

(2003) 05 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 485 of 1999

National Insurance Co.

APPELLANT

Vs

H.S. Rainal and Others

RESPONDENT

Date of Decision : 27-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3)

Citation : (2003) 3 JKJ 603

Hon'ble Judges : V.K. Jhanji, Acting C.J.; S.K. Gupta, J

Bench : Division Bench

Advocate : J.A. Kawoosa and Kamal Gupta, for the Appellant; Davinder Singh, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, A.C.J.

1. This LPA is directed against order dated 22.7.1999 of the learned Single Judge whereby writ petition (SWP No. 947/91) filed by respondent

No. 1 (hereinafter referred to writ petitioner) has been disposed of with a direction to the appellant National Insurance Company Ltd. (hereinafter

referred to Insurance Company) to consider the claim of the petitioner afresh by taking into consideration the date when S.K. Dhar (respondent

No. 4 in the writ petition) was promoted from time to time.

2. The present writ petition is not the only one filed by the petitioner, but number of writ petitions came to be filed from time to time. In order to

understand the grievance of the petitioner and the matters which have been decided, it is necessary to take note of brief facts of the case.

3. Writ petitioner was working with the Insurance Company as an Administrative Officer when he filed writ petition No. 432/82 wherein he

challenged his initial categorization as Administrative Officer. According to the Insurance Company the said writ petition was filed after nearly 7 years from the date the categorization was finalised by the Company in terms of the provisions of the Nationalisation Act and the various Schemes framed there - under. During the pendency of the aforementioned writ petition, the writ petitioner filed two more writ petitions No. 267/1984 and 268/1984, in which he prayed for restoration of development functions and promotion to the rank of Divisional Manager, Senior Divisional Manager and General Manager with effect from different dates and years given therein. In Writ Petition No. 268/1984 he impleaded as many as 30 respondents and by an interim order passed therein it was directed that the writ petitioner shall not be placed in any Division which may be headed by any one of those arrayed as respondents 3 to 30 in the writ petition. Because of the interim order Insurance Company was left with no option but to transfer the writ petitioner out of Jammu as the person heading the Jammu Division of the Insurance Company at that time was arrayed as respondent. Petitioner challenged the order of transfer by way of yet another writ petition No. 542 of 1984. By a detailed order dated 27.2.1985 the Court directed that writ petitioner as a stop gap arrangement shall continue to work at Jammu but the Insurance Company shall post some one who is not a respondent in petition No. 268/1984 as Divisional Manager at Jammu. In pursuance of the said order S.K. Dhar (Respondent No. 4 in the writ petition) who was already holding the post of Assistant Manager was transferred from Delhi and posted as Divisional Manager at Jammu. It is pertinent to mention here that if an Assistant Manager is posted in a Division then he is known as Divisional Manager and if a person is posted in a Region then he is designated as Assistant Manager. S.K. Dhar was in the year 1985 holding the post of Assistant Manager and on his posting at Jammu Division he was designated as Divisional Manager and Writ Petitioner worked under him as an Administrative Officer. Writ Petitioner filed another writ petition No. 970/1985 in which he challenged the promotions of S.K. Dhar, Divisional Manager, S.M.L. Koul, Manager and Y.P. Chopra, Manager. The promotion of S.K. Dhar to the post of Assistant Manager was also challenged in that writ petition. Neither the order promoting S.K. Dhar was annexed to the writ petition nor it was stated as to on which date he was promoted. On 26.10.1988

the Court directed the writ petition to be listed for hearing after the decision of the writ petitions Nos. 432/82, 268/84, 267/84 and 542/84. The

writ petition mentioned earlier was pending in the Srinagar Wing of the High Court. According to the Insurance Company, hearing of the writ

petition was being delayed by the writ petitioner on one pretext or the other, with the result that the Court directed that the writ petition be

transferred to Jammu Wing of the High Court as cause of action actually arose within the jurisdiction of the Jammu Wing of the High Court.

