CALCUTTA HIGH COURT

Life Insurance Corporation of India

Vs.

Nilratan Banerjee

Appeal from Original Order No. 18 of 1970

(Arun K. Mukherjee and Sabyasachi Mukharji, JJ.)

26.06.1970

JUDGMENT

Sabyasachi Mukharji, J.

1. Nilratan was an employee of the Life Insurance Corporation of India. He was originally appointed by the Hindusthan Co-operative Insurance Society Limited on or about March 11, 1935, and thereafter, upon the constitution of the Life Insurance Corporation of India, the service of said Nilratan Banerjee was transferred and acquired by the Life Insurance Corporation was constituted by the Life Insurance Corporation Act, being Act XXXT of 1956. In 1958, the said Nilratan Banerjee, hereinafter referred to as the Respondent, was promoted as section head of the Life Insurance Corporation, hereinafter referred to as the Appellant. On December 8,1961, the Respondent was promoted as Superintendent by the Life Insurance Corporation. Upto February 25, 1966, the Respondent was employed as Superintendent, Adrema (Renewal) at No. 4 Chittaranjan Avenue, Calcutta. On February 26, 1966. the Respondent was transferred as Superintendent, Adrema (New Business) Department at Rallis Building at No. 16 Hare Street, Calcutta. It appears between January 22, 1966 to June 16, 1966, six cheques of different dates were encashed by one Sukumar Das Gupta, also a Superintendent of the Appellant, through the bank account of the Respondent with the Central Bank of India Limited, Esplanade Branch, which is next door to the Appellant's office at Chittaranjan Avenue. The Respondent alleged that one R. C. Chowdhury, who had been appointed as Chief Accountant of the Esplanade Branch, informed the Respondent that an enquiry was being made by the Appellant in respect of cheques encashed by Sukumar Das Gupta through the Respondent's bank account. The Respondent asserted that he was advised by the Chief Accountant to get a receipt from Sukumar Das Gupta. It is further the case of the Respondent that on coming to know of the enquiry the Respondent voluntarily reported the matter to S. C. Chatterjee, Assistant Divisional Manager of the Appellant. The Respondent also obtained declaration in writing from Sukumar Das Gupta that he had deposited some cheques in the current account of the Respondent with the Central Bank,

Esplanade Branch. The. cheques were all drawn by the Appellant, Calcutta Division Office, in favour of various parties and Sukumar Das Gupta stated that they were deposited by Sukumar Das Gupta personally with the bank of the Respondent and pay-in-slips were filled in and cheques endorsed by Sukumar Das Gupta. Sukumar Das Gupta further asserted that he had received the full value of the cheques: It is further the case of the Respondent that the Divisional Manager of the Appellant enquired of the Respondent about the encashment: of cheques by Sukumar Das Gupta when the Respondent told him the facts and the Divisional Manager asked the Respondent to submit a report in writing to the Senior Divisional Manager. The Respondent on April 19, 1968, submitted a report to the Senior Divisional Manager of the Appellant in writing regarding the alleged facts about the encashment of cheques by Sukumar Das Gupta. The Respondent had also stated in the said report that the entire amount covered by the said cheques were duly paid to Sukumar Das Gupta. He also stated that he had helped many persons who were employees of the Appellant and did not have bank accounts in encashing cheques through his account. In the middle of May 1968 the Respondent went on leave due to the contemplated marriage of his daughter in June 1968. On June 18, 1968, the Respondent rejoined his services with the Appellant. On June 24, 1968, the Respondent was served with a notice by the Senior Divisional Manager of the Appellant. It was in respect of the proceeding under Reg. 39 of the Life Insurance Corporation of India (Staff) Regulations, 1960. By the said letter, the Respondent was informed that since disciplinary proceedings were contemplated against him for defrauding the Corporation by encashing cheques against the refund of deposits issued to various policy-holders, he was placed under suspension with immediate effect and he was to remain suspended until further order. He was also allowed subsistence allowance at the rate of l/3rd of his basic pay drawn prior to his suspension. On the same day the Senior Divisional Manager gave notice of the charges of the proceedings under Reg. 39 of the Life Insurance Corporation of India (Staff) Regulations, 1960. It is necessary to set out in detail the charges framed which appear at pp. 25-26 of the paper-book as follows: You, Shri Nilratan Banerjee, Superintendent, S.R. No. 3082, attached to Adrema Department are hereby charged for the following offence:

(1) That in respect of the following cases you credited cheques drawn in favour of various persons to your Bank Account with the Central Bank of India Ltd. Esplanade Branch, Calcutta, and misappropriated the proceeds of these cheques, and thereby you have acted in a manner prejudicial to your good conduct and committed breach of Regulation 24 of Staff Regulations, 1960, penalties for which may be imposed on you under Regulation 39 of the Staff Regulations, 1960.

