Order dated 13<sup>th</sup> November, 2009 imposing a penalty of reduction in basic pay by four stages.

**38.** Further, Mr. Shukla submitted that the Order dated 8<sup>th</sup> April 2013 records that, notwithstanding the imposition of the aforesaid penalties, the Petitioner continued to remain unauthorisedly absent from office for further period exceeding 600 days, and in effect, abandoned his post at the Divisional Office. Having regard to this continuing and escalating history of unauthorised absence, the Disciplinary Authority was constrained to impose the penalty of 'Removal from Service', with the express qualification that such removal would not operate as a disqualification for future employment. Mr. Shukla submitted that this history, taken cumulatively, demonstrates a sustained dereliction of duty and a callous disregard on the part of the Petitioner, for the obligations he

owed under his contract of employment, the obligations that he has deliberately shirked with impunity, while now seeking, before this Court, to cast himself in the guise of a victim when he has not approached this Court with clean hands.

**39.** Mr. Shukla submitted that had the Petitioner genuinely been unable to discharge his duties as Divisional In-Charge, the appropriate and bonafide course open to him was to seek voluntary retirement, rather than to abandon his post for a period of 600 days between January 2008 and April 2013, as recorded in the Order dated 8<sup>th</sup> April 2013, an abandonment that resulted in demonstrable financial loss to the Respondents. Mr. Shukla submitted that the Petitioner did, in fact, subsequently apply for voluntary retirement, but was found ineligible on account of his prolonged unauthorised absence and the penalties already imposed upon him.

**40.** Further, Mr. Shukla submitted that the Petitioner is a chronic defaulter and approached this Court to evade liability. In this regard, Mr. Shukla submitted that the Petitioner has suppressed the material fact that he had defaulted on both the housing loan and the auto loan availed by him from the Respondents, in consequence whereof the Respondents were constrained to institute recovery proceedings against him by way of Civil Suit No. 2161 of 2017 before the City Civil Court at Dindoshi, for recovery of Rs.6,51,727/-, and Civil Suit No.1582 of 2016 before the Court of the Civil Judge (Senior Division), Pune, for recovery of Rs. 4,48,441/-. Mr.

Shukla further submitted that neither of these loans stand cleared by the Petitioner to date. In these circumstances, the present Petition is nothing but a malafide device to project the Petitioner as an aggrieved party, when he has defrauded the Respondents by availing of housing and vehicle loan facilities extended to him in his capacity as Divisional In-Charge, while simultaneously and willfully failing to discharge his duties through prolonged unauthorised absence, and defaulting on both loans.

41. Mr. Shukla further submitted that, for all the aforesaid reasons, the present Writ Petition should be dismissed with costs.

#### **ANALYSIS AND FINDINGS :**

42. Although, in the prayers of the Petition, the Petitioner has also challenged the Orders dated 1<sup>st</sup> April 2009 and 13<sup>th</sup> November 2009, in this Judgement, we have confined ourselves to the Orders dated 8<sup>th</sup> April 2013 and 5<sup>th</sup> June 2017, as the Petitioner's Counsel has limited his arguments to the Orders dated 8<sup>th</sup> April 2013 and 5<sup>th</sup> June 2017, and further, in any case, the challenge to Orders of 2009 cannot be raised in a Petition filed in 2018 on the ground of delay and laches.

43. The Order dated 8<sup>th</sup> April 2013 has been passed admittedly without giving any Notice or hearing to the Petitioner. Rule 25 of the 1975 Rules provides for a detailed Inquiry procedure for imposing a major penalty under Rule 23 of Removal from Service which shall not be a

disqualification for future employment.

44. Despite the same, Respondent No.1 imposed such a major penalty on the Petitioner, under Rule 23, without following the procedure laid down in Rule 25 on the basis of the provisions of sub-Rule (ii) and (iv) of Rule 30.