Against the order of transfer of the writ petition, the writ petitioner filed an application before the Hon'ble Chief Justice seeking re - transfer of the

writ petition to Srinagar Wing of the High Court. On 17.12.1986 an agreed order was passed whereby the Insurance Company was given liberty

to transfer the writ petitioner from Jammu to Srinagar in supersession of the earlier order whereby such an embargo had been placed. Pursuant to

the order of the Hon'ble Chief Justice, the Insurance Company transferred the writ petitioner from Jammu to Srinagar. Said order too was

challenged by the writ petitioner in writ petition No. 81/1987. By order dated 9.6.1988 the writ petition was disposed of with the direction that the

writ petitioner shall not be placed under his juniors at Srinagar Branch of the Insurance Company. The question of seniority of the writ petitioner

and other officers of the Company was not decided. The observation made in the order was not to prejudice the rights of the parties, who were

either posted at Srinagar or with whom the writ petitioner had the dispute over the seniority. In regard to such remarks which had been made by

the writ petitioner or his counsel in the unamended writ petition, it was observed as under:

Before parting with this writ petition we would like to say that remarks made by the petitioner or his counsel in the unamended writ petition about

one of us (Chief Justice) are unwarranted and uncalled for. It is shocking to note that petitioner has attributed motives to the Court which passed

the order dated 17.12.1982. The order was consent order and was passed in presence of the petitioner's two lawyers whose presence is

recorded in the said order. After that petitioner has acted irresponsibly by drawing paras 4 & 5 of the writ petition in such a manner which amounts

to maligning the Court. This is sad and reprehensible. The petitioner and his counsel who had framed the writ petition should have acted

responsibly and carefully, but we have noted with dismay that to overcome the effect of consent order, they have resorted to fair insinuations and

accused (Chief Justice) of having passed the order dated 17.12.1986 by threatening the petitioner's counsel. This insinuation is not only unfounded

and mischievous, but is contemptuous also. These paras subsequently were permitted to be amended but the unamended petition is also on the

record which contains the mischievous allegations.

We refrain from initiating contempt proceedings against the petitioner and his counsel who has framed the writ petition because by reason of our

office, we have to halt at the dates of controversy. K.L. Gauba's case ILR (1942) Lah. 411 reminds us that

as enlightenment spreads and public opinion ripens this judicial self allegation will be appreciated better and not

embolden the licentious to trample upon everything sacred in society and to overthrow those institutions which have hitherto been deemed the

bent guardians of civil liberty.

We have therefore only sounded a note of caution to the petitioner and to his counsel to be cautious in future as said by Justice Iyar in Shri

Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, :

Judges and Courts have diverse duties. But functionally, historically and jurisprudentially the value which is dear to the community and the function

which deserves to be cordoned off from public molestation, is judicial.

4. Undeterred writ petitioner filed another writ petition No. 82/1987 whereby he challenged the quashing of charge-sheet dated 29.7.1986 and

19.1.1987 which in the meantime had been served upon him. He also prayed for holding of an enquiry into the reasons on the basis of which

Jammu Division of the Insurance Company had suffered loss of in the year 1985-86. He further prayed for promotion to the rank of General

Manager from 1984. In the said writ petition S.K. Dhar was arrayed as a party respondent as his promotion from time to time to various posts

was also challenged. Yet another writ petition bearing No. 111/88 was filed in which he again prayed that he be promoted to the rank of General

Manager. One More writ petition 665/88 was filed challenging the order of transfer from Jammu to Srinagar.

He also prayed therein that he be promoted to the post of General Manager.

When all the writ petitions filed by the writ petitioner were pending disposal at Srinagar, writ petitioner on 30.6.1985 filed an application for withdrawal of the writ petition and the CMPs pending disposal. In the application he submitted that his grievance is being redressed out side the Court by the Insurance Company and so writ petition be dismissed as withdrawn along with the connected CMPs. The Court recorded the submission of the writ petitioner and dismissed the writ petition as withdrawn. The interim directions, if any, were vacated.

5. According to the respondents the writ petitioner though was not found eligible for promotion but taking lenient view in the matter by order dated 1.7.1989 he was posted to the post of Assistant Manager and was posted as Divisional Manger, Jammu Division-II. As already noticed when an Assistant Manager is posted in a Division he is designated as Divisional Manager and when he is posted in a Regional office, he is designated as Assistant Manager. Writ Petitioner accepted the promotion to the post of Assistant Manager and joined in new place of posting and worked as Divisional Manager, Division No. II, Jammu till his superannuation. After his superannuation and after lapse of two years of the withdrawal of the writ petition, the writ petitioner filed SWP No. 947/91. Order passes in the said writ petition now is the subject matter of this appeal.

