IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 12.02.2020

DELIVERED ON 17.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.29645 OF 2011
&
M.P.No.1 of 2011

K.Rajendra Kumar ... Petitioner

Vs.

1.The Chairman cum Managing Director
United India Insurance Company Ltd
Reg.Head Officer
No.24, Whites Road
Chennai-600 014

2.The Deputy General Manager
United India Insurance Company Ltd
No.24, Whites Road
Chennai-600 014

3.The Chief Regional Manager
United India Insurance Company Ltd
Regional Office
Visakhapatnam ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus, calling for the records of the 3rd respondent pertaining to the order No.VRO:MKTG:03:2009 dated 06.04.2009 removing the petitioner from service, and the records of the 2nd respondent pertaining to the order No.Ho:2007-14:07 dated 01.02.2010 and the records of the 1st respondent pertaining to the order No.HO-2007-14-03/2010 dated 18.01.2011 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.E.J.Ayyappan

For Respondents: Ms.Chitra Sampath, Senior counsel

O R D E R

The petitioner was appointed as Development Officer Grade II on 06.07.194 and was promoted as Grade I with effect from 01.08.1995. While he was working as Development Officer (Admin) the Division Officer Eluru, departmental proceeding was initiated for certain lapses on two counts. The gravamen of the charges was that he issued cover notes and collected the premium from the insure and failed to pay the same to the office and thereby committed temporary misappropriation of funds. Though it was admitted that he issued cover notes and collected money, according to the petitioner, the delayed payment was due to the lapse on the part of the insurance agent by name one V.V.Sathyanarayana. Even though, the said agent has filed an affidavit before the enquiry officer to that effect, it was not considered by the enquiry officer and the charges were held proved. The Disciplinary authority imposed the punishment of removal from service. On appeal it was confirmed by the Appellate authority also. Aggrieved over the same, petitioner is before this Court.

2. The writ petitioner, interalia raised various grounds and contend non following of the procedure as enshrined under Art. 311 of the Constitution of India vitiate entire proceedings. Though elaborate argument was made touching upon the merits of the punishment order passed, the learned counsel would raise the preliminary issue of lack of jurisdiction to pass the impugned order. Accordingly to him, the High Court of Karnataka in its order in Crl.A.Nos. 933 C/W 835/2010 dated 01.03.2012 has held that The General Insurance (Conduct, Discipline and Appeal) Rules, 1975 (hereinafter referred to as the 'GI (CDA) Rules') was not placed before the Parliament and no gazette notification was issued and therefore any action taken under the said rule is not valid. In view of the same, the punishment imposed against the petitioner in the instant case under Rule 23 of the GI (CDA) Rules is also invalid unenforceable and the punishment order should be set aside. He would also rely upon the judgment of the Hon'ble Supreme Court in Crl.A.Nos.1872-1873 of 2014 dated 03.11.2015. Confirming the above order holding that the Rules were not gazetted at any point of time and made applicable to the employees of the said insurance company. On finding so, confirming the judgment of the High Court of Karnataka dismissed the appeals preferred by the insurance company. Therefore, a contention is made that the very application of the rules and the order of punishment passed by the respondents is illegal and without jurisdiction and liable to be set aside.

3. Per contra the learned Senior counsel appearing for the respondents would produce the General Insurance Business

(Nationalisation) Act, 1972 (hereinafter referred to as the Act) dated 20.09.1972 and the Scheme framed under the General Insurance (Termination, Superannuation and retirement of Officers and Development staff) Scheme, 1976 and Amendments (hereinafter referred to as "scheme") dated 21.09.1976.

4. According to the learned Senior counsel as per Sec.16 of the Act 57 of 1972 the Central Government may, by notification frame one or more schemes with regard to rationalisation of General Insurance business. As per Sec.17A, by notification scheme regarding the terms and conditions of service of officers and other employees can be framed.

5. Accordingly, the above said Scheme was framed on 21.09.1976. As per sub-clause 4(a) of the scheme, the Corporation or the company is entitled to frame their own Conduct, Discipline and Appeal Rules with regard to the Development staff and the power to retire, remove or dismiss an officer or Development staff in accordance with GI (CDA) Rules framed by them will not affect the right of the Appointing authority to do so.