Cheque No.	Date of Cheques	Name of the Payee	Amount
OA 83542433	8.2.1966	Shri A.K. Kundu	Rs. 730.00
OA	22.1.1966	Shri N.N.	Rs. 2,306.10

44522624		Bakshi	
OA 8354253 p.c.	8.2.1966	Shri S.N. Dutt	Rs. 1,152.40
" 835894	18.2.1966	Shri R.K. Majumdar	Rs. 2,234.09
OC 25343813	16.6.1966	Shri S. Verma	Rs. 683.55
OC 371637	12.4.1966	Shri S. Sen	Rs. 921.10
			Rs. 8,027.24

(2) That by crediting to your Account these cheques which had been fraudulently issued against refund of deposits without the knowledge of the policy-holders concerned, you had been a party to cheat the Corporation and thereby you have acted in a manner prejudicial to your good conduct and committed breach of Regulation 24 of Staff Regulations, 1960, penalties for which may be imposed on you under Regulation 39 of the Staff Regulations, 1960. The Respondent was further informed of the date by which he was to submit his defence and to state whether he desired to call any witnesses indicating the nature of their evidence. It appears that on June 30, 1968, Sukumar Das Gupta wrote to the Respondent setting out the particulars of the six cheques and stating that he had received in full the amounts covered by the said cheques and that he had encashed the cheques and for that purpose had himself filled up the pay-in-slips. He also stated that he had told the Respondent that the cheques belonged to his friends and relatives' and that in order to help them he had deposited the cheques in the account of the Respondent. On July 2, 1968, the Respondent replied to the charge-sheet. The Respondent also gave the names of four persons, all employees of the Life Insurance Corporation, as witnesses. The said letter is annex. F to the petition and appears at p. 29 of the paper-, book. On July 24, 1968, the Respondent No. 3, N. Balasubramaniam, Assistant Divisional Manager, Life Insurance Corporation of India, wrote to the Respondent as follows: In pursuance of the order dated 16th July, 1968, of the Deputy Zonal Manager, L.I.C.I., Eastern Zone, appointing, me as the enquiry Officer to enquire into and to report to him on the charges framed against you, in terms of the charge-sheet.... I have to inform you that I shall hold the enquiry at the 1st floor of Hindusthan Building, 4, Chittaranjan Avenue at 11-00 p.m. on 7th August 1968, and on subsequent days, if necessary.

2. The Respondent was asked to name the employee of the Corporation by whom he wanted to be represented at the time of the enquiry. The Respondent was also asked to give the names,

designation and addresses of the witnesses. On August 5, 1968, the Respondent replied to the aforesaid letter giving the names of four employees of the Life Insurance Corporation as witnesses. He also stated that he would be assisted by K.G. Goswami, Superintendent, L.I.C.I, Zonal Office, Provident Fund Section, Calcutta. As regards the witnesses, the Respondent stated as follows: As regards witnesses, I shall be obliged if you will kindly allow the following gentlemen to be present as witnesses who will testify as to the encashment of cheques through my bank account and prove my bona fides in the transaction. On August 7, 1968, the enquiry was held and the Respondent attended. As to what happened at the enquiry regarding the witnesses, there is some controversy. It would be necessary to set out first from the report of the Enquiry Officer which is annex. N to the petition, at p. 56 of the paper-book. It is in the following terms: Sri Banerjee requested that the above two letters might be treated as documents filed by him before me. He also wanted the following persons to be examined as defence witnesses:

(1) Sri Debabrata Bose, Assistant Manager, E.D.P., Calcutta.
(2) Sri N. K. Dutta, Retired A.D.M. (Machines), C.D.O.
(3) Sri Bibekananda Bose, Section Head, Adrema Department, Calcutta Division Office.
(4) Sri K. D. Banerjee, Superintendent, D.P.C., C.D.O.

3. Sri Banerjee informed me that the above person would depose that some of their cheques had been encashed through his current account and would thus substantiate his statement in defence that he was in the habit of obliging friends and relatives in encashing their cheques. I had of course no objection to their being examined as defence witnesses but pointed out that the fact of encashing the cheques of friends and relatives (other than those under enquiry) could very well be proved from the Bank statement which I was going to call upon from Sri Banerjee. He did not, therefore, press for their examination and requested that their examination could be dropped. The evidence tendered by Sri Banerjee on the 7th August, 1968, before me is attached herewith as Annexure B. It appears, pursuant to the letter of the Enquiry Officer, the Respondent forwarded the statement of the current account of the Central Bank for the period from January 1, 1966 to June 30, 1966, to him. On September 5, 1968, the Enquiry Officer made the report. On January 10, 1968, the Respondent received a letter from the Appellant No. 2, Zonal Manager, L.I.C., intimating the Respondent that he had been found guilty of partial misappropriation of the proceeds of the six cheques and that he had also been found guilty of being a party to cheat the Corporation. The Respondent was directed to show cause why he should not be dismissed from service which was to reach the Appellant No. 2 within three weeks from the date. The Respondent, thereafter, asked for two weeks' time. On January 29, 1969, the Respondent wrote to the Zonal Manager stating that Sukumar Das Gupta had been dismissed for misappropriation of the proceeds of the same six cheques. According to the Respondent, he should be told on what ground Sukumar Das Gupta had been found guilty because to the extent Sukumar Das Gupta had been found liable, the Respondent asserted, he was discharged for the alleged offence. On February 3, 1969, the Respondent again wrote to the Zonal Manager stating that he did not receive the report of the Enquiry Officer. Thereafter, he had stated that though the four witnesses

were available to give evidence the Enquiry Officer had said that, if necessary, the witnesses would be examined after the examination of the Bank statement. But that was not done and, as such, the Respondent stated that he did not have reasonable opportunity and, as such, no action could be taken against him. By a letter dated February 5, 1969, the Respondent was supplied with the report of the Enquiry Officer. On February 14, 1969, the Respondent wrote a letter to the Zonal Managar, L.I.C., which is annex. O to the petition and is in the following terms: For that I was given no proper opportunity of being heard at the said purported enquiry on August 7, 1968, inasmuch as I was expressly told by the Enquiry Officer, M. N. Balasubramaniam at the said enquiry that the evidence of the said four witnesses was not necessary and in the event he would feel necessary to hear the said witnesses a proper notice thereof would be given. On February 14, 1969, the Petitioner moved this Court, under Article 226 of the Constitution challenging the Show Cause Notice dated January 10, 1969. No rule was issued and the Court observed as follows: In any event, it is premature. It is only after the enquiry proceedings have been finally concluded that the Petitioner can on proper grounds come to High Court on an application under Article 226 of the Constitution of India."

