
(1993) 02 AHC CK 0050
In the Allahabad High Court
Case No : Writ Petition No. 12 of 1981

Jagdish Punnn

APPELLANT

Vs

National Insurance Co.Ltd., and others

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Citation : (1993) 02 AHC CK 0050

Hon'ble Judges : S.H.A.Raza, J

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—The fate of this writ petition hinges on the reply to the question, firstly that as to whether the person appointed in National Insurance Company Ltd., can be proceeded against for any act of commission or omission relating to a period while he was posted in Calcutta Insurance Ltd., secondly as to whether the disciplinary authority who passed the order dismissing the petitioner from service was competent to pass such an order.

2. The factual matrix as set out in the writ petition is that on May 1, 1969, the petitioner was appointed as Development Secretary, in the erstwhile Insurance Company Ltd. and he was posted at Lucknow Office of the said Company. In the year 1972 the General Insurance (Nationalisation) Act that is Act no. 57 of 1972 was passed by the Parliament. The shares of that Company were transferred and vested in the Central Government. Section 16 of the said Act provided for a Scheme of Merger of the Companies and formation of one or more Companies. It was contemplated that Calcutta Insurance Ltd., would be merged into National Insurance Company Ltd. and pending actual merger the Calcutta Insurance Ltd., was to be known as National Company Unit Ltd. Calcutta Insurance. On 11/1975, the completion of the merger was accomplished, and the Calcutta Insurance Company ceased to exist, and a new unit known as National Insurance Company came into being. On 30th September, 1975, by means of the order, passed by Chairman cum Managing Director of National Insurance Company Ltd., 3 Middleton Street, Calcutta the petitioner was appointed in the rank of Assistant

Administrative Officer in the Company with immediate effect. The said order is reproduced below:

?I have pleasure in informing you that you have been provisionally selected for appointment in the rank of Assistant Administrative Officer and I hereby appoint you in the rank of Assistant Administrative Officer in the Company with immediate effect.

However, I wish to make it clear that this appointment is purely provisional and does not confer on you any right to the post or to any particular seniority in the Company. Please also note that you will hold this post on the same terms and conditions of service by which you are governed at present and you will continue to do so until such time as the remuneration, terms and conditions are duly altered by the Company.

Order of your posting will follow.

You are requested to sign the duplicate of the appointment letter in confirmation of your acceptance of the foregoing and return the same to me,?

Yours faithfully,

Sd. S.C. Chatterjee

ChairmanManaging Director.?

30. On 15.11.1976 the petitioner was suspended from service and on 27.11.1976 he was served with a chargesheet. All the charges pertained to the period while the petitioner was working in the Calcutta Insurance Company Ltd., which is evident from Article of charges contained in Annexure 2 to the writ petition.

4. The aforesaid contentions were more or less admitted, but, however, it was clarified in the counter affidavit, that section 16(1)(a) of General Insurance (Business) Nationalisation Act, 1972, provided that the Central Government may frame Schemes for the merger of various Companies so as to leave only four Insurance Companies to carry on the business of General Insurance. Section 16(1)(g) provided for the framing of the Scheme by the Central Government for the rationalisation of pay scales and other conditions of service employed in various Insurance Companies. Accordingly, in pursuance of the powers given under section 16(1)(a) the Central Government framed, four various Schemes for the merger of Companies, as a result of which four Companies were left to do Insurance Business and all other Companies were merged in one or other Companies:

1. New India Insurance Company Ltd,
2. The Oriental Fire & General Insurance Company Limited.
3. National Insurance Company Limited.
4. United India Insurance Company Ltd.

5. Paragraph 5 of the merger scheme provided that the employees of various companies, which were nationalised shall continue to hold their posts on the same terms and conditions on which they were employed, in the erstwhile insurance companies, until the said terms and conditions were duly altered. Clause 5 of the merger scheme was as follows:

Transfer of service of adjusting employees:

Every whole time officer or other employee of any merged company who was employed by such company immediately before the specified day shall on and from that date become an officer or other employee, as the case may be, of the transferee company and shall hold his office or service under the transferee company on the same terms and conditions and with the same rights as to pension, gratuity and other matters as would have been admissible to him if there has been no such transfer as referred to in paragraph 3 and shall continue to do so, unless and until his employment in the transferee company is terminated or until his remuneration, terms and conditions are duly altered by the transferee company or by any other scheme framed under the Act.?