6. As per the above Sub clause 4(a), power to frame rules has been conferred on the Corporation or individual subsidiary companies. Since the scheme was already notified, the rules framed thereunder does not require any further notification. No such procedure was contemplated for notification of the rules for taking disciplinary action against the employees internally. In so far as the respondent insurance company is concerned, the Board of Directors have resolved to follow the Conduct Discipline and Appeal rules of the Corporation. If it is construed that framing of CDA Rules requires notification in the gazette, it will create an anomalous situation and lead to chaos. No insurance company can initiate any disciplinary proceedings nor take any action for misconduct against any of its employees.

7. She would also contend that the judgment relied on by the petitioner arose out of a criminal proceeding and an incidental remark made therein to give benefit of doubt to the petitioner will not become a binding precedent in respect of disciplinary proceedings now initiated. On the other hand, the learned Senior counsel would rely on the judgment of Hon'ble Supreme Court in Mihir Kumar Hazara Choudhury vs. Life Insurance Corporation and Another, 2017 9 SCC 404, where in it is held as under:

> 26) An employee, in discharge of his duties, is required to exercise higher standard of honesty and integrity. In a case where he deals with the money of the depositors and customers, it is all the more necessary for him

to be more cautious in his duties because he deals with the money transactions for and on behalf of his employer. Every such employee/officer is, therefore, required to take all possible steps to protect the interest of his employer. He must, therefore, discharge his duties with utmost sense of integrity, honesty, devotion and diligence and must ensure that he does nothing, which is unbecoming of an employee/officer. Indeed, good conduct and discipline are inseparable from the functioning of every employee/officer of any Institution and more when the institution deals with money of the customers. Any dereliction in discharge of duties whether by way of negligence or with deliberate intention or with casualness constitutes misconduct on the part of such employee/officer. (See some observations in Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain, (2005) 10 SCC 84)

27) There is no defense available to a delinquent to say that there was no loss or profit resulting in a case when officer/employee is found to have acted without authority. The very discipline of an organization and especially financial institution where money is deposited of several depositors for their benefit is dependent upon each of its employee, who acts/operates within the allotted sphere as custodian of such deposit. Acting beyond one's authority by itself is a breach of discipline and thus constitutes a misconduct rendering the delinquent to suffer the adverse orders (see some observations in Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik, 1996(9) SCC 69).

28)In our opinion, having regard to the seriousness of the charges coupled with virtually no defense taken by the appellant in answer to the charges and lastly, the findings of the Enquiry Officer, the punishment of dismissal was appropriate as provided in the service regulations and hence does not call for any leniency in awarding such punishment.”

8. For the same proposition, she would also rely on the judgment of Hon'ble Supreme Court in B.C.Chaturvedi vs. Union of India, 1995 6 SCC 749, wherein it has been held thus:

18. A review of the above legal position would establish that the

disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof.

9. I have heard the submissions of both sides.

10. For the better understanding of the case on hand, it is beneficial to go through the Scheme of the Act 57 of 1975.

Sec.3(o) defines Scheme as under:

> 3.(o) "Scheme" means the scheme framed under Section 16 and also includes a scheme framed under Section 17A"

Under Sec.16 under Chapter V of the Act reorgnization of General Insurance business is explained.

Sec.17 reads as under:

> " 17. A copy of every scheme and every amendment thereto framed under section 16 shall be laid, as soon as may be after it is made, before each House of Parliament."

As per the above section every scheme or mandate made under section 16 shall be laid before each House of Parliament.

11. As per Section 17A under Chapter V-A, the terms and conditions of officers and other employees are explained.

> " 17A(1) The Central Government may, by notification in the Official Gazette frame one or more schemes for regulating the pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring Company.
> 2. A Scheme framed under sub-section (1) may

add to, amend or vary any scheme framed under section 16 [including any addition, amendment or variation made therein by notification under sub-section (6) of Section (16)] with respect to rationalisation or revision of pay scales and other terms and conditions of service of offers and other employees of the Corporation or of any acquiring company, to provide for further rationalisation or revision of such pay scales and other terms and conditions of service notwithstanding that such further rationalisation or revision is unrelated to, or unconnected with, the amalgamation of insurance companies or merger consequent on nationalisation of general insurance business.

(3) The Central Government may, by notification, add to, amend or vary any scheme framed under this section.

