

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2022

CORAM:

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.NO.484 OF 2020

1. The Chairman-cum-Managing Director,
United India Insurance Company Ltd.,
Reg.Head Office,
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.

... Appellants

Vs

K.Rajendra Kumar

... Respondent

Appeal preferred under Clause 15 of Letters Patent against the order dated 17.02.2020 made in W.P.No.29645 of 2011.

Prayer in W.P.No.29645 of 2011:-

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 Appellants : Mr.AL.Somayaji,
Senior Advocate
for Mr.V.Perumal

For Respondent : Mr.E.J.Ayyappan

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

1. Challenge in this appeal is made to the order dated 17.02.2020 recorded on W.P.No.29645 of 2011. This appeal is by the respondent in the writ petition - the employer.

2. Heard Mr.AL.Somayaji, learned Senior Advocate assisted by Mr.V.Perumal for the appellant and Mr.E.J.Ayyappan, learned advocate for the contesting respondent / writ petitioner.

3. The relevant facts are as under:-

3.1 The writ petitioner was appointed in the year 1994 as Development Officer (Grade II) by the appellant / United India Insurance Company. He was thereafter promoted as Development Officer (Grade I). While he was working on the said post, the Management of the company found that he had indulged in some misconduct, for which charge-memo was issued to him on 09.04.2007. On denial of the charges, inquiry officer was appointed vide order dated 20.09.2007. On the basis of the material on record and after giving opportunity to the delinquent to respond to it, the inquiry officer arrived at the conclusion that the charges leveled against the delinquent were proved, which was recorded in the report dated 11.08.2008. The writ petitioner responded to the said finding vide letter dated 27.11.2008. On the basis of the material, the Disciplinary Authority passed an order on 06.04.2009, ordering imposition of major punishment of removal from service.

3.2 The delinquent filed appeal as provided under the Rules on 19.06.2009 and the said appeal was rejected on 01.02.2010 by the appellate authority. The disciplinary proceeding thus attained finality departmentally. There is also provision of filing mercy petition which was also resorted to by the petitioner and even that came to be rejected on 18.01.2011. It is under these circumstances, writ petition was filed before this Court assailing these three orders i.e., orders dated 18.01.2011, 01.02.2010 and the first punishment order dated

06.04.2009. Learned Single Judge has set aside the punishment order dated 06.04.2009 and has ordered reinstatement of the writ petitioner. It is this order, which is under challenge in this appeal.

4. Learned Senior Advocate for the appellant / Insurance Company - the employer has submitted that, the only ground on which the writ petition is allowed is that, the set of Rules under which action is taken is treated by learned Single Judge a nullity, since the same was not notified by the Government in the Gazette and therefore according to learned Single Judge, any action taken pursuant thereto is nullity. It is also pointed out from the reasoning recorded by learned Single Judge that, the said satisfaction is recorded on the basis of some observation made by the Supreme Court of India in the case of State of Karnataka CBI, ACB Bangalore v K.T.Uthappa & Anr (Criminal Appeal Nos. 1872 - 1873 of 2014 dated 03.11.2015), more particularly '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'. It is submitted that, the observations of the Supreme Court in the said order can not be said to be a law and therefore after having recorded satisfaction as contained in para : 15, learned Single Judge recorded contrary satisfaction in para : 18, which is based on the said order of the Supreme Court (vide para : 19) and thereafter arrived at the conclusion at para : 20, which is an error which may be corrected in this appeal.

5. It is the above point, which has fallen for consideration of this Court. We note that, since learned Single Judge has decided the writ petition solely on this ground, any interference by this Bench in the said order would result in restoring the punishment order which was impugned in the writ petition. With a view to see that, the grievance of the writ petitioner is also considered on merits, we have permitted submissions on behalf of the writ petitioner to assail the orders under challenge on all other permissible grounds. The same is noted under hereinafter.