6. It was further averred in the counter affidavit that the Calcutta Insurance Company had merged into the National Insurance Company Limited with effect from the appointed day under the aforesaid Act i.e, 111973. Thus the service of the petitioner continued under the opposite party no. 1. There was 110 new employment as alleged. National Insurance Company Ltd. being successor in law were vested with all powers and privileges, rights and liabilities which were vested in or enjoyed by the erstwhile Calcutta Insurance Company Limited. In fact the petitioner accepted and acquiesced into the said position and received benefit therefrom. Thus both in law and equity the claim of the petitioner to the contrary, is misconceived, untenable and inadmissible.

7. Subsequently, the Central Government framed three Schemes for rationalisation of the pay scales and other conditions of service of three different categories of employees working in the General Insurance Industry. The said Scheme were as follows;

(1) The General Insurance (Rationalisation of Pay Scales and other conditions of Service of Clerical and Supervisory Staff) Scheme, 1974.

(2) The General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Officers) Scheme, 1975.

(3) The General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Scheme, 1976.

8. The petitioner was covered under the said Scheme and was accordingly categorised in terms of the said scheme.

9. In paragraph 9 of the counter affidavit it was not denied that petitioner was offered any fresh appointment by the National Insurance Company Limited by

categorising him as Assistant Administrative Officer. It was averred that as already submitted the service of the petitioner continued in terms of Clause 5 of the Merger Scheme on the same terms and conditions on which he was holding his appointment under the Calcutta Insurance Company Ltd., and the said terms were duly altered under the said Scheme. This categorisation did not in any manner change the contract of employment. The National Insurance Company Limited being the successor of erstwhile Calcutta Insurance Company became the employer of the petitioner. The respondent no. 2 did not give any fresh appointment as alleged. He continued as per his original employment. Only the terms and conditions were changed by statutory provisions. From the aforesaid averments it is evident that the case of the opposite parties is that the service of the petitioner continued in terms of clause 5 of the merger scheme on the same terms and conditions on which he was holding his appointment under the erstwhile Calcutta Insurance Company Limited. The opposite parties have not denied the contents and factum of the appointment order dated 30th September, 1975 issued by ChairmancumManaging Director of the National Insurance Company Limited, Calcutta. According to clause 5 of the merger scheme, there existed no necessity for the transferee company to issue a fresh appointment order, as every officer of the merged company would have become officer of the transferee company, on the same terms and conditions and with the same rights as to pension, gratuity and other matter as would have been admissible to him. If there had been no transfer, but in the present case a fresh appointment order was issued appointing the petitioner in the rank of Assistant Administrative Officer while in the erstwhile company he was holding the post of Development Secretary. The said appointment was only provisional, which did not confer upon the petitioner any right to the post or to any particular seniority in the company. It simply means that the period of service rendered by the petitioner in erstwhile company would not be computed for the purposes of seniority in the transferee company. It is further to be noted that the petitioner was categorised as Assistant Administrative Officer in pursuance of the aforesaid appointment order issued by the National Insurance Company Ltd.

10. In the ease of Mahavir Prasad Jain v. Nagarmahapalika, Lucknow decided on 6 21969 (Writ Petition no. 828 of 1967) the case of the petitioner was that earlier he was an employee of the Nagarmahapalika, Lucknow and was later on absorbed in the Palika Centralised Service. He was suspended and chargesheeted for his conduct prior to his absorption in the Palika Centralised Service; whereas the charges related to the period when he was in the service of Nagarmahupalika, Lucknow. The contention of the petitioner was that it was not open to the new employer to proceed on the basis of any misconduct on the part of the employee alleged to have been committed in the course of his past services. This contention was upheld and the order of suspension as well as the charge sheet were quashed by the High Court.