6. In the writ petition, the petitioner arrayed Ramesh Kapoor, Regional Manager; S.K. Dhar, Sr. Divisional Manager; S.M.L. Koul, Manager and Y.P. Chopra, Manager as respondents No. 3, 4, 5 & 6. In the writ petition he not only challenged the promotion and seniority of the said respondents, but also sought quashing of the seniority list issued under Circular dated 3.5.1989 of the cadre of Dy. Mangers and also the seniority list dated 9.10.1990 of Managers. Writ petitioner further prayed that the promotion of respondents Ramesh Kapoor, S.M.L. Koul and Y.P. Chopra as Managers be quashed and the Insurance Company be directed to restore the seniority position of the writ petitioner and to promote him as General Manager with effect from 1984. He also sought a direction that he be promoted to the post of Senior Divisional Manager, Deputy Manager and Manager immediately from the dates Ramesh Kapoor, S.K. Dhar, S.M.L. Koul and Y.P. Chopra were promoted to the ranks they were holding.

7. Upon notice of the writ petition Insurance Company raised number of objections including that the writ petition is not maintainable as earlier writ petition challenging the promotion of private respondents was withdrawn unconditionally and the writ petition on the same cause of action is not competent; that the writ petitioner is estopped from calling in question the promotion of private respondents without disclosing as to how their promotion is bad either under policy or the regulations of the Company. It was also stated that through promotion of respondents No. 3 to 5 as Managers has been challenged but their orders of promotion have not been annexed to the writ petition. It was also stated that the writ petition seeking quashing of the seniority list of Deputy Managers and Managers while writ petitioner himself is an Assistant Manager, is not maintainable.

In regard to the challenge made by the writ petitioner to circular No. PRS-MPL-HO/21/89 dated 3.5.1989 of cadre of Dy. Managers and

Managers and the seniority of Dy. Managers dated 9.10.1990 the Insurance Company submitted that all the persons mentioned in the said list

have not been made party to the writ petition and therefore, the writ petition is not maintainable.

8. As noticed earlier, learned Single Judge disposed of the writ petition with a direction to the Insurance Company to consider the claim of the

petitioner afresh by taking into consideration the date when S.K. Dhar was promoted from time to time.

9. The Insurance Company has come in appeal.

10. Submission of the learned counsel for the appellant is that the learned Single Judge has failed to appreciate that in view of the unconditional

withdrawal of the earlier writ petition the present writ petition was not maintainable. According to the learned counsel in the earlier writ petition, the

writ petitioner had claimed that he be promoted to the post of General Manager and therefore, the same issue cannot be agitated in the present

writ petition. Learned counsel further submitted that the findings of the learned Single Judge that S.K. Dhar was not a party to the earlier writ

petition is factually incorrect. According to the learned counsel, he was not only party but his promotion too had been challenged by the writ

petitioner and the said writ petition was withdrawn unconditionally. He further submitted that the petitioner has challenged Circular No. PRS-

MPS-HO/21/89 dated 3.5.1989 but yet has failed to implead all those persons mentioned therein as party respondents to the writ petition.

Learned counsel also submitted that the writ petitioner had the right of consideration for promotion which was accorded to him, but was not found

eligible and therefore, the learned Single Judge could not have directed the re-consideration without holding that he was not considered in

accordance with law. He further submitted that the writ petitioner while challenging the order of promotion of respondents No. 3 to 5 as managers,

has not annexed copy of the order of Promotion and so the writ petition in this regard was not maintainable at all. In regard to the promotion of the

petitioner to the rank of Asstt Manager he submitted that though he was not found eligible for promotion but taking a lenient view and taking it as a

special case when the Insurance Company decided to open a Divisional Office-II at Jammu, the writ petitioner was posted therein to head the said

Division as Divisional Manager by giving him promotion to the cadre of Asstt Manager. He was designated as Divisional Manager to head the said

Divisional Office. In regard to the allegation of the writ petitioner that the Insurance Company had assured that his grievance would be redressed

so he withdrew the writ petition it is submitted that the same is totally incorrect as at no point of time the Insurance Company had given such an

Insurance. Learned counsel further submitted that the writ petition was barred by delay and laches in as much as the writ petitioner was promoted

as Assistant Manager and posted as Divisional Manager, Jammu Division-II vide order dated 1.7.1989. That order has been challenged in 1991.

Further according to the learned counsel respondents No. 3, 4 & 5 were promoted almost a decade back to the filing of the writ petition no

explanation whatsoever has been given by the petitioner as to why the writ petition has been filed belatedly.