45. Rule 30 of the 1975 Rules reads as under:

**"30. Special procedure in certain cases :-**

*Notwithstanding anything contained in Rule 25 or 26 or 27, the competent authority may impose any of the penalties specified in Rule 23 in any of the following circumstances :-*

*(i) the employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial; or*

*(ii) where the competent authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules, or*

*(iii) where the competent authority is satisfied that in the interest of the security of the Corporation / Subsidiary it is not expedient to hold any inquiry in the manner provided in these rules.*

*(iv) where an employee has abandoned his post, the competent authority may consider the circumstances of the case and pass such orders thereon as it deems fit.*

**Explanation :**

*For the purpose of this rule, an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or overstays his leave for a continuous period of 90 days without any intimation therefor in writing."*

46. The plain reading of 30(ii) of the 1975 rules makes it abundantly clear that the power to dispense with the Departmental Inquiry is an exception to the normal rule and can be exercised only upon the Competent Authority recording specific, objective and cogent reasons in writing demonstrating why it was not reasonably practicable to hold such an Inquiry. The requirement of recording reasons is mandatory and is not an empty formality. In the present case, the impugned Order of Removal dated 8<sup>th</sup> April 2013 is conspicuously silent on this mandatory requirement. The Disciplinary Authority has neither recorded any reasons nor disclosed any circumstances, whatsoever, to indicate why it was allegedly not reasonably practicable to conduct a regular Departmental Inquiry. Mere invocation of Rule 30(ii), without recording the requisite satisfaction founded on objective material, is fully insufficient in law and vitiates the impugned Order.

47. Rule 30(ii) has wording similar to Clause (b) of the 2<sup>nd</sup> proviso to Article 311 of the Constitution of India, which reads as under:

*Art. 311 (2)(b) - Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;*

48. In **Union of India Vs. Tulsiram Patel (Supra)**, the Hon'ble Supreme Court, while dealing with Clause (b) of 2<sup>nd</sup> Proviso to Article

311(2) of the Constitution of India, held that satisfaction of the Disciplinary Authority under the second proviso to Article 311(2) must be based on objective material and that reasons must be recorded in writing showing that it was not reasonably practicable to hold an inquiry. The Court further held that the existence of such reasons are amenable to judicial review. Paragraphs 133, 134 and 138 of the Judgement are relevant and are set out hereunder:

*133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.*

*134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause(b) for the disciplinary*

*authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.*

*138. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in*

*the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.*

49. This principle was reiterated by the Hon'ble Supreme Court in **Jaswant Singh and Others Vs. State of Punjab and Another (Supra)**, wherein the Hon'ble Supreme Court held that the Authority cannot dispense with an inquiry merely on its *ipse dixit* and that objective material must exist to justify such satisfaction. The relevant portion of paragraph 5 of the said Judgement is set out hereunder:

*"Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case: (SCC p. 504, para 130)*

*"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the government servant is weak and must fail."*

*The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer."*

50. Likewise, in **Chief Security Officer and Others Vs. Singasan Rabi Das (Supra)**, the Hon'ble Supreme Court observed that dispensing with a Departmental Inquiry is an exceptional course and cannot be resorted to mechanically or for administrative convenience. The Authority must establish, on the basis of contemporaneous material, that holding an inquiry was genuinely impracticable. Paragraph 5 of the said Judgement is relevant and reads as under :

*5. In our view it is not necessary to go into the submissions made by Dr Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under Rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witness of the security/other railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a*

*confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry. In this view it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment. In the result the appeal fails and is dismissed. There will be no order as to costs.*

51. Recently, the Hon'ble Supreme Court in the case of **Manohar Lal Vs. Commissioner of Police and Others (Supra)**, has considered all the above judgments and reiterated the position that reasons need to be given for dispensing with inquiry. Paragraphs 19 and 41 of the said Judgement are relevant and are set out hereunder :

19. *Further, the Court emphasised the words used in clause (b) of second proviso that the disciplinary authority should record its reasons in writing for its satisfaction that holding an inquiry is not reasonably practicable. In case such reason is not recorded in writing or not valid and justifiable, the order dispensing with the inquiry and the order of penalty flowing therefrom would be void and unconstitutional. Emphasising the scope of judicial review, it is said that in the matters where administrative discretion is exercised, it is open to assail either under Article 226 before High Court or under Article 32 before this Court. Referring clause 3 of Article 311 and reiterating that the decision of disciplinary authority indicating why it is not reasonably practicable to hold an inquiry is not binding on Court and the scope of judicial review is open. In the said contingency, the Court will examine the charges of mala*

*fides if any made in the Writ Petition. It is emphasised that the Court, while exercising judicial review, would not sit as an appellate court but it shall consider the situation due to which, according to the disciplinary authority, it was not reasonably practicable to hold an inquiry. While examining the relevance of the reasoning, the Court ought to place itself as a disciplinary authority and consider whether in the prevailing situation, a reasonable man acting in a reasonable way, would have taken the same decision as taken by the disciplinary authority. If the Court finds that the reasons are irrelevant, then satisfaction of the disciplinary authority may be held to be an abuse of power. In that situation, it would be open to the Court to take the case out of purview of that clause and the order of penalty would stand invalidated.*

