

**HIGH COURT OF JAMMU & KASHMIR
AT JAMMU**

LPASW No. 372/2001

Date of Order: 26.082015

New India Assurance Co. Ltd. And ors

v.

Vinay Kumar and ors.

Coram:

***Hon'ble Mr. Justice, Muzaffar Hussain Attar, Judge
Hon'ble Mr. Justice B. S. Walia, Judge***

Appearing counsel:

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| For the appellant(s) : | Mr. U. K. Jalali, Sr. Advocate with Ms. Shivani Jalali, Advocate Mr. R. K. Gupta, Sr. Advocate with Mr. Prem Sadotra, Advocate |
| For the Respondent(s): | Mr. Sachin Dogra, Advocate |

i) Whether approved for reporting in
Digest/Journal/Media

ii) Whether approved for reporting in Digest/Journal Yes

Muzaffar Hussain Attar (Oral)

Respondent-writ petitioner No. 1 after he was transferred from Jammu to Bhiwani and relieved from Jammu, failed to comply with the transfer order which resulted in initiation of disciplinary proceedings against him and was placed under suspension.

Learned Writ Court allowed the writ petition on the ground that respondent-writ petitioner could not participate in the disciplinary proceedings because he was not paid the subsistence allowance, which would enable him to travel from Jammu to Bhiwani.

Learned Writ Court for the aforesaid reasons held that the enquiry has been conducted against the respondent-writ petitioner No. 1 in breach of principles of natural justice. Learned Writ Court while allowing the writ petition ordered that respondent –writ petitioner No. 1 shall stand reinstated

with all consequential benefits. The appellants were, however, given liberty to hold fresh inquiry.

It is stated at the bar that the respondent-writ petitioner No. 1 has retired from service. No enquiry at this stage can be initiated against the respondent-writ petitioner No. 1 as he is not governed by service rules of appellant-corporation having ceased to be their employee.

If the appellants were interested in conducting the enquiry, they should have passed an order deferring retirement of the respondent-writ petitioner No. 1 to enable them to conduct the inquiry. They have not followed this legal course.

The only grievance projected by the appellants in this appeal is that respondent-writ petitioner No 1 would not be entitled to back wages when appellants were given liberty to hold a fresh inquiry. Appellants have not taken advantage of the aforesaid direction of the Court. They are estopped under law from raising the issue at this stage.

Learned counsel for the appellants stated that the respondent-writ petitioner No. 1 was never reinstated into service because the judgment of the learned Writ Court was stayed.

On 17.10.2001 when this appeal was considered and admitted to hearing, Court directed that the operation of the impugned judgment to the extent of directing that the

respondent-writ petitioner No. 1 shall stand reinstated with all consequential benefits shall not take effect till the matter is on board next. CMP was disposed of.

The order dated 17.10.2001 outlived its life when the case was listed again and direction was not extended. The factual position is that judgment was stayed till the date the LPA was on board again. Even otherwise, directions passed by the learned Single Judge for conducting fresh enquiry was not stayed by the Letters Patent Bench. The appellants despite opportunity have failed to initiate inquiry.

The argument of the learned counsel for the appellants for the aforesaid reasons cannot be sustained.

Even otherwise, the interim order staying the impugned order to the extent of reinstatement and payment of the consequential benefits outlived life when the appeal was taken on board on next date. The interim order was in operation only for the date CMP was disposed of till the matter was consider by the Court again. Appellants have failed to conduct the inquiry when the respondent-writ petitioner was in service.

For the aforesaid reasons, the impugned judgment does not call for any interference.

Appeal is dismissed.

(B. S. Walia)
Judge

(Muzaffar Hussain Attar)
Judge