11. In answer to these submissions, learned counsel appearing on behalf of the petitioner submitted that the petitioner became eligible to be

promoted between the year 1972 to 1989 but he was not considered for promotion and persons junior to him were promoted without considering

the claim of the writ petitioner. Further according to the learned counsel writ petitioner was shown at S. No. 98 in the provisional seniority list of

Administrative Officers as on 1st Sept. 1977 in which S.K. Dhar even did not figure and as on today the position is that the write petitioner is Asstt

Manager, whereas S.K. Dhar was promoted firstly to the rank of Asstt Manager then to the post of Deputy Manger and Manager. Further

according to him the writ petitioner made representation in 1989, 1990, 1991 but his representations were not decided and so the writ petition is

not barred by delay and laches. Further according to him since the Insurance Company had assured the petitioner that his case for promotion

would be considered he withdrew the writ petition and so the present writ petition challenging the promotion of respondent No. 4 is maintainable.

However, learned counsel was not able to deny the assertion of the learned counsel for the Insurance Company that S.K. Dhar was a party to the

earlier writ petition where in his promotion had been challenged.

12. We have heard the learned counsel for the parties and have gone through the entire record.

13. It has come on record that the writ petitioner filed number of writ petitions from time to time and his attempt through out had been to remain in

Jammu and he was successful in his attempt to a large extent. He filed the present writ petition SWP No. 947/1991 impleading Romesh Kapoor,

Regional Manager; S.K. Dhar, Divisional Manager; S.M.L. Koul, Manager and Y.P. Chopra, Manager. In one of the earlier writ petition No.

907/1985 he impleaded S.P. Malhotra, Asstt General Manager; K.C. Mittal and S.K. Dhar, Divisional Manager as party respondents and

challenged their promotion. His challenge was also to the criterion on the basis of which the said respondents had been promoted to the higher

rank. The said writ petition was hotly contested by the Insurance Company and in the counter it was explained in regard to the promotion of S.K.

Dhar and others. Instead of pursuing the writ petition, the same was got withdrawn by making a statement that he would get the grievance

redressed out side the Court. It is on his statement that the writ petition was withdrawn. Order dated 1.7.1989 no - where indicates that any

assurance was given by the Insurance Company that the case of the writ petitioner in regard to his promotion would be considered afresh. The

cause of action in regard to the challenge of promotion to S.K. Dhar was directly in issue in the earlier writ petition and in the present writ petition

that is the only issue which is being sought to be raised and therefore, the learned counsel for the Insurance Company is right in submitting that the

writ petitioner, who had with drawn the writ petition filed by him without permission to file a fresh writ petition filed by him without permission to

file a fresh writ petition cannot file the same on the same cause of action. Their Lordships of the Supreme Court in the case Sarguja Transport

Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, opined, that ""in order to prevent a litigant from abusing the process of

the Court by instituting suits again and again in the same cause of action without any good reason the Civil Procedure Code, insists that he should

obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Order 23, Rule 1 (3).

14. In M/s. Upadhyay and Co. Vs. State of U.P. and Others, , their Lordships of the Supreme Court reiterated that the principle under Order 23

Rule 1 (3) CPC is a public policy and is applicable to the writ petitions filed under Article 226 of the Constitution of India.

15. In view of the law settled by the Supreme Court of India and considering that the claim of the writ petitioner that he be promoted to the post of

Deputy Manager, Manager, Assistant General Manager, General Manager was directly and substantially in issue in the earlier writ petition, which

was dismissed as withdrawn, we are of the considered view that the writ petitioner is not entitled to agitate the same issue in the present writ

petition.

16. There is yet another matter which is to be taken care of and that is when the writ petitioner was holding the post of Administrative Officer,

S.K. Dhar was the Divisional Manager of Division-I, Jammu and the writ petitioner had even worked under S.K. Dhar in Srinagar Division when

writ petitioner was holding the post of Administrative Officer and S.K. Dhar was holding the post of Sr. Divisional Manager. In the event of

promotion of S.K. Dhar to the higher rank in the year 1984, if the writ petitioner was aggrieved of the same he could have challenged his

promotion immediately there after. The writ petition filed in 1991 after a considerable period of seven years is clearly barred by delay and laches.