41. *In case such a decision invoking the extraordinary power is taken by the competent authority in light of the judgment Tulsiram Patel (Supra) within the parameter as discussed, the scope of judicial review is available to the Constitutional Courts wherein the reasons as assigned for satisfaction of the authority must be reasonable, valid, justified and in writing. In addition, the satisfaction as recorded must be the objective satisfaction on the basis of material brought on record which ordinarily the disciplinary authority may take as a prudent person. Otherwise, dispensing with the enquiry is not permissible in law. In the present case, Section 21 of the 1978 Act confers power of punishment and Section 22 prescribes the procedure for awarding such punishment. The procedure as contemplated has been elaborated under the 1980 Rules. In the present case, in our view, the power exercised by the authority is completely without application of mind, thus, the question of recording of satisfaction as affirmed by the appellate authority, the CAT and the High Court does not arise. Therefore, we can hold that the order dispensing with the*

*regular procedure of inquiry is arbitrary and consequently the order of dismissal of the appellant is liable to be quashed and the orders of the CAT and the High Court affirming the said dismissal order stand set aside.*

**52.** In the present case, the Respondents have failed to satisfy the mandatory pre-condition prescribed under Rule 30(ii) of the 1975 Rules. The impugned Order dated 8<sup>th</sup> April 2013 does not disclose any reason for dispensing with the inquiry. Such mechanical invocation of Rule 30(ii) without compliance with its mandatory requirements renders the Order of Removal arbitrary, illegal and violative of the principles of natural justice and liable to be quashed and set aside.

**53.** Further, as far as sub-Rule (iv) of Rule 30 is concerned, the same is applicable when an employee has abandoned his post. The explanation to sub-Rule (iv) of Rule 30 lays down when employee shall be deemed to have abandoned his post. In our view, the Respondents proceeded on the basis that taking medical leave automatically amounts to abandonment of service. Abandonment of service is never presumed merely because an employee remains absent for a long time. The employer must establish by cogent evidence that the employee had a clear, unequivocal and conscious intention to permanently sever the employer-employee relationship. The facts of the present case show otherwise. Throughout the relevant period, the Petitioner repeatedly requested transfer

to Mumbai on medical grounds, continuously informed the Respondents of his deteriorating health, submitted medical certificates from specialist hospitals, sought medical leave, requested that the inquiry be conducted at Mumbai or that evidence be recorded on Commission due to his inability to travel, and even applied under the Voluntary Separation Scheme. Each of these acts demonstrates the Petitioner's continuing intention to remain in service and is inconsistent with the intention to abandon employment. Further, the Respondents themselves had deputed a retired ACP to verify the Petitioner's illness. The ACP personally visited the Petitioner, found him bedridden and submitted a Report to the Respondents. Instead of relying upon this material evidence, the Respondents withheld the Report altogether.

54. This Court in paragraph 9 of the case of **Noble Paints Private Limited Vs Mr. Ashok Tukaram Shinde (Supra)**, held as under:

*“(9) IN so far as the question of abandonment is concerned, in view of the well settled position in law, abandonment or relinquishment of service is a question of intention. Whether there has been a voluntary abandonment of service is a question of fact which has to be determined in the light of the surrounding circumstances of each case. In (G. T. Lad and others v. Chemicals and Fibres of India) 1979 (1), L. L. J. page 258, a Bench of three learned Judges of the Supreme Court, while laying down these principle, also held that normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. In so far as this Court is concerned, in (Gaurishankar Vishwakarma v. Eagle Spring Industries*

*Private Limited and others), 1988 (1) C. L. R. page 38, a Division Bench held that it is well settled that even in a case of abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and must hold an enquiry before terminating his service on that ground. In (Abdul Rashid v. Indian Sailors Home Society and others), 1988 (1) L. L. N. page 120, the Division Bench, in a case where the employer had raised the defence of abandonment of service, noted that if it was a case of voluntary abandonment, the employer would have communicated with the workman and asked him to report for duty. That was not done.”*

55. Accordingly, the allegation of abandonment has never been established. Absence occasioned by genuine illness, coupled with continuous intimation/communication with the employer and repeated assertion of service rights, can never constitute voluntary abandonment. In these circumstances, the Respondents were not correct in dispensing with an inquiry under Rule 25 of the 1975 Rules on the ground that the Petitioner had abandoned his post under sub-Rule(iv) of Rule 30 of the 1975 Rules.