11. In the case of Ram Gopal Nigam v. State of U.P. decided on 2881962 by a Division Bench of this Court (Writ Petition no. 135 of 1969) it was indicated that

a person absorbed in Mahapalika Centralised Services cannot be proceeded against for any act of commission or omission relating to a period prior to his absorption in the service in a disciplinary proceedings initiated after his absorption to the Centralised Services.

12. The Allahabad High Court again in Civil Miscellaneous Writ Petition no. 2316 of 1975 in re: Jagdish Prasad Verma v. State of U.P., held that the proceedings initiated against the petitioner were without jurisdiction, since the charges related to a period when he was Principal of a Private Institution and not a government servant "in a Government college In that case action was taken by the Government against the petitioner on the basis of the charges relating to a period when Sri Sharma was in employment of a private institution and had been subsequently absorbed in a Government College.

13. In Writ petition no, 12 3 of 1975 G.C. Verma v. UPSEB and others a Division Bench of this Court again considered a similar question, The facts of that case were that Gyan Chandra Verma was Engineer, Hydel Division, Lucknow in 1969, whereafter he was absorbed as an Executive Engineer in the UPSEB with effect from 181972. After his absorption in the Board action was initiated against him departmentally on several charges amounting to misconduct in the discharge of his official duties allegedly committed during the period of his employment. Sri Verma was under the employment of the State Government. In the aforesaid circumstances it was indicated that the State Electricity Board had no jurisdiction departmentally to try Sri Verma on the charges before the period of his actual absorption in the Board.

14. Learned counsel for the respondents vehemently submitted that under clause 5 of the merger scheme the petitioner became officer of the transferee company on the same terms and conditions and with the same rights as to the pension, gratuity and other matters as would have been admissible to him if there has been no such transfer and shall continue to do so until and unless his transfer under the transferee company is terminated or until his remuneration and terms and conditions are duly altered by the transferee company or in any other scheme framed under the Act. Hence it cannot be said that after the merger, the petitioner belongs to a new service. The argument advanced is misconceived firstly for the reason that the petitioner was provisionally selected and appointed in the rank of Administrative Officer, in view of clause 5 of the merger scheme there existed no justification for the opposite parties to have selected and appointed the petitioner in the rank of Assistant Administrative Officer as under clause 5 of the merger scheme he would become an officer of the transferee company, secondly that he was appointed in the rank of Assistant Administrative Officer while in Calcutta Insurance Limited he was working as Development Secretary. This categorisation of the petitioner as Assistant Administrative Officer envisages a new contract of employment, thirdly the appointment was provisional in terms of the appointment order, fourthly it did not confer any right to the post or to any particular seniority in the Company, meaning thereby that

his previous service in the Calcutta Insurance Company was not at all computed or taken into account and lastly he was not appointed on the same terms and conditions with the same rights as to the pension etc. which had been admissible to him in the Calcutta Insurance Company. The petitioner by means of his application dated 26th April, 1977 submitted before the Inquiry Officer which has been annexed as Annexure 6 to the writ petition, challenged the inquiry on the ground that he was appointed as Assistant Administrative Officer by the Chairmancum Managing Director and letter itself indicated that his past services with M/s. Calcutta Insurance Company were not recognised and the terms of the appointment unconnected with his past service. Further that he was not given any benefit of his long services in the Calcutta Insurance Company which is evident from his order of appointment. Hence his past act of omission and commission alleged to have been committed by him prior to his appointment could not be made the subject matter of any disciplinary proceeding in the National Insurance Company, but nowhere in the counter affidavit the averments so made in the aforesaid application which has been annexed along with the counter affidavit were rebutted.

15. In paragraph 57 of the counter affidavit which is reply to paragraph 59 of the writ petition where the said application was referred to it was indicated that it was denied that a fresh appointment was given as alleged or that a new contract came into existence. Nowhere it has been explained as to why in accordance with clause 5 of the merger scheme the petitioner had not become an officer of the transferee company, on the same terms and conditions with the same rights as to the pension, gratuity and other matters as would have been admissible to him if there had been no such transfer. It was not at all explained as to why the petitioner was offered a fresh appointment without providing him the benefit of his past services. Why he was not allowed to hold his office of service under the transferee company under the same terms and conditions and with the same rights as to the pension, gratuity and other matters as would have been admissible to him if there had been no such transfer.