17. In regard to the submission of the earned counsel for the writ petitioner that there is no definite criterion laid down by the Insurance Company

for making promotions to the various posts, it is only to be stated that the promotions are being made by the Insurance Company on the basis of

the policy regarding promotion of officers to the rank of Managers Dy. Manager, Asstt Manager and Administrative Officer. The policy placed on record shows that when a person is promoted from the post of Administrative Officer to the post of Assistant Manager and Assistant Manager to Deputy Manager, the Manager and Assistant Manager to Deputy Manager, the Lower Management Committee consisting of Chairman-cum-managing Director, two General Managers of the Company considers the case on the basis of information contained in the summary sheets and it also gives suitable weightage either plus or minus for the inconsistencies and/or exaggerated remarks, as may be observed from the confidential reports/work records of the officers concerned. While giving such weightage the committee also takes into account the regional imbalances, noticed if any. There-after, total marks are suitably moderated and recorded by the Committee, taking into account the marks secured in the interviews where-ever applicable. In the writ petition, there is no challenge to the policy on the basis of which the writ petitioner and others were considered for promotion from time to time. In absence of any challenge to the policy, it cannot be agitated that either there is no criterion or that the criterion adopted is arbitrary.

18. Further on carefully going through the writ petition, we find that the first prayer made by the writ petitioner was to quash Circular No. PERS-MPLVHO/21/89 dated 3.5.1989. However, on going through the said document, We find that Circular No. PERS-MPL-/HO/21/89 dated 3.5.1989 is not the seniority list, but is the list of officers cadre-wise, who have been selected for promotion to the next higher grade. The Seniority list alleged to have been issued on 9.10.1990 of Dy. Managers and Managers in the year 1990 has not been annexed to the writ petitioner nor it is stated that who were the said persons who were promoted Circular dated 3.5.1989 contained as many as six names promoted from the rank of Deputy Manager to the rank of Manager and 13 persons promoted from the rank of Assistant Manager to the rank of Deputy Manager and there is a list of 35 persons, who are promoted to the rank of Asstt Manager from the rank of Administrative Officer. Neither there is any averment in the writ petition nor the learned counsel for the petitioner is able to point out as to how those persons were junior to the writ petitioner. They have

also not been made party to the writ petition and in their absence their promotion cannot be set at naught. In fact no foundation whatsoever has been laid down in the writ petition, for challenging their promotion to the various ranks. In case the writ petitioner was aggrieved of their promotion, then their promotions could have been challenged when they were promoted from the post of Administrative Officer to the post of Assistant Manager and from the post of Assistant Manager to the post of Deputy Manager and from Deputy Manager to Manager and from the rank of Manager to General Manager. At such a belated stage and that too when the writ petitioner has superannuated their promotion cannot be challenged. In regard to S.K. Dhar's promotion, it has already been noticed that his promotion was earlier challenged in the writ petition No.

907/85 but the same was not pursued. In these circumstances, we are of the considered view that the writ petition deserves to be dismissed.

19. It would not be proper, if we do not refer the judgments cited by the learned counsel for the petitioner. 1st judgment cited by him is in case Dr.

Subramaniam Swamy Vs. Ramakrishna Hegde, wherein a junior engineer was not considered for promotion in selection grade thrice during 1977-

79 but left out due to adverse entries of 1972-73. Those adverse entries were expunged in 1979. Their Lordships of the Supreme Court, held he was entitled to be considered for promotion.

20. In *Samaru Dass Banarje v. State of Madhya Pradesh* 1985 Lab. I.C. 1043 it was held that the "rule of reason" is the integral part of principles of natural justice which a statutory authority is required to observe even in the absence of a provision in the statute on that behalf.

21. In case *State of Gujarat Vs. S. Tripathy and Others*, the Hon'ble Supreme Court on facts held that the respondent there-in was wrongly passed over. *Amar Kant Choudhary Vs. State of Bihar and Others*, has been cited for the proposition that the suspension, adverse remarks in confidential rolls and frequent transfers from one place to another are ordered or made many a time without justification and without giving a reasonable opportunity to the officer concerned and such actions surely result in the demoralisation of the services. Case *G.P. Goval and Ors. v. Chief Secretary, Govt. of U.P. and Ors.* 1984(2) SLR 555 is for the proposition that the delay and laches would not come in the way of the writ

petitioner where series of representations did not yield any response or relief.

22. We fail to understand how, the judgments cited by the learned counsel for the petitioner apply to the facts and circumstances of the present case.

23. In view of the above, the appeal is allowed, judgment dated 22.7.1999 of the learned Single Judge in SWP No. 947/1991 is set aside and consequently the writ petition (SWP No. 947/1991) is dismissed. There is no order as to costs. The record, if any, lying in sealed cover be returned to the counsel for the appellant.