6.1 Learned advocate for the writ petitioner has submitted that, though there was no specific pleading with regard to the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 being non-est, since it is a pure question of law, learned Single Judge has rightly, on the basis of the directions of the Supreme Court of India, granted relief in favour of the writ petitioner, which can not be said to be an error and therefore no interference be made by this Court.

6.2 Without prejudice to the above, it is additionally submitted that, the departmental inquiry conducted against the petitioner was not in accordance with law, since an affidavit of one person in favour of the petitioner was not taken into consideration by the authorities and also that, the punishment of removal from service is too harsh. It is submitted that, even if this Court arrives at the conclusion that the Disciplinary Authority did have the power to hold the inquiry under the Rules and further that even if the charges are also held to be proved, lesser punishment than removal be imposed. It is submitted that, this appeal be dismissed or in the alternative, appropriate relief be granted to the writ petitioner by setting aside / modifying the punishment order.

7. Learned Senior Advocate for the appellant, without prejudice to what is noted in para : 4 above, in response to the submissions made on behalf of the learned advocate for the writ petitioner on merits of the inquiry in question has submitted that, it is also the case of the employer / appellant that the departmental inquiry was initiated, conducted and concluded in due compliance of the set of Rules, which hold the field. It is submitted that the Board of the appellant Company has duly adopted the same by a resolution in the year 1975. Attention of this Court is also invited to the material in that regard. It is submitted that, the punishment order impugned in the writ petition was passed after holding departmental inquiry, strictly in accordance with law and therefore the same be not interfered with. It is additionally submitted that, considering the gravity of the charge against the delinquent, the Disciplinary Authority, in its wisdom had thought it proper to impose punishment of removal from service. The higher authorities of the Company, in appeal, have also examined this aspect and have found that, the inquiry was in accordance with law and quantum of punishment is also proportionate to the guilt established. It is also submitted on behalf of the appellant that, writ petition is allowed on the ground - which was not even the case of the writ petitioner and therefore that aspect be also considered. It is therefore submitted that no interference be made by this Court, even on merits in the punishment order.

8. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

8.1 The relevant facts as already noted in para : 3 above are reproduced to the extent necessary.

8.2 The subject matter of the writ petition was the punishment order (removal from service) dated 06.04.2009, as

confirmed by the Appellate Authority vide order dated 01.02.2010. The said punishment order dated 06.04.2009 was on conclusion of the departmental inquiry, which was initiated on 09.04.2007, qua which inquiry officer was appointed - who recorded finding to the effect that the charges against the delinquent were proved. The said finding was considered by the Disciplinary Authority and after agreement therewith, opportunity was given to the writ petitioner and after considering his representation, removal order was passed. The said exercise was under the Rules called as the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, which is duly approved by the Board of the appellant Company, at the relevant time.

8.3 Learned Single Judge has, in para : 15 of the order recorded his satisfaction as under:-

"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....."

(emphasis supplied)

8.4 We are in full agreement with the above satisfaction recorded by learned Single Judge.

8.5 Having held as above, we find that, while further considering the matter, learned Single Judge, in para : 18 observed as under:-

"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."

8.6 After having arrived at the conclusion as noted in para: 15, the above deviation crept up in view of some observations in the order of the Supreme Court of India in the case of State of Karnataka CBI, ACB Bangalore v K.T.Uthappa & Anr (Criminal Appeal Nos. 1872 - 1873 of 2014 dated 03.11.2015), as noted by learned Single Judge in para : 19. The said observations of the Supreme Court read thus:-

"....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."

8.7 Having kept the above observation in mind, and with the issue as noted in para : 18, learned Single Judge recorded conclusion in para : 20, as under:-

"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."