56. For all the aforesaid reasons, the Order dated 8<sup>th</sup> April 2013 is required to be set aside. The Appellate Order dated 5<sup>th</sup> June 2017 also does not provide adequate reasons as to why sub-Rules (ii) and (iv) of Rule 30 were invoked. The only reason stated is that the Petitioner did not attend the earlier inquiry. In our view, for the reasons stated above, sub-Rules (ii) and (iv) of Rule 30 of the 1975 Rules could not have been invoked on that

ground. Therefore, the Appellate Order dated 5<sup>th</sup> June 2017 is also required to be set aside.

57. We will now deal with some of the other submissions made by the Respondents.

58. It is the case of the Respondents that the present Writ Petition is not maintainable as the dispute is one of purely private contractual character. In support of this submission, the Respondents have relied upon the Judgement of the Hon'ble Supreme Court in **Ramesh Sanka (Supra)** and **K. K. Saksena Vs. International Commission on Irrigation and Drainage (Supra)**. There can be no dispute with the law laid down in both these Judgements. However, in the present case, Respondent No.1 is 'State' within the meaning of Article 12 of the Constitution of India, and therefore, the present Writ Petition is maintainable against it. Further, sub-Rules (ii) and (iv) of Rule 30 of the 1975 Rules are wrongly invoked in the present case, which is certainly a public issue warranting interference by this Court. Further, in the present case, there has been a wrongful removal of the Petitioner from employment by the said Order dated 8<sup>th</sup> April 2013. The statutory remedy of an Appeal was also exhausted and the Appellate Order dated 5<sup>th</sup> June 2017 confirmed the Order dated 8<sup>th</sup> April 2013. Therefore, the Petitioner is entitled to invoke the writ jurisdiction of this Court to get his grievances redressed.

59. It is further the submission of the Respondents that the

Petitioner has approached this Court with suppression and misrepresentation of material facts and, therefore, the present Writ Petition should be dismissed. In this context, it is well settled that suppression of material facts disentitles the Petitioner from getting relief. Having considered the submissions of the Respondents and having perused the Writ Petition, we are of the opinion that the Petitioner has not suppressed any material fact which would disentitle him to relief.

**60.** The next submission of the Respondents is that the Petitioner is a chronic defaulter and has approached this Court to evade liability and therefore, on this ground also, the Writ Petition deserves to be dismissed. In support of this submission, the Respondents have contended that the Petitioner has committed defaults in repayment of housing loan and the vehicle loan availed from the Respondents. In our view, the default on housing loan and vehicle loan cannot be the ground for not entertaining the present Writ Petition which has been filed alleging that the Petitioner has been wrongfully removed from service. The Respondents have their own remedy in respect of default of housing loan and vehicle loan, and they have invoked the said remedy by filing Civil Suits for recovery of these loans.

**61.** As far as the reliefs sought by the Petitioner are concerned, along with other reliefs, the Petitioner has also sought payment of back wages. In our view, the Petitioner is not entitled to back wages for the

period for which he was not working and was on leave. Therefore, we are not inclined to grant the said relief.

### **ORDER**

In light of the aforesaid discussion and for the aforesaid reasons:

(a) The Orders dated 8<sup>th</sup> April 2013 and 5<sup>th</sup> June 2017 are hereby quashed and set aside.

(b) The Respondents are directed to pay to the Petitioner back wages, if any, for the period for which the Petitioner was actually working with the Respondents and was not on leave.

(c) The Respondents are directed to release all retirement benefits to the Petitioner, including pension on his superannuation from service, with simple interest thereon at the rate of 9% per annum, from the date of superannuation till the date of payment.

(d) The Respondents are directed to release the Provident Fund dues to the Petitioner as per Trust Rules of Respondent No.1, along with simple interest thereon at the rate of 9% per annum from the date of superannuation till the date of payment.

(e) The Rule is made absolute in the aforesaid terms

and the Writ Petition is disposed of in the aforesaid terms.

(f) In the facts and circumstances of the case, there shall be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]

[R.I. CHAGLA, J.]