

## **Chairman-Cum-Managing Director, ... vs K.S. Vishwanathan And Ors. on 1 August, 1985**

**Equivalent citations:** AIR1985SC1405, [1985(51)FLR354], (1985)ILLJ580SC, 1985(2)SCALE123, (1985)3SCC686, 1985(17)UJ825(SC), AIR 1985 SUPREME COURT 1405, 1985 LAB. I. C. 1637, 1985 UJ (SC) 825, 1985 SCC (L&S) 912, 1985 (3) SCC 686

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**Bench:** O. Chinnappa Reddy, V. Balakrishnan Eradi, V. Khalid

### **JUDGMENT**

O. Chinnappa Reddy, J.

1. These appeals and transferred cases arise out of problems connected with the integration of services consequent on the nationalisation of general insurance business. The management of the undertakings of all insurers carrying on general insurance business was vested in the Central Government, pending nationalisation, by the General Insurance (Emergency Provisions) Ordinance. The process of nationalisation was completed by the enactment of the General Insurance Business (Nationalisation) Act, 1972, providing for the acquisition and transfer of shares of Indian Insurance Companies and undertakings of other existing insurers. 'Existing insurer' was defined to mean 'every insurer the management of whose undertaking has vested in the Central Government Under Section 3 of the General Insurance (Emergency Provisions) Act, 1971', and included 'the undertakings of the Life Insurance Corporation in so far as it related to the general insurance business carried on by it.' 'Indian insurance company' was defined to mean 'an existing insurer having a share capital who is a company within the meaning of the Companies Act'. 'Corporation' was defined to mean 'the General Insurance Corporation of India to be formed Under Section 9 of the Act.' Section 4(1) of the Act provided that 'on the appointed day, all the shares in the capital of every Indian insurance company shall, stand transferred to and vested in the Central Government.' Section 4(2) required the Central Government to transfer not less than ten shares of every such company to such persons as may be specified to enable the Indian insurance company to function as a Government company. Section 5(1) provided that on the appointed day, the undertaking of every existing insurer who was not an Indian insurance company shall stand transferred to and vested in the Central Government. Section 5(2) provided for the transfer of the undertaking to and vesting of it in more than one Indian insurance company in such manner as might be specified. Section 6 provided for the effect of transfer on undertakings. Section 7 provided for the transfer of service of existing employees in certain cases. Sub-sections (1) and (2) of Section 7 are important for the purpose of the present appeals and may, therefore, be usefully extracted :

7(1). Every whole-time officer or other employee of an existing insurer other than an Indian insurance company who was employed by that insurer wholly or mainly in connection with his general insurance business immediately before the appointed day shall, on the appointed day, become an officer or other employee, as the case may be, of the Indian insurance company in which the undertaking of that insurer or that part of the undertaking to which the service of the officer or other employee related has vested, and shall hold his office or service under the Indian insurance company on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting, and shall continue to do so unless and until his employment in the Indian insurance company in which the undertaking or part has vested is terminated or until his remuneration, terms and conditions are duly altered by that Indian insurance company :

Provided that nothing in this sub-section shall apply to any such officer or other employee who has given, in writing, notice to the Central Government or to any person nominated in this behalf by that Government before the appointed day intimating his intention of not becoming an officer or employee of the Indian insurance company in whom the undertaking or part thereof to which his service relates has vested.

(2) If any question arises as to whether any person was a whole-time officer or employee, or as to whether any officer or employee, was employed wholly or mainly in connection with the general insurance business of the existing insurer referred to in Sub-section (1) immediately before the appointed day, the question shall be referred within a period of two years from the appointed day and not thereafter to the Central Government which shall, after giving an opportunity of being heard to the person concerned in the matter, decide it in such manner as it thinks fit and such decision shall be final.

Section 9 provided for the formation of a Government Company known as the General Insurance Corporation and Section 10 provided that all the shares in the capital of every Indian Insurance company which stood transferred to and vested in, the Central Government Under Section 4, with the exception of the shares transferred under Sub-section (2), shall immediately stand transferred to and vested in the Corporation. Section 16 provided for the framing of one or more schemes by the Central Government for the more efficient carrying on of general insurance business. In particular Section 16(1)(a) provided for the framing of schemes for "the merger in one Indian insurance company of any other Indian insurance company, or the formation of a new company by the amalgamation of two or more Indian insurance companies". Section 16(1)(g) provided for the framing of a scheme for "the rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees wherever necessary." Section 17 provided that 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.

3. Before nationalisation there were a large number of big and small insurance companies and undertakings which were carrying on the business of general insurance, in India, After the nationalisation Act was passed the Central Government framed a scheme Under Section 16(1)(a) by which the existing insurance companies were so grouped together that only four companies remained to carry on the business of general insurance. They were the Oriental Fire & General Insurance Company Ltd., The United India Fire & General Insurance Company Ltd., The New India Assurance Company Ltd. and The National Insurance Company Ltd. The share capital of these four companies was vested in and controlled by the General Insurance Corporation. The insurance undertakings, other than Indian insurance companies were merged into one or other Indian insurance company.

4. Immediately thereafter the question of integration of the services of the employees of the former Indian insurance companies and other existing insurers arose.

5. Pursuant to the powers conferred by Section 16(1)(g) of the General Insurance Business (Nationalisation) Act, 1972, the Central Government framed a scheme called the General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 on May 27, 1974 and another scheme called the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Officers) Scheme, 1975 on September 17, 1975. Clause 3(1) of the Scheme dated September 17, 1975 'delineated officer' as meaning 'an employee appointed in India before the commencement of the Scheme and serving whether in India or outside India, in a position other than supervisory, clerical or subordinate position, and categories d as holding any of the posts referred to in the Schedules' but not including 'an employee declared as member of the development staff by the Committee appointed by the Board.' Clause (5) of the Scheme further provided that 'if any officers have not been categorised so far, the Committee appointed by the Board shall, within two months from the date of commencement of the Scheme complete assessment of the suitability of such officers being categorised as Assistant Administrative Officers within the authorised cadre strength and categorise such officers as Assistant Administrative Officers.' Where an officer was not categorised as an Assistant Administrative Officer, he was to be categorised as Junior Officer.