4. On April 14, 1969, an order was received by the Respondent dismissing him under Reg. 39(l)(g) of the Life Insurance Corporation of India (Staff) Regulations, 1960., On April 17, 1969, notice was served upon the Respondent by the National Industrial Tribunal, New Delhi, of an application under Section 33(2)(b) of the Industrial Disputes Act, made by the Appellant No. 1. On April 18, 1969, the respondent sent a formal letter of demand and on April 29, 1969, moved this Court tinder Article 226 of the Constitution for a writ; of and/or an order and/or direction in the nature of mandamus directing the Appellants and each of them to forthwith cancel, rescind and/or withdraw the alleged enquiry report dated September 5, 1968, and the order dated April 11, 1969, also for a writ of and/or an order and/or direction in the nature of certiorari calling upon the Appellants and each of them to send up to this Court the records of the purported enquiry including the report dated September 5, 1968, and all records culminating in the purported order dated April 11, 1969, and also for a writ of and/or an order and direction in the nature of prohibition forbidding the Appellants from taking any steps in pursuance or in respect of an alleged enquiry and for further incidental reliefs. A Rule nisi was issued. Thereafter, the matter appeared in the list of S.C. Ghose J. and the, Respondent was given liberty to serve the National Industrial Tribunal with the order dated April 29, 1969. Then on May 22, 1969, an order was made restraining both parties from proceeding before the National Industrial Tribunal. After affidavits were filed, the matter came up for hearing before P.K. Banerjee J. and by an order and judgment delivered on November 26, 1969, his Lordship had made the Rule absolute by setting aside the enquiry report and the order of dismissal with the observation that the order would not prevent the Appellants from proceeding again in accordance with law.

5. Two points were urged on behalf of the Petitioner before the learned Judge. The first point was that the Deputy Zonal Manager was not the authority who could appoint the Enquiry Officer under Rule 39(3) of the Staff Regulations of the Life Insurance Corporation of India, 1960. It

was contended on behalf of the Life Insurance Corporation that the Deputy Zonal Manager was at that time holding the charge of the Zonal Manager, who was the Senior Divisional Manager and, as such, the appointment was in compliance with the requirement of the Staff Regulations. The learned trial Judge overruled this contention urged on behalf of the Life Insurance Corporation and held that the appointment of the Enquiry Officer was bad and, as such, the report made by the Enquiry Officer could not stand and any order passed on that report, according to the learned trial judge, must accordingly be quashed. The other point that was urged in support of the petition before the learned trial Judge was that in not summoning the four witnesses named by the Petitioner, there had been violation of the rules of procedure as enjoined by the Staff Regulations of the Life Insurance Corporation of India and there had been violation of the principles of natural justice. The learned Judge came to the conclusion that the Petitioner's contentions on this ground were, also well-founded and he held that the principles of natural justice had been violated in conducting the enquiry. On behalf of the Life Insurance Corporation of India it was urged that no writ could issue against the Life Insurance Corporation at all and that the rules framed for the Staff Regulations were not statutory provisions. The learned Judge was of the view that because of the decision of the Supreme Court in the case of *Life Insurance Corporation of India v. Sunil Kumar*[1], it must be held that the writ could be issued against the Life Insurance Corporation of India for violation of Staff Regulations framed under the provisions of the Act. Therefore,

[1] A.I.R. 1964 S.C. 847

the learned Judge overruled this contention urged on behalf of the Life Insurance Corporation of India. The next contention that was urged by the Life Insurance Corporation was that, in view of the pendency of the application under the Industrial Disputes Act made under Section 33(2)(b), the application made to this Court under Article 226 of the Constitution was premature. The learned Judge was also unable to accept that contention.

6. Being aggrieved by the said judgment and order of P.K. Banerjee J., dated November 26, 1969, the Respondents to the Article 226 petition, the Appellants herein, have preferred the present appeal. Before we examine the fundamental question, whether for the violation of Sub-rule (3) of Rule 39 or any other rule of the Staff Regulations of the Life Insurance Corporation of India, 1960, an application under Article 226 of the Constitution lies, it would be necessary to examine the questions whether there has in fact been any violation of the Staff Regulations and whether in fact there has been any violation of the principles of natural justice. It was contended on behalf of the Appellants that there had been no such violation.

7. As mentioned hereinbefore, the Life Insurance Corporation of India Act came into operation in 1956. Section 11 provided for the transfer of services of the existing employees of several insurers to the Life Insurance Corporation under certain terms and conditions. Section 48 of the said Act gave the Central Government power to make rules by notification in the Official Gazette for the purposes of the Act. Sub-rule (3) of the said section provided that all rules made under that section should be laid before the Parliament within a certain time. Section 49 is the section

which gives the Life Insurance Corporation power to make regulations with the previous approval of the Central Government. It appears that pursuant to the authority given under Section 49 certain regulations were made named as the Life Insurance Corporation of India (Staff) Regulations, 1960. These regulations were notified In the Gazette of India and came into force on July 1, 1960. Regulation 39 mentions various misconducts and various penalties, including dismissal, that can be imposed. Sub-clause (2) of Reg. 39 enjoins that the charges must be communicated to the employee concerned and he must be given a reasonable opportunity of defending himself. It also stipulates that certain penalties, including the penalty of dismissal, can only be imposed by the disciplinary authorities specified in sch. I of the said Regulations. Such disciplinary authority is empowered to enquire into the charges itself or appoint an Enquiry Officer for that purpose.