(emphasis supplied)

9. We find that, the conclusions arrived at by learned Single Judge as noted in para : 15 and para : 20 are in conflict with each other and both can not go hand-in-hand. We are in agreement with what is noted in para : 15 by learned Single Judge. Once the findings contained in para : 15 (of the order of learned Single Judge) is upheld, which we do, the conclusion in para : 20 as recorded by learned Single Judge can not hold the filed. We further find that, the conclusion in para : 20 as recorded by learned Single Judge, even otherwise is based on the above referred decision of the Supreme Court. For this reason, it needs to be considered, whether the said observation of the Supreme Court can be said to be ratio decidendi, or even obiter

dicta. For this reason, we have taken into consideration, what was the issue before the Supreme Court in the said matter. For that reason, we have taken into consideration the order of the High Court of Karnataka, from which the appeal had arisen before the Supreme Court. (Details in this regard noted hereunder)

10.1 The High Court of Karnataka (from which the appeal had arisen before the Supreme Court) was considering an appeal against conviction recorded by the competent sessions court, in a case, where the proceedings were initiated against an officer under various sections including under the provisions of the Prevention of Corruption Act. The Sessions Court had found that, the charge against the accused therein was proved beyond reasonable doubt and therefore they were convicted and sentence was imposed. The said conviction was challenged by the accused / convict in the High Court.

10.2 Learned Single Judge of Karnataka High Court, on facts, found that the evidence put forward by the prosecution against the accused was not sufficient to arrive at the conclusion that, the charge leveled against him can be said to have been proved beyond reasonable doubt. It is with those observation and findings, the High Court of Karnataka set aside the conviction recorded by the Sessions Court. One of many arguments pressed into service on behalf of the appellant therein was that, the Assistant General Manager of the Insurance Company (the employer), who had given sanction for prosecution could not be termed to be competent authority to accord such a sanction. The argument in that regard was that, in absence of any delegation by the Board of the Company to the said Assistant General Manager in that regard, the said Assistant General Manager (who was PW 1 in the trial), could not be said to be competent authority. The employer - Insurance Company in that case could not place any material on record to indicate that, the said officer was authorized under Rules to do so or that in that case, any delegation was made by the Board to the said A.G.M. Under these circumstances, the said argument came to be accepted by the Court leading to the conclusion that, there was no valid sanction for prosecution by the competent authority. It is this ground, which also weighed with the High Court, while reversing the conviction recorded by the competent court, amongst other.

10.3 The said reversal of the conviction by the Karnataka High Court was questioned before the Supreme Court by the State, so also by the Insurance Company. Thus, the only issue before the Supreme Court in the said appeal was, whether the reversal of the conviction by the High Court, on various counts, required any interference. Since invalid sanction for prosecution was the root of the matter, the first point pressed

into service on behalf of the appellant therein was that, the grant of sanction for prosecution by the Assistant General Manager of the Insurance Company could not be termed to be by an incompetent authority. The Supreme Court, in the facts of that case, was not persuaded to accept that argument. It is for that reason, the acquittal recorded by the High Court was not interfered with. We find that, non-interference by the Supreme Court in the appeals filed by the prosecuting agency and the employer, questioning the reversal of conviction recorded by the competent court, by the High Court, can not be said to be a law of land that departmental inquiry initiated against any employee / officer of the Insurance Company in the entire country would be a nullity. According to us, that was not the point at issue before the Supreme Court and further that, what is observed by the Apex Court can not be termed as 'the law'. Further we are not persuaded to accept couple of lines from the order of the Supreme Court, even as obiter dictum. The finding recorded by learned Single Judge in that regard needs to be and is reversed to that extent.

11. We further find that, in the said order of the Supreme Court, while not interfering in the acquittal recorded by the High Court, the Supreme Court was also mindful of the fact that, the respondent in that appeal who was facing conviction recorded by the sessions court was already dismissed from service by the Disciplinary Authority. The said fact is noted in these terms. 'We have further seen that it is a fact that the respondents - 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'. Thus, it was the fact that, after the departmental inquiry, those officers were already dismissed, and whether those dismissed officers should also be again sent to jail or not was the issue and the Supreme Court under those circumstances was not persuaded to reverse the acquittal recorded by the High Court. We do not read anything more in the said order of the Supreme Court. After noting the said fact about dismissal from service (which was not the subject matter of the appeal), the Supreme Court further recorded one line in that order, which reads as under:-

"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."