6. As contemplated by the Scheme, a Lower Management Committee was appointed by the Board of the General Insurance Corporation and not by the insurance companies which were units of the General Insurance Corporation as mistakenly mentioned in the counter-affidavit. This we find from the records produced before us.

7. In several of the smaller Indian insurance companies, there were employees who were variously described as Branch Managers, Branch Secretaries etc., who, while discharging administrative functions, were also responsible for developmental work. Questions arose whether they were to be absorbed in the category of officers of the four units of the General Insurance Corporation i.e. National Insurance Co Ltd., New India Assurance Co. Ltd., The Oriental Fire & General Insurance Co. Ltd. and United India Fire & General Insurance Co. Ltd. Some erstwhile Branch Managers and Branch Secretaries, who were not classified as officers and who were absorbed into the development staff, filed writ petitions in the High Court of Kerala. Balakrishna Eradi, J. (as he then was) made an

order, with the consent of the parties, directing the petitioners to make representations to the Central Government and further directing the Central Government to carefully examine these representations and pass final orders in the matter after full and fair investigation of the claims put forward by the petitioners. The learned Judge also made it clear that the direction which he was giving by consent of the parties was not to be understood as a decision on the merits of any of the contentions raised by either party. Pursuant to the direction of the learned Judge, the Government of India passed an order on 22.10.77 purporting to confirm the categorisation of the petitioners as member of the development staff by the Lower Management Committee of the United India Fire & General Insurance Co. Ltd. The decision of the Government of India was questioned once again by the very persons who had approached the High Court earlier and an argument was advanced that the Government of India did not apply its mind to the question of categorisation and that no opportunity was afforded to the petitioners before the categorisation was affected. On that ground the categorisation was quashed and the respondents were directed to reconsider the question of categorisation in accordance with law. Civil Appeal Nos. 880-882/80 are appeals filed by the General Insurance Corporation and the insurance company against the Judgment of the Kerala High Court quashing the categorisation of the respective respondents (petitioners before the High Court). We may straight away say that we are unable to uphold the judgment of the High Court. The submission advanced before us by the learned counsel for the respondents, which submission had found favour with the High Court, was that the Lower Management Committee was improperly constituted and it had no jurisdiction to make the categorisation and therefore, approval of the categorisation by the Government of India was illegal. We are afraid we cannot accept this submission. The question is not whether the Lower Management Committee was properly constituted or improperly constituted but whether the Government of India had decided the matter in accordance with the directions of the Kerala High Court. Merely because the Government observed that there was no reason to depart from the categorisation made by the Lower Management Committee, we do not see how it follows that the Government of India did not apply its mind to the question. Even an improperly constituted Committee could come to a right conclusion and that conclusion could properly be accepted as correct by the authority to whom the matter was referred by consent. We do not see any justification for straight away drawing the conclusion, without anything more, that the authority to whom the matter was referred did not apply its mind. We, therefore, allow Civil Appeal Nos. 880-882/80, reject the writ petitions filed in the High Court and confirm the categorisation made by the Government of India in those cases.

8. Transferred Cases Nos. 360-363/83 arise out of the judgment of a learned Single Judge of the Kerala High Court who purported to follow the judgment of the Division Bench of the Kerala High Court which had quashed the categorisation made by the Government of India pursuant to consent order of the Kerala High Court. The learned Judge further purported to hold that the categorisation of 'Officers' had to be done by the Central Government Under Section 7 of the Act and not by the Lower Management Committee. A bare perusal of Section 7 of the General Insurance Business (Nationalisation) Act, 1972 exposes the hollowness of this contention. Section 7(1), as its very first clause shows, applies only to officers or employees of existing insurers other than Indian insurance companies. Section 7(2) also refers, not to all existing insurers, but only to existing insurers referred to in Sub-section (1). Therefore, there can be no question of applying Section 7 to erstwhile officers and employees of Indian insurance companies. The question whether erstwhile officers or

employees of Indian insurance company can be categorised as an officer of any four units of the General Insurance Corporation has to be decided in accordance with the provisions of the Schemes made Under Section 16. The decision of the learned Single Judge of the Kerala High Court cannot, therefore, be sustained. The transferred appeals are therefore allowed and the judgment of the learned Single Judge of the Kerala High Court is set aside.

9. Civil Appeals Nos. 2564-2565/84, 367/80 and 235/85 raise the same question as Transferred Cases Nos. 360-363/80 and, have, therefore, to be allowed. In Civil Appeal No. 367/80, a further question was raised that officers of similar rank had been given preference and continued as Assistant Managers or Administrative Officers while the respondent was treated as Junior Officer. There is no basis for this complaint since the categorisation was made on the basis of the actual work turned out by the officers concerned during the year of consideration. In Civil Appeal No. 235/85, a further point was made by the appellants that a writ of mandamus had been straight away issued to categorise the respondents as Officers. According to the learned counsel for the appellants all that the High Court could have done, if it agreed with the submission made before it by the petitioners, was to direct the appropriate authority to reconsider the question of categorisation and not to straight away itself order the categorisation. There appears to be some force in this submission also. Civil Appeal Nos. 2564-2565/84, 367/80 and 235/85 are all allowed and the respective judgments of the High Courts are set aside. There will be no order regarding costs in any of the appeals.