8. Schedule I of the said Regulations, which was placed before us, mentions different categories of disciplinary authorities for the purpose of imposing different punishments mentioned in Reg. 39(1). Schedule I is not very happily worded. It is difficult to anticipate the punishments before the enquiry.

9. The first question that requires examination is, whether the appointment of the Enquiry Officer in this case was done by the proper authority. From the affidavit-in-opposition filed in this case it appears that from July 2, 1968, the Deputy Zonal Manager was holding the charge in the absence of the Zonal Manager. The Enquiry Officer was appointed on July 16, 1968. From the judgment of the learned trial Judge it appears that a letter of the Executive Director dated July 30, 1968, was placed before him. From that letter it appears that the Deputy Zonal Manager was holding the charge of the Eastern Zone and he was to be treated as officiating Zonal Manager. We are, therefore, of the opinion that the appointment of Enquiry Officer in this case was by the competent authority. Such appointment was in substantial compliance with Reg. 39(3) of the said Regulations. This question, however, needs to be further examined from another aspect, namely, assuming that there has been irregularity in the appointment of the Enquiry Officer in the facts and circumstances of this case, is the Respondent Nilratan Banerjee entitled to make a grievance of the same under Article 226 of the Constitution ? Learned Counsel for the Life Insurance Corporation has contended that he is not. We are of the opinion that the learned Counsel for the Life insurance Corporation is right in his submission on this aspect of the matter. It appears to us that throughout the proceeding prior to the notice of demand for justice Nilratan Banerjee never raised any objection about the jurisdiction of the Enquiry Officer or the validity of his appointment. Nilratan Banerjee submitted to his jurisdiction and now finding that the report of the Officer has gone against him, he has taken his point. By his aforesaid conduct he has acquiesced in the jurisdiction of the Enquiry Officer and such acquiescence would disentitle Nilratan Banerjee to seek any relief against enquiry report on this ground under Article 226 of the Constitution. Reliance may be placed for this view on the decision of the Madras High Court in the case of *Latchmanan Chettiar v. Madras Corporation*[2]. and on the decision of the Supreme Court in the case of *Pannalal Binjraj v. Union of India*[3], (paragraph 45). We are of the opinion

that there has been no violation of Reg. 39(3) in the appointment of the Enquiry Officer and, further, Nilratan Banerjee having acquiesced in the jurisdiction of the Enquiry Officer, even if there was any irregularity in the appointment of the Enquiry Officer, he cannot be allowed to take that, point. It must, however, be observed that it does appear from the judgment of the learned trial Judge that the point of acquiescence was not argued before him. The point was, however, taken in the affidavit-in-opposition and it appears from the records in this case. Therefore, we have entertained this contention. A further aspect of the matter, namely, even if there has been violation in the appointment of Enquiry Officer of Reg. 39(3) the Staff Regulations, whether any relief is available to the Respondent under Article 226 of the Constitution, will require detailed examination later in the judgment.

10. The next question is, whether there has been any violation of the principles of natural justice. Consideration of that question involves various factors. In this case, the requirement that reasonable opportunity should be given has been enjoined by Sub-clause (2) of Clause (2) of Reg. 39 of the Staff Regulations, 1960. The question, whether denial of reasonable opportunity would be a violation of the statutory provision and, as such, amenable to be corrected by an order under Article 226 of the Constitution, will be considered along with the other question mentioned before, namely, how far for the violation of the Staff Regulations in the enquiry by the Life Insurance Corporation of India, the aggrieved party has the right to move the High Court under Article 226 of the Constitution. Apart from that consideration it seems that in order to consider the question of natural justice it would be necessary to consider how far in the case of a dismissal of an employee in the enquiry preceding the dismissal the principles of natural justice need be followed. Connected with that question is the consideration whether a dismissal becomes void or is merely voidable, assuming that there has been a violation of the principles of natural justice, and lastly, it is necessary to consider whether, assuming there has been

[2] A.I.R. 1927 Mad. 130

[3] A.I.R. 1957 S.C. 397 (412)

denial of natural justice, and there is no statutory obligation to follow the principles of natural justice, has the employee the right to move the High Court under Article 226 of the Constitution. Before we deal with these questions it would be necessary to examine whether, in fact, there has been any violation of the principles of natural justice in this case. The first question we need answer, therefore, is whether Nilratan Banerjee had reason able opportunity of defending himself before the Enquiry Officer. The principles of natural justice are easy to proclaim but their precise extent of application is far less easy to define. But what is indefinable does not necessarily become inapplicable or non-existent. In this connection it is appropriate to remember the warning of Lord Reid in the case of *Ridge v. Baldwin*[3] against the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exit. The requirements of reasonable opportunity must vary from case to case. In this case, the grievance of the Respondent is that the four of his witnesses named by him and called by the Enquiry Officer were not examined. What the Respondent wrote to the Enquiry Officer about the nature of the evidence to be given by these four witnesses, in his letter dated August 5, 1968, as

