

(2012) 02 P&H CK 0045

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 9010 of 2010 (O and M)

Smt. Narinder Kaur

APPELLANT

Vs

United India Insurance
Company Ltd. and
others

RESPONDENT

Date of Decision: Feb. 13, 2012

Citation: (2012) 166 PLR 60

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K. Kannan, J.

The writ petition challenges the order passed in departmental proceedings finding the petitioner's husband as having been guilty in colluding with surveyors and generating false motor claims for various amounts to the benefit of 6 different persons, who had insured the respective vehicles with the respondent-Corporation and had the cheques prepared in the names of insured but later the names had been modified by the petitioner's husband without authorization and payments made of various sums totaling Rs. 1,24,640/-. The inquiry got concluded resulting in a report finding the petitioner's husband guilty of the charges attributed to him. On the basis of the report, the disciplinary authority proceeded to dismiss the petitioner's husband from service along with his superior officer. Appeals have been filed but while the petitioner's husband's appeal was dismissed. The appeal filed by the co-employee had been modified and the punishment of dismissal from service had been reduced to lesser punishment. The charged employee submitted a memorial to a still higher official but before any decision was communicated, the petitioner's husband had died. The petitioner, therefore, filed a petition challenging the order passed by the disciplinary authority and the appellate authority. The writ petition had been filed challenging only the respective orders of the disciplinary authority and the appellate authority, without making any reference to the manner of disposal of the

memorial but the respondents filed the written statement contending that no memorial at all had been filed. The petitioner has filed replication making a reference to the rejection of the memorial on 26.10.2006 and has filed copy of the same as Annexure P-13. It was at that time that the respondents have filed an amended written statement, after seeking permission from the Court, affirming that indeed a memorial had been filed and also disposed of rejecting the petitioner's husband's contention and that the writ petition cannot be sustained when it did not contain a challenge to order passed by a still higher authority. The contention is that the orders impugned have merged with the order passed on the memorial on 26.10.2006 and the writ petition cannot be sustained without assailing the order passed on 26.10.2006. The objection taken through amended written statement as regards the maintainability of the writ petition is not without significance, for, it is not the petitioner's contention, on her own pleadings, that the memorial had not been disposed of. There was no reason to simply discard the decision taken by the authority on 26.10.2006 and challenge merely the orders passed by the disciplinary authority and the appellate authority. There is a fundamental flaw in the writ petition in the manner that has been framed without challenging the order ultimately passed on 26.10.2006 but in the interest of justice, I would not, however, still treat this as a ground for summary rejection and I would hasten to proceed to consider the merits of the contention raised by the petitioner in the writ petition against the orders impugned.

2. The gravaman of chargesheet is that the petitioner's husband colluded with the surveyors and fabricated false claims in the names of the insured persons of various vehicles. Each one of the articles of the charge contains a second portion as well, in that it refers to modification of names of the payees and counter signatures made by the petitioner's husband. It has been brought through the evidence that the claims of the insured themselves were false and there had been no such accidents that could have led to the assessment of the amounts as payable to the various insured persons. The second portion of each one of the articles of the charges would refer to the fact that the names of the payees have been changed. The learned counsel appearing on behalf of the petitioner would point out that the authority has relied on a report obtained from Forensic Science Department, Chennai finding that cuttings had been made in the payees' names and that different names had been given with the counter signatures of the petitioner's husband. The counsel would point out that in the list of documents filed by the Management, the report of the Forensic Science Department itself had not been referred to and the decision taken by the disciplinary authority acting on the inquiry officer's report was erroneous, for, it was flawed on a fundamental issue of procedure that a document, which had not been cited and put to the knowledge of the petitioner was being relied on to conclude the charges against the petitioner's husband. While I would accede to the petitioner's plea that no document that was not put to the knowledge of the petitioner's husband could have been relied, I would still not take this objection to prevail on the basic finding recorded that there had been a collusion by the petitioner with the surveyors to make spurious claims and the cheques had been got issued in the names of insured persons for various amounts. The financial loss arises by generating fake claims and

making out cheques in the names of the insured persons and the alterations of the names of the payees were merely a subsidiary charge and does not take away the sting of the substantial charges imputed against the petitioner's husband. If the findings of the inquiry officer that the petitioner's husband had engineered to fabricate false claims in collusion with surveyors and had thereby caused financial loss could be seen to be unassailable as findings rendered on an appreciation of facts, I will not allow this to be diluted by an error in procedure by referring to the report of the forensic expert that the names of the payees had been altered for the subsidiary charge. In fact the petitioner's husband himself was not denying that the cheques had been originally drawn in the names of the insured persons and later modified. It was merely stating the obvious and it was an admitted fact, and affirmed through the forensic expert's report. The petitioner's husband could not, therefore, be taken to have been prejudiced.

3. If the charges of fabrication of claims are confirmed, then the limit of intervention for the punishment meted out would require the Court only to see if the punishment was capricious and disproportionate. In a case where financial loss has been caused by spurious claims, the punishment of removal of service cannot be seen to be wrong.

4. The learned counsel appearing for the petitioner also contends that a superior officer, who had also counter-signed the cheques had been dealt with leniently while the petitioner's husband alone had been removed from service. I cannot take an example of different treatment for another person to be relevant, without minding the actual imputation of the criminal conduct of the petitioner's husband. I have no means of assessing what was the extent of participation of the superior officer in fabricating the spurious claims. Unless the disciplinary authority had himself also found and the appellate authority had also affirmed that even the claims had been falsely generated by the petitioner's husband, acting also in collusion with the superior officer, a punishment that has been granted to him, which was later reduced cannot be seen to be wrong. It is one thing for superior officer to counter-sign the cheques where rules might require certain amounts payable by the Corporation to be approved but quite another for a person to be acting in collusion with surveyors to generate spurious claims. I have not been shown through any finding that the superior officer was also found guilty of acting in collusion with the surveyors. If the punishment for the superior officer had been reduced for only cut in his increments and his own act was seen to be erroneous only insofar as he had counter-signed all the cheques payable, that would by itself not conclude the issue in favour of the petitioner. As far as the petitioner's husband is concerned, the charges proved against him were serious enough that deserved extreme punishment of removal from service. I would find no cause for interfering with the impugned orders. They are maintained and the writ petition is dismissed.