(4) The power to frame a scheme under sub-section(1) and the power conferred by the sub-section (3), to add to, amend, or vary any scheme framed under this section, shall include the power to frame such scheme, or, as the case may be, to make such addition, amendment or variation in any scheme framed under this section, with retrospective effect from a date not earlier than the appointed day.

(5) A copy of every scheme, and every amendment thereto framed under this section shall be laid, as soon as may be after it is made before each House of Parliament."

(6) The provisions of this section and of any scheme frame under it shall have effect notwithstanding anything to the contrary contained in any other law or any agreement, award or other instrument for the time being in force.

(7) Notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority or in any other law, agreement, award or other instrument for the time being in force, every scheme framed or purporting to have been framed with retrospective effect under sub-section (1) of section 16 of the principal Act and every notification made or purporting to

have been made with retrospective effect under sub-section (6) of that section before the commencement of the General Insurance Business (Nationalisation) Amendment Ordinance, 1984 shall be, and shall be deemed always to have been, for all purposes, as valid and effective as if the amendment made in the said section 16 by section 3 of this Ordinance had been part of that section and had been in force at all material times.

(2) Notwithstanding anything contained in any judgement, decree or order of any court tribunal or other authority or in any other law, agreement, award or other instrument for the time being in force

(a) Every scheme framed, or purporting to have been framed, by the Central Government under sub-section (1) of section 16 of the principal Act; and

b) every notification made, or purporting to have been made, by the Central Government under sub-section(6) of the said section 16, before the commencement of the General Insurance Business (Nationalisation) Amendment Ordinance, 1984 in so far as such scheme or notification provides (whether with or without retrospective effect) for any rationalisation or revision of pay scales or other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company, otherwise than in relation to, or in connection with amalgamation of insurance companies or merger consequent on nationalisation of general insurance business shall be, and shall be deemed always to have been, for all purposes, as valid and effective as if section 17A, as inserted in the principal Act by section 4, of this Ordinance had been part of the principal Act, and had been in force at all material times and such schemes or notification in so far it provides as aforesaid had been framed or made, under the said section 17A:

Provided that nothing in this section shall apply to or in relation to, the notification dated the 30th day of September, 1980, framing the General Insurance

(Rationalisation and Revison of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Second Amendment Scheme, 1980.
Explanation- In this section, the expressions "acquiring Company" and "Corporation" shall have the meanings respectively assigned to them in the principal Act.

11. As per the above sections any scheme for regulating the pay scale and service conditions of the officers shall be made by notification in the official gazette. As per sub-section (3) of Sec.17A of the Act, the Central Government has power to add, amend or vary any scheme framed in the section by an notification issued by it. Sub-section(5) specifies a similar procedure of laying the scheme under section 16 to lay the scheme or amendment framed under 17A before each House of the Parliament as mandated under section 17. Therefore, it is very clear that any scheme framed under section 16 and 17A shall be laid before each House of the Parliament and notified in the gazette of the Central Government.

12. In exercise of such powers as mandated by the Act, the General Insurance company has framed the scheme (Termination, Superannuation and retirement of Officers and Development staff) Scheme, 1976 and Amendments on 21.09.1976. The said scheme framed in exercise of power conferred by clause (g) of sub-section (1) of section 16 of Act 57 of 1972 was notified under Central Government gazette to regulate termination, superannuation and retirement of officers of General Insurance Corporation and its company.

13. As per the scheme,

"Board" means the Board of Directors of the Corporation or of the Company and includes, in relation to the exercise of powers of such Board, any committee of the Board to which, or any officer of the Corporation or Company to whom, the Board has delegated any of its powers.

"Company" means the National Insurance Company Limited, the New India Assurance Company Limited, the Oriental Insurance Company Limited, or the United India Insurance Company Limited.

14. Sub-clause 4 of section 4 deals with right of the

Appointing authority to retire, remove or dismiss an officer or person of the Development staff in accordance with (CDA) Rules framed by the Corporation or the company in respect of the employees.

15.The moot question is that whether framing of such (CDA) rules requires further notification in accordance with the scheme or not. In the considered opinion of this Court it does not require any notification. Under the scheme, the (CDA) Rules can be framed by the Corporation or the company to take disciplinary action against its employees by virtue of power conferred in sub clause 4 of clause 4 of the Scheme already notified. But in the instant case punishment was not imposed under (CDA) Rules framed by the respondent company and therefore, the question of going into the issue of whether it requires the notification in the gazette by the Central Government will not arise. On the other hand the punishment was imposed under Rule 23(g) of GI (CDA) Rules, 1975 and the same was confirmed by the Appellate authority under the Rule 37(2)(c)(i) of the said rules.