well as what the Enquiry Officer wrote about this question in his report, has been set but before in this judgment. In para. 3 of the enquiry report it was further stated that the statement of the Respondent that he used to help his. friends and relatives in encashing their cheques appeared to be correct as may be seen from the particulars of the enclosed to the said report. The contention of the Respondent on this question was that he was in the habit of allowing his numerous friends and relatives to encash their cheques through his Bank account. It seems to us that it is this contention which the four gentlemen named as witnesses were going to prove. On this aspect the Enquiry Officer has found as a fact this contention of the Respondent to be correct. It was nowhere stated that in connection with the encashment of the six cheques regarding which the enquiry was being conducted that the Respondent wanted these witnesses to be examined. Furthermore, the question that the Enquiry Officer had really to determine in this case was whether in encashment of cheques by Sukumar Das Gupta the conduct of Nilratan Banerjee had been proper and regular. Nowhere before the Enquiry Officer has it been stated that these four named gentlemen cited by the Respondent as witnesses could or would throw any light on the encashment of the cheques by Sukumar Das Gupta. Reading, therefore, reasonably what the Respondent wanted to say, it is clear that the evidence that the Respondent wanted to adduce on this aspect was not relevant to the enquiry. It appears -that in case of other parties Nilratan Banerjee was in the habit of allowing them to encash their cheques through his account and there was bona fides on his part in so doing. This has been exhibited from his Bank's statement of account. Therefore, it seems that the evidence of the four witnesses intended to be adduced by the Respondent was not relevant to the enquiry and what these gentlemen wanted to say has been accepted in substance by the Enquiry Officer. There is no statement in the petition by the Respondent that these, four named gentlemen cited by him as witnesses could throw any light on the encashment of cheques by Sukumar Das Gupta which' was the subject-matter of the enquiry. One of the witnesses named. by the Respondent has affirmed an affidavit in support of this application. He has also not stated that he could throw any light on the encashment of cheques by Sukumar Das Gupta. In the premises, it is apparent that no relevant evidence has been shut out. As the Supreme Court observed in the case of *Union of India v. T. Verma*[4], that the principles of

[3](1964) A.C. 40 (64) [4] A.I.R. 1957 S.C. 882

natural justice require that a party should have the opportunity of placing all relevant evidence on which he relied. Assuming, therefore, that the statement of the Respondent in the petition that his witnesses were not examined to be correct, it does not appear that the evidence of these witnesses were at all relevant to the enquiry and, therefore, in not examining these witnesses there has been no violation of the principles of natural justice and no denial of reasonable opportunity. There is another aspect of the matter. The enquiry report has stated that the Respondent did not press for the examination of the witnesses and requested that their examination be dropped. That statement appears at p. 58 of the paper-book. Mr. Nilratan Banerjee has contradicted that statement. So has one of the witnesses, namely Bibekananda Bose. Learned trial Judge has observed that there is no affidavit by the Enquiry Officer. This is true. But there is the statement of the Enquiry Officer in the report. This report has been annexed to the affidavit-in-opposition filed on behalf of the Life Insurance Corporation of India. Therefore, a determination of the question which of those

statements is correct would involve a determination on serious disputed question of fact. It is true that there is no affidavit by the Enquiry Officer, but at the same time there is the report of the Enquiry Officer and the statement and Enquiry Officer in that report cannot be ignored. Even on the question of violation of the principles of natural justice when there is a question on which there is a serious dispute as to certain facts, and upon a determination of which it can be found out whether there has been any violation of the principles of natural justice, it is desirable not to decide that question in a writ petition but to relegate the parties to a suit. [See the observations of the Supreme Court in the case of *Union of India v. T. Verma*[5], We are, therefore, of the opinion that in the facts and circumstances of this case it has not been clearly established that there has been any violation of the principles of natural justice, or any denial of reasonable opportunity to the Respondent which would entitle the Respondent to seek reliefs under Article 226 of the Constitution.

11. It is now necessary to examine the larger question involved in this appeal, namely, assuming there has been violation of the principles of natural justice or denial of reasonable opportunity and assuming there has been violation of the Staff Regulations, in the appointment of the Enquiry Officer, is the Respondent entitled to any reliefs under Article 226 of the Constitution against the Life Insurance Corporation ? It may be appropriate to examine the question of natural justice first. In the well-known decision of *Ridge v. Baldwin*[6] the House of Lords had to consider that question. Lord Reid distinguished three clauses of cases, namely, (i) dismissal of servant by a master, (ii) dismissal from offices held at pleasure and (iii) dismissal from an office where there must be something against a man to warrant his dismissal. The House of Lords in the aforesaid case was concerned with the dismissal of the third type. The House of Lords held that in case of dismissal of the third type in the enquiry preceding dismissal the principles of natural justice must be followed. The aforesaid principle in the decision of *Ridge v. Baldwin* Supra has been applied in India by the Supreme Court in several decisions. [See the decisions of the Supreme Court in *Associated Cement Works, Surajpur v. P.N. Sharma*[7], *Bhagwan v. Ram Chand*[8], and *D.L. Board, Calcutta v. Jaffar Imam*[9],] It has, however, to be observed that *Ridge v. Baldwin* Supra was not a proceeding for the issuance of any prerogative writ or for a writ of certiorari. That was a suit for various reliefs. The second factor, which has to be borne in mind in connection with that decision

