

(2001) 01 SC CK 0049

In the Supreme Court Of India

Case No : Civil Appeal No. 5251 of 1996

Electronics Corporation of India

APPELLANT

Vs

G. Muralidhar

RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Citation : AIR 2001 SC 2040 : (2001) AIRSCW 1862 : (2001) 1 JT 520 Supp : (2001) 3 SCALE 647 : (2001) 5 SCC 46 : (2001) 3 Supreme 622 : (2001) 2 UC 157 : (2001) 2 UJ 1157

Hon'ble Judges : G. B. Pattanaik, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The order of termination from service of the delinquent-respondent was assailed before the Andhra Pradesh High Court by filing a writ petition. The said order of termination had been passed not by the disciplinary authority, but by the appellate authority. The learned Single Judge of the High Court came to the conclusion that by taking recourse to such procedure, a right of appeal was denied to the delinquent and, therefore, the order of termination is vitiated by application of the decision of this Court in *Surjit Ghosh v. Chairmen & Managing Director, United Commercial Bank & Ors.* [JT 1995 (2) SC 74]. That order of the learned Single Judge was assailed before the Division Bench by filing an appeal. The Division Bench, however, upheld the order of the learned Single Judge and did not interfere with the same. Necessarily, therefore, the direction of the learned Single Judge for reinstatement and back wages remained to be implemented. When the matter came up to this Court, initially a notice had been issued to show cause as to why the relief of reinstatement and back wages granted by the High Court should not be modified in the light of the direction given in *Surjit Ghosh* case (supra). A further direction was given that a sum of Rs. 50,000.00 be paid to the delinquent in accordance with the aforesaid decision of this Court. Later on, however, leave had been granted by order-dated 29.3.1996.

2. Mr. Rontagi, the learned Additional Solicitor General appearing for the appellant, contended that the judgment in Surjit Ghosh case must be limited to the facts of that case and in the case in hand when a higher forum is available to scrutinise the legality and correctness of the decision of the Chairman-cum-Managing Director (CMD), namely, the Board, it would be meet and proper to direct that an appeal should be presented to the said Board leaving the matter to the Board to take an ultimate decision. It is however conceded before us by the learned Additional Solicitor General that under the Rules governing the conditions of service of the Corporation, the CMD is not the disciplinary authority in respect of the respondent and, in fact, he is the appellate authority and, therefore, undoubtedly a right of appeal which was otherwise available to the respondent, has been denied. It is also stated to us that there is no general provision which confers a power of review or revision to the Board against any order passed by the CMD. In that view of the matter, even if the Board may be a superior authority to the CMD, to hold that an appeal would lie against an order of termination passed by the CMD, it would tantamount to a fresh legislation which we are not inclined to adopt. Necessarily, therefore, a valuable right of appeal having been denied to the delinquent-respondent, in view of the judgment of this Court in Surjit Ghosh case, the order of punishment gets vitiated and the employee-respondent is entitled to a direction for reinstatement and back wages, though the back wages could be limited depending upon the facts and circumstances of the case. In the case in hand, a sum of Rs. 50,000.00 has already been paid to the respondent by virtue of the interim order of this Court dated 23/2/1996 following the direction in the case of Surjit Ghosh (supra)

3. We, therefore, while not finding any justification for interfering with the direction for reinstatement, observe that the employee-respondent will not be entitled to any back wage from the date of termination till today excepting the sum of Rs. 50,000.00 which has already been paid to him. He is entitled to his regular salary from today and appointment/posting be given to him at an early date. The civil appeal stands disposed of accordingly. Needless to mention that on reinstatement the employee would get his due seniority and continuity of service.

4. The learned Additional Solicitor General also informed us that the employee himself has sought for voluntary retirement. That is a matter for the employer to take that into consideration and pass appropriate orders