16. It is useful to refer to the Rules followed by the respondent company. The rules are read as the General Insurance (conduct, Discipline and Appeal) Rules 1975. These rules are made under General Insurance Business (Nationalisation) Act, 1972.

17. Section 39 of the Act 57 of 1972 confers the power on the Central Government to make Rules.

Section 39 reads as under :

> 39(1) The Central Government may, by notification make rules to carry out the provisions of this Act.
>
> (2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for-
>
> (a) the manner in which the profits, if any, and other moneys received by the Corporation may be dealt with
>
> (b) the conditions, if any, subject to which the Corporation and the acquiring companies shall carry on general insurance business
>
> (c) the terms and conditions subject to which any reinsurance contracts or treaties may be entered into
>
> (d) the form and manner in which any notice or application may be given or made to the Central Government

(e) the reports which may be called for by the Central Government from the Corporation and the acquiring companies

(f) any other matter which is require to be, or may be, prescribed.

(3) Every rule made under this section and every notification issued under section 35 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive session, and if, before the expiry of the session immediately following the session or the successive aforesaid, both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

As per the above section, the Central Government can make rules with regard to regulating service conditions of its employees. But as per Section 39(1) the Central Government can make rules to carry out the provisions of the Act. Sub-Section 2 (f) empowers it to make rule in any other matter which is required to be or may be, prescribed. Sub-section (3) mandates that every notification issued under section 35 shall be laid before each House of the Parliament while it is in session. Section 35 speaks about application of insurance Act.

18. From the conspectus of the scheme of the Act, it is seen that Central Government while exercising its power to make rules, it is mandatory to issue a notification in the public gazette. As such the General Insurance (CDA) Rules, 1975 made under the General Insurance Business (Nationalisation) Act, 1972 must be notified. But in the instant case, the said rules as admitted by both parties was not notified.

19. The said fact is substantiated by the finding of the Hon'ble Supreme Court in Criminal Appeal Nos.1872-1973 of 2014 dated 03.11.2015, wherein it is observed as under :

" .....

we have further seen that it is a fact that the respondents-herein who were officers of the Insurance Company have already herein who were Officers of the

> Insurance company have already been dismissed from the service on account of the disciplinary action taken by the United India Insurance Company Ltd. We also keep on record that the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 not even gazetted at any point of time and made applicable to the employees of the said Insurance Company.”

20. In the instant case also, the relevant point of time of imposing punishment against the petitioner the said rules were not notified. When the above said General Insurance (CDA) Rules, 1975 has been held not applicable to the employees of the respondent insurance company by the Hon'ble Supreme Court. As it was not notified, the same will apply to all cases. Be it a Criminal or other proceedings but the unassailable fact remains that the rules not notified in the public gazette as mandated under the specific provisions of Act is not enforceable and non-est. The law declared by the Hon'ble Supreme Court holds it fixed till date and there is no change in the said situation.

21. In such view of the matter, punishment order imposed by the 3rd respondent pertaining to the order No.VRO:MKTG:03:2009 dated 06.04.2009 removing the petitioner from service, and the records of the 2nd respondent pertaining to the order No.Ho:2007-14:07 dated 01.02.2010 and the records of the 1st respondent pertaining to the order No.HO-2007-14-03/2010 dated 18.01.2011 which has no legal sanction shall be declared non-est unenforceable and thereby entire proceedings stands vitiated.

In view of the same, the writ petition is allowed. The respondents are directed to reinstate the petitioner in service with all consequential benefits on notional basis. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman cum Managing Director
United India Insurance Company Ltd
Reg.Head Officer
No.24, Whites Road, Chennai-600 014

2.The Deputy General Manager
United India Insurance Company Ltd
No.24, Whites Road
Chennai-600 014

3.The Chief Regional Manager
United India Insurance Company Ltd
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+1cc to Mr.S.J.Ayyappan, Advocate, S.R.No. 12732
+1cc to Mr.T.S.Baskaran, Advocate, S.R.No. 12751

W.P.No.29645 OF 2011
&
M.P.No.1 of 2011

PVS(CO)
GN(10/03/2020)