[5] A.I.R. 1957 S.C. 882 [7] A.I.R. 1965 S.C. 1595 [9] A.I.R. 1966 S.C. 282
[6] 1964 A.C. 40 [8] A.I.R. 1965 S.C. 1767

is, that the Watch Committee of County Borough of Brighton exercised their power of dismissal under Section 191(4) of the Municipal Corporation of 1882. In this appeal before us it has not been argued that the principles of natural justice need not be followed. Indeed the Staff Regulations, 1960, provide for reasonable opportunity. The question with which we are concerned is not whether principles of natural justice need be followed in the enquiry preceding dismissal in this case, but whether an application under Article 226 of the Constitution lies in this case. In aid of the submission that none of the Appellants are either persons or authority as

contemplated in Article 226 against whom any writ in the nature of certiorari can be issued, learned Counsel for the Appellants drew our attention to several decisions of the Supreme Court wherein the expression Tribunal or Authority used in the Constitution has been construed. Our attention was drawn to the decisions of *Durga Shankar Mehta v. Thakur Raghuraj Singh and ors*[10]*.*, *Associated Cement Co. Ltd. v. P.A. Sharma & anr*[11]*.*, J*aswant Sugar Mills v. Lakshmi Chand*[12]*,* and *Rajasthan State Electricity Board v. Mohan Lal & ors*[13]*.,* In the case of *R. v. Disputes Committee of Dental Technicians*[14] it was held that the Court had no power to direct the issue of orders of certiorari or of prohibition addressed to an Arbitrator directing that a decision by him should be quashed or that he be prohibited from proceeding in an arbitration unless he was acting under powers conferred by statute.

12. In the case of *Ram Babu Rathaur v. Life Insurance Corporation of India*[15]*,* the Court had to consider precisely this question. The Petitioner there was an employee of the Life Insurance Corporation of India. Consequent on his dismissal from service on charges of misconduct and misappropriation of money he filed a petition under Article 226 of the Constitution for the issue of a writ of certiorari quashing the order of his dismissal and also for issue of mandamus directing the Corporation to treat him as in service and to pay him all the arrears of salary and other amounts due to him. It was alleged that the order of dismissal was wrongful being in disregard of the Staff Regulations and also because the Petitioner had not been given a reasonable opportunity to defend himself against the charges. It was held by Jagdish Sahai J. that the petition was not maintainable as the Petitioner had an alternative remedy of filing a suit for damages for wrongful dismissal which was not only adequate but more suitable. It was further held that the Life Insurance Corporation of India, not being a department of the Government but an autonomous body, the provisions of Article 311 of the Constitution of India would not be applicable. It was also held that the relation-ship between the Petitioner and the Corporation being entirely that of master and servant the general law of master and servant applied to his case and in the absence of any statutory provision Or a contract which curtailed, modified or took away the power of the Corporation to dismiss its employee at pleasure, the Petitioner could not claim for himself a tenure during good behaviour. It was further held that a writ of certiorari could not be issued in such cases, firstly, because it would be a futile writ and, secondly, the practical effect of issuing the writ would again be a case of doing indirectly what the law prohibited from being done directly. It was also held that a mere disregard of the Staff Regulations would not be actionable. The aforesaid decision of the Allahabad High Court was approved by the Supreme Court in the case of *S.R. Tewari v. The District Board, Agra*[16]*,*

[10](1955) 1 S.C.R. 267 [12] A.I.R. 1963 S.C. 677 [14](1953) 1 All E.R. 327
[11] A.I.R. 1965 S.C. 1595 [13] A.I.R. 1967 S.C. 1857 [15] A.I.R. 1961 All. 502
[16] A.I.R. 1964 S.C. 1680

The Supreme Court observed as follows: It must be pointed that the powers of a statutory body are always subject to the statute which has constituted it and must be exercised consistently with the statute, and the Courts have, in appropriate cases, the power to declare an action of the body illegal or ultra vires, even if the action relates to determination of employment of a servant. In Ram Babu Rathaur's case, A.I.R. 1961 All. 502, the Court had to consider the question whether

an employee of the Life Insurance Corporation whose employment was terminated could claim a writ of mandamus restoring him to the service of the Corporation or a writ of certiorari quashing the proceeding of the Corporation. The Corporation is an autonomous body and is not a department of the State, and the relation between the Corporation and its employees is governed by contract, and no statutory obligation is imposed upon the Corporation in that behalf. The Court was therefore right in holding that the relationship between the employee and the Corporation had to be determined, in the absence of any statutory provision or a special contract, by the general law of master and servant.