16. In view of his appointment dated 30th September, 1974 as Assistant Administrative Officer in the National Insurance Company there is no escape from the conclusion that with effect from the date of his appointment as Assistant Administrative Officer the petitioner belonged to new service and ceased to be an employee of Calcutta Insurance Limited and there existed no justification for the National Insurance Company Ltd. to initiate disciplinary proceedings against the petitioner in relation to acts of commission and omission alleged to have been committed by him while serving under Calcutta Insurance Limited. I would accordingly uphold the contention of the petitioner that since after 30th September, 1975 the date on which he was appointed as Administrative Officer, the petitioner cannot be proceeded with against the act of misconduct alleged to have been committed by him prior to that date.

17. As far as other question regarding the competence of the authority which

had passed the order of dismissal is concerned, it is pertinent to mention that the petitioner was never informed as to who passed the order of dismissal.

18. On a query so made by the petitioner on 7880 the petitioner addressed a letter to the ChairmancumManaging Director, National Insurance Company Limited, Calcutta in which he stated that the Regional Office, New Delhi vide their letter dated 2nd June, 1980 under the signature of Shri D.C. Gupta, Manager has advised him that the competent authority had found him guilty of charges 1 to 5 of the chargesheet dated 17111976 and has awarded dismissal from service with immediate effect The Manager further advised the petitioner that the punishment did not affect the right of the Company to receive the loss suffered by the company due to his acts. In the said application, the petitioner mentioned that he had sent a registered letter dated 28th July, 1980 to the Assistant General Manager, New Delhi requesting him to send him his original order wherein his services were dismissed so that he might know the name and designation of the competent authority. In reply to the said letter the Chief Vigilance Officer of the National Insurance Company Limited, Calcutta informed the petitioner that the matter had been referred to Assistant General Manager, New Delhi. In paragraph 61 of the counter affidavit it was averred that the records of the inquiry were placed before Sri R.K. Thapar who was at that time holding the post of Assistant General Manager. The decision of the competent authority was communicated to the petitioner by Sri D.C. Gupta, the Manager. In paragraph 64 of the writ petition the petitioner has averred that no order of dismissal passed by the ? competent authority? with any reason had been communicated or served to him. The Manager, who had communicated the order of dismissal, apparently was not the dismissing authority. No authority which allegedly took the decision of dismissal had been specified In reply to the said contention it was denied that the dismissal authority was not the competent authority.

19. A perusal of Annexure1 to the writ petition which purports to be the appointment order of the petitioner indicates that the petitioner was appointed as Administrative Officer in its Insurance Company by the Chairman cumManaging Director, but the order of dismissal appears to have been passed by Sri R.K. Thapar who at that relevant time was holding the post of Assistant General Manager. Nowhere in the counter affidavit it has been indicated that as to whether any such power to dismiss an officer to the rank of the petitioner was ever delegated by ChairmancumManaging Director to the Assistant General Manager. The irresistible conclusion which can be derived from the averments made in the writ petition as well as in the counter affidavit would be that Sri R.K. Thapar, Assistant General Manager, who at the relevant time was the Assistant General Manager of the National Insurance Company Limited, was not competent to pass the order of dismissal from service of the petitioner. It is strange that the opposite parties have never communicated the order of dismissal passed against the petitioner. If the same would have been produced, the Court could have appreciated as to whether the disciplinary authority had applied his mind over the record of the inquiry or the inquiry report while passing the order of

dismissal. Even during the course of the present proceedings before this Court neither order of dismissal passed by the competent authority was annexed with the counter affidavit nor it was produced before this Court for perusal. The communication of the operative portion of the order by the Manager of the Company could not be deemed to be the communication of the order passed by the competent authority dismissing the services of the petitioner.

20. As the order of dismissal is vitiated on the two grounds indicated hereinabove I have not strolled into other fields which have been given by the petitioner in his writ petition.

21. In the result, the writ petition succeeds. A writ in the nature of certiorari is issued quashing the impugned orders contained in Annexures 2 and 8 to this writ petition, with all consequential benefits.

However, in the circumstances of this case no order is made as to costs.