According to us, even if the above observation is accepted as a statement of fact, the said line itself can not be said to be even obiter dicta, much less law.

12. The question therefore is, whether not gazetting the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 as applicable to the employees / officers of the United India Insurance Company Limited which is even approved by the Board of the Company can be said to be lack of jurisdiction by the Disciplinary Authority to initiate proceedings against its employees. According to us, such an absolute conclusion could not have been arrived at in absence of any pleading by either of the side and further that, law can not contemplate any vacuum like situation for any organization, which has offices spread over entire country. If the finding of learned Single Judge is allowed to stand, it would lead to absolute chaotic situation for the appellant Company, not only qua one officer (writ petitioner in this case) or qua the Southern Region of the country but for the country on the whole. Only passing reference of one statement recorded by the Supreme Court in some different matter, in different context, is erroneously understood by the writ court as mandate by the Supreme Court. The said error is apparent on face of record, which according to us, needs to be corrected in exercise of powers under Clause 15 of Letters Patent. While exercising that power, we set aside the said conclusion recorded by learned Single Judge. We also note that, at the time of admission of this appeal itself, the said finding was already stayed by the Division Bench at the relevant time.

13. Having held as above, the next question would be, whether the punishment order needs to be interfered with on any other permissible ground. When any order of punishment is challenged before any judicial forum, the broad parameters which need to be kept in view are, whether the Disciplinary Proceeding is initiated by competent authority, whether the order is passed by the competent authority and whether the inquiry was conducted in due compliance of principles of natural justice. In this regard it is noted that, it is not in dispute that, the authority which instituted disciplinary proceedings is the competent authority (by designation). Inquiry officer was also appointed and in the said inquiry, the petitioner had participated as well. Further, on conclusion of the departmental inquiry, the inquiry officer found that the charges are proved. The said report is responded by the delinquent and the Disciplinary Authority (who is competent by his designation) passed punishment order. We do not find any illegality, so far procedural aspect is concerned - either in initiation or conclusion of the departmental inquiry. At this stage, reference also needs to be made to one argument pressed into service on behalf of the writ petitioner that, one V.V.Satyanarayana had filed an affidavit on 03.05.2009 which could have weighed in favour of the writ petitioner. In this regard it is noted that, the sustainability of the punishment order dated 06.04.2009 can

not be examined by considering an affidavit dated 03.05.2009. The next question is with regard to the quantum of punishment. We find that, the Disciplinary Authority has, on the charge of temporary mis-appropriation having been proved, thought it proper to impose punishment of removal from service. The same is confirmed by the Appellate Authority. We find that, this is not the case where the discretion needs to be exercised under Article 226 of the Constitution of India read with Clause 15 of Letters Patent. We refuse to exercise that discretion in favour of the writ petitioner, in the facts of the case.

14. In totality we find that, no interference is required in the punishment order, either in fact or on law. The writ petition therefore needs to be dismissed.

15. For the above reasons, the following order is passed:-

15.1 This appeal is allowed.

15.2 The order of learned Single Judge is set aside.

15.3 No interference is required in the punishment order.

15.4 The writ petition is dismissed.

15.5 No costs. C.M.P.NO. 7297 of 2020 would not survive.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman-cum-Managing Director,
United India Insurance Company Ltd.,
Reg.Head Office,
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.

+1cc to Mr.V.Perumal, Advocate, S.R.No.41810

+1cc to Mr.E.J.Ayyappan, Advocate, S.R.No.41859

W.A.No.484 of 2020

AJB(CO)
RLP(15/07/2022)