13. We have now to consider the decision in the case of *Life Insurance Corporation of India and ors. v. Sunil Kumar Mukherjee*[17], and ors. Supra on which reliance was placed by the learned trial Judge in his judgment. The question involved was the validity of certain orders passed by the Life Insurance Corporation of India terminating the service of its employees. The Supreme Court held that by virtue of Section 11 the employees of the former insurance companies became the employees of Life Insurance Corporation. The Supreme Court held that the provisions contained in Section 11 (2) of the Act were paramount and would override any contrary provisions contained in the L.I.C. Field Officers (Alteration of Remuneration and other Terms and Conditions of Service) Order, 1957, or the Regulations under Section 49 of the Life Insurance Corporation Act. The Supreme Court further held that subject to the provisions of Section 11 (2) the provisions of the Order would prevail, because the order had been issued by the Central Government by virtue of the powers conferred on it by Section 11(2) itself and also held that they partook of the character of the rules framed under Section 48 of the Act. In. that case the Supreme Court found Chat the termination of services of the employees was not in conformity with the Order framed under Section 11 (2) of the Act by the Central Government. Therefore, it was found that the Life Insurance Corporation had acted in violation of the statutory provision. In these circumstances, the Supreme Court confirmed the orders of the High Court against the orders of the Life Insurance Corporation. In the case of *D.I. Board, Calcutta v. Jaffar Imam, AIR 1965 SC, 282* Supra the Supreme Court was concerned with the orders of dismissal of registered dock workers by the Calcutta Dock Labour Board. The said orders were challenged on the ground that no reasonable opportunity had been given to the dock workers of defending themselves in the enquiry preceding the dismissals and, as such, there had been violations of the principles of natural justice and the relevant statutory provisions had been contravened. The services of those workers were controlled by the Calcutta Dock Workers (Regulation of Employment) Scheme, 1951. The Scheme was framed by the Central Government in exercise of the powers conferred on it by Sub-section (1) of Section 4 of the Dock Workers (Regulation of Employment) Act, 1948. Clause 36(3) of the Scheme lays down that before any action is taken under Sub-clause (1) or (2) the person concerned should be given an opportunity to show cause why the proposed action should not be taken against him. It appears that certain workers were detained under the Preventive Detention Act

[17] AIR 1964 SC 847

and, thereafter, they were dismissed without giving them reasonable opportunity of defending

themselves. Gajendragadkar C.J. delivering the judgment of the Supreme Court observed: There can be no doubt that when the Appellant purports to exercise its authority to terminate the employment of its employees, such as the Respondents in the present case, it is exercising power and authority of a quasi-judicial character. In cases where a statutory body or authority is empowered to terminate the employment of its employees, the said body or authority cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice. (Page 286) In the facts of that case it was clear that the Scheme had statutory force, and reasonable opportunity was enjoined by the said Scheme, therefore, by a denial of reasonable opportunity there was violation of a statutory obligation by a statutory body. The aforesaid judgment, therefore, has to be read in the aforesaid context. In the case of Commissioners for the *Port of Calcutta v. Baleswar Singh*[18], the Division Bench of this Court held that in case of employees of the Port Commissioners for the Port of Calcutta being a statutory body must act according to the statute of incorporation and they must follow the principles of natural justice before terminating the employment of its employees. The Division Bench of this Court did so on the basis of the aforesaid decision of the Supreme Court. Sinha C.J., however, observed that the proposition about the requirements of natural justice was perhaps too widely stated. We are, however, not concerned with that question because it is not disputed before us that the principles of natural justice must be followed in this case.

14. The position in law therefore is, that if any statutory body discharges statutory functions in dismissing any of its employees it is amenable to be corrected by an appropriate order passed under Article 226 of the Constitution for the violation of any of the statutory provisions and in cases where such statutory body must follow the principles of natural justice, if there has been violation of any principle of natural justice. The question, therefore, is in regard to any enquiry conducted under the Staff Regulations, 1960, by the Appellants, are the Appellants discharging any statutory function ? Therefore, it necessarily follows that it has to be decided whether the Staff Regulations, 1960, are statutory in character. For this purpose we have to refer to the decision of the Supreme Court in *U.P. Warehousing Corporation v. C.K. Tewari*[19] There the Supreme Court has discussed these principles and has dealt with the case of *Life Insurance Corporation v. Sunil Kumar Mukherjee and Ors.* Supra. There a person who was a technical assistant was dismissed from service after having been suspended and found guilty on certain charges levelled against him. The said dismissed employee filed a suit challenging the order of dismissal on the ground that the enquiry was contrary to the principles of natural justice without giving him any opportunity to place his defence and the enquiry held was in disregard of Reg. 16 of the Regulations framed by the aforesaid Corporation. It was, on the other hand, contended that the violation of Reg. 16(3) of the Staff Regulations would not be a violation of statutory regulation such as the rules framed by the Central Government under Section 52 of the Agricultural Production (Development and Warehousing) Corporation Act, 1956, but would only be violation of Regulations framed by the Corporation which did not create any statutory obligation. The Supreme Court accepted the contention that the contract for personal service could not be enforced by an order for specific performance, nor would it be open for a servant to

refuse to accept the repudiation of a contract of service by his master and say that the

[18] A.I.R. 1968 Cal. 206

[19](1670) I LLJ. 32

contract had never been terminated. The Supreme Court further held that an order passed by the Corporation in breach of the Staff Regulations framed by virtue of Section 54 of the Act would be merely a breach of terms and conditions of employment and would not be a breach of any statutory obligation. It has to be remembered that Section 54 of that Act is in similar terms to Section 49 of the Life Insurance Corporation Act under which the Staff Regulations, 1960, with which we are concerned, have been framed. On an analysis of the several decisions we are of the opinion that a statutory body when it conducts its affairs with its employees, independently of any statutory provision, it is not amenable to the writ jurisdiction of the Courts under Article 226 of the Constitution. In view of the decision of the Supreme Court in the case of *U.P. Warehousing Corporation v. C.K. Tewari*[20] it must be held that the Staff Regulations of the Life Insurance Corporation of India are not statutory provisions. It must, therefore, follow that the Zonal Manager in dismissing an employee and the Enquiry Officer in conducting an enquiry under the provisions of the said Staff Regulations are not amenable to the jurisdiction of the Courts under Article 226 of the Constitution. In the case of *Promodrai Shamaldas Bhavsar v. Life Insurance Corporation of India*[21], an application was made under Article 226 of the Constitution against an order passed by the Zonal Manager of the Life Insurance Corporation, dismissing the Petitioner therein, who was an employee of the said Corporation. There were certain allegations against the said employee, there was an enquiry and after the show-cause notice by the Zonal Manager of the Life Insurance Corporation there was dismissal under Rule 39(l)(g) of the Staff Regulations of 1960 of the Life Insurance Corporation of India. A writ petition was filed before the High Court alleging that there had been violation of the principles of natural justice and the Enquiry Officer was not an impartial one. The Division Bench of the Bombay High Court dismissed the application. The Division Bench held that the activity of the Corporation was only business activity and that the said Corporation did not possess any power which in any manner could be exercised to affect the activities of other citizens. Therefore, the Bombay High Court came to the conclusion that the Life Insurance Corporation did not fall within the expression of other authorities' under Article 12 of the Constitution and was not a State within the meaning of Article 12 of the Constitution. The Bombay High Court further came to the conclusion that since the Life Insurance Corporation could not be regarded as an authority no writ could be issued against it and, therefore, no writ could be issued against the Corporation when it dismissed one of its servants. The Bombay High Court was further of the opinion that there was an alternative remedy in a proper forum. The Bombay High Court held that the Zonal Manager of the Life Insurance Corporation was not a Tribunal under Article 227 of the Constitution. Insofar as the Bombay High Court held that the activity of the Corporation was only business activity and as such no writ lay, with respect, we are unable to agree with that proposition. The proposition cannot be so broadly stated. A writ against the Life Insurance Corporation would lie for violation of any statutory obligation as in the case of *Life Insurance Corporation of India v. Sunil Kumar Mukherjee* Supra. The aforesaid decision of the Supreme Court has been referred to by the Bombay High Court. But, according to the Bombay High Court, the specific point that no writ

lies against the Life Insurance Corporation under Article 226 of the Constitution was not canvassed in the case before the Supreme Court. We have the subsequent decision of the Supreme Court in which the Supreme Court has explained the basis of the decision in the case of *Life Insurance*

[20](1670) I LLJ. 32

[21] A.I.R. 1969 Bom. 337

Corporation of India v. Sunil Kumar Mukherjee. It appears, therefore, that in case the Life Insurance Corporation affects the rights of its employees by acting in violation of the statutory provisions a writ under Article 226 of the Constitution would lie against the Life Insurance Corporation. But we are in respectful agreement with the Bombay High Court in its conclusion that for violation of Staff Regulations, 1960, no writ under Article 226 of the Constitution lies.

15. Our attention was also drawn to the case of *Praga Tools Corporation v. C.V. Imanaul*[22]*,* where the Supreme Court held that for the Courts to issue mandamus, if a statutory duty had been cast, it was not necessary that the person or the authority on whom the statutory duty was imposed should be a public official or an official body. The Supreme Court further held that there was neither any statutory nor any public duty imposed on the company, shares of which were held by the Union Government and which was a non statutory body and one incorporated under the Companies Act. There fore, there was no question of enforcing any public duty or statutory duty by means of mandamus. Inasmuch' as the Staff Regulations in the instant case are not statutory provisions, even if there has been any violation of the said Regulations in the appointment of the Enquiry Officer, the said irregularity or violation of principles of natural justice by the Enquiry Officer cannot be challenged in a petition under Article 226 of the Constitution.

16. The last point that was argued before us is whether the application under Article 226 of the Constitution is maintainable in view of the fact that the application under Section 33(2)(b) of the Industrial Disputes Act, 1947, was pending. The learned trial Judge has overruled this contention. We are in entire agreement with the learned trial Judge on this point. In view of the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947, and in view of observations of the Supreme Court in the case of *Straw Board Manufacturing v. Govind*[23]*,* (1504) we are unable to accept the contention urged on this point by the Appellants.

17. Our conclusions on the several points urged in this appeal are as follows: (a) In the appointment of the Enquiry Officer there has been no violation of the provisions of the Staff Regulations, 1960, of the Life Insurance Corporation of India, the appointment was in substantial compliance with the provisions of the said Regulations ; in any event irregularity in the appointment has been acquiesced by the Respondent and he cannot now be allowed to take this point in the present application. (b) No relevant evidence was shut out and, as such, the Petitioner has not been denied reasonable opportunity of defending him self. There has been no violation in the facts and circumstances of this case of any principle of natural justice. (c) The application under Article 226 of the Constitution made to this Court- by the Respondent was not premature,

in view of the pendency of the application under Section 33(2)(b) of the Industrial Disputes Act, 1947. (d) Even if there has been violation of any provisions of the Staff Regulations or any principle of natural justice inasmuch as the Life Insurance Corporation of India does not exercise its power in dismissing its employees under any statutory provision, an application under Article 226 of the Constitution cannot be maintained. (e) In the view we have taken in this appeal it is not necessary for us to decide the point, urged by learned Counsel for the Appellants,

[22] A.I.R. 1969 S.C. 1306

[23] A.I.R. 1962 S.C. 1500

whether any of the Appellants are persons or authority against whom writ of certiorari can be issued.

18. In the view we have taken this appeal must be allowed. Therefore, the judgment and order of P. K. Banerjee J., dated November 26, 1969, are set aside. The application made to this Court by the Respondent under Article 226 of the Constitution is hereby dismissed. In the facts and circumstances of this case, there will be no order as to costs here as well as before the learned Judge.

.