

(1992) 02 CAL CK 0012
In the Calcutta High Court
Case No : F.A. No. 296 of 1972

Mita Bose

APPELLANT

Vs

Philips India Ltd. and Others

RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Citation : (1992) 2 CALLT 41 : (1992) 1 CHN 250 : 96 CWN 792 : (1992) 65 FLR 526 : (1993) 3 LLJ 872 : (1992) 5 SLR 587

Hon'ble Judges : A.M. Bhattacharjee, J;A.K. Nandi, J

Bench : Division Bench

Advocate : Aruna Mukherjee, Dipak Kumar Ash and Nibedita Ash, for the Appellant;Bijoy Kr. Bhose and Prasanta Das, for the Respondent

Judgement

A.K. Nandi, J.—This is an appeal arising out of an action in damages by an employee against the employer on account of wrongful termination of service, and sufferance of bodily injury in course of employment.

2. The plaintiff alleged that she was appointed by the defendant No. 1 on 31.12.60 and confirmed in service on 6.1.62. While in service she was denied bonus and provident fund. She having insisted on such payment incurred the displeasure of the defendants No. 2, 3 and 4 and out of malice she was transferred from running belt section to packing section. The job required exercise of physical force. In course of discharging the job she became ill and had to consult an Orthopaedic Surgeon. She was given a helper ultimately to do the more arduous part of the job. The plaintiff was ultimately served with a chargesheet issued by the defendant No. 4. Despite protest the defendant No. 3 was appointed an enquiry officer who was bearing malice and grudge against the plaintiff. She was not given the service of a defence assistant of her choice nor she was allowed to examine witness of her choice. She was not given copy of deposition. Evidence was not recorded honestly. The enquiry was conducted illegally, and finally she was discharged with effect from 20.11.63 by a notice dated 28.12.63.

3. The defendants together by a joint written statement have controverted the allegations in the plaint. It is stated that bonus was being paid in terms of an agreement with the Union and the Plaintiff was not entitled to it under the terms of the agreement. She was given the benefit of her provident fund as soon as she became entitled to it. The defendant company offered money in lieu of earned leave to the temporary employees. All the employees excepting the plaintiff accepted it. The plaintiff was employed at the running belt section. She was simply transferred from one position to another. It was a part of her job as an Assembler RA. It was no masculine job. Many females were employed there. The plaintiff was served with a chargesheet after several verbal warnings. The defendant No. 3 being the Personnel Officer held the enquiry according to practice and rules of the company. According to the rules and practice a delinquent might be represented by a member of a recognized Union or by a member of the works committee. P.C. Nandy was not a member of a recognized Union and so he was not allowed to represent. A.K. Pal was not allowed to be examined as a defence witness since he had no connection with the instant case. By a letter dated 16.12.63 the plaintiff was asked to collect copy of deposition; but she did not. The depositions were faithfully recorded. Order of dismissal was perfectly a valid order. The proceeding was conducted according to law.

4. By a lengthy judgment the trial court has dismissed the suit. The aggrieved plaintiff therefore has come to this Court.

Admittedly the plaintiff was appointed by the defendant No. 1 on 31.12.60. She was confirmed on 6.1.62. Chargesheet was served upon her on 19.11.63. And she was dismissed with effect from 20.11.63 by a notice dated 28.12.63.

5. The question as to whether the private employer was justified in holding the enquiry or whether the materials in the proceeding were sufficient to warrant the punishment is not open to question in a Civil Court. Civil Court is no Court of appeal from the decision of the domestic tribunal, *B. Bhimrajee Vs. Union of India (UOI)*, . Even the High Court cannot sit over the finding of the domestic tribunal. If there is some evidence to sustain the charge, the inadequacy or reliability of the same cannot be questioned in a court of law, *The State of Madras Vs. G. Sundaram*, . In the instant case it is, however, no case of the aggrieved that the materials before the Enquiry Officer could not sustain the charge in the chargesheet.

6. We need not make a roving enquiry either as to whether the defendants were actuated by malice to dismiss the employee since our interference will not be permissible if we find that the proceeding otherwise does not suffer from any infirmity.

7. The defendant No. 1 has a Standing Order which has categorized two classes of misdemeanors, minor and major. But it does not lay down the procedure in holding the enquiry. No rule in this behalf has been shown to us. The defence case on the contrary in paragraph 27 of the written statement is that the enquiry

was conducted according to the rules of natural justice. In opining with respect to the procedure the Supreme Court laid down that in the absence of a procedure in the Standing Order the principle of natural justice has to be following, Bihar State Road Transport Corporation Vs. State of Bihar and Others, . Enquiry Officer should not be biased and witness should be examined, if prayed. These are some of the basic principles of natural justice.

8. In the instant case, the plaintiff has impeached the enquiry on grounds more than one. Admittedly, the enquiry was held by defendant No. 3, P.K. Ghosh. There is no dispute that there was a dispute, bona fide or otherwise, between the employee and the management over leave, bonus, provident fund in which the plaintiff involved the Enquiry Officer. The plaintiff had occasion to lodge complaint against him to the Chief Inspector of Factories on 15.7.63 (Ext. 6(2) 7) and to the Chairman-cum-Managing Director of the Company on 11.9.63 [Ext. 6(v)]. There was an apprehension of malice and grudge, well grounded or otherwise, from defendant No. 3. The defendant No. 2 (DW. 4 K.V. Nath) has admitted that he found allegations against P.K. Ghosh. He nevertheless justifies the appointment since, according to him, the allegations had no foundation. It is difficult to accept the reasoning of defendant No. 2. A human being against whom complaints were made to the highest authority of a company and to some authority in the Government is very likely to succumb to a human weakness. Bias need not be, or for the matter of that cannot be always proved. It shall be inferred if from circumstances it is found that he cannot or is not likely ; to maintain impartiality. In the face of the complaints the Enquiry Officer was unlikely to be impartial. In appointing P.K. Ghosh as the Enquiry Officer despite protest, natural justice was violated.

9. The delinquent asked for the services of P.C. Nandy as her defence assistant. It is no case of the defence that defence assistance is not permissible under the rules or practice. The plea is that the prayer was disallowed since P.C. Nandy was no member of the recognized Union or a member of works committee. But D.W. 2, Bharati Das, a witness of the defendant, has admitted that P.C. Nandy is the Secretary of Philips Union. In disallowing the services of P.C. Nandy the delinquent was denied natural justice.

10. The dismissal was therefore wrongful. The appellant had asked for damages on account of personal injury and medical treatment. She has admitted that she has vouchers to support her claim. The vouchers have not been filed. The claim has not been substantiated in evidence. Further, the medical evidence does not support the plea that the alleged injury was caused due to any onerous job in the respondent Company. The claim on this score therefore fails. Similarly the claim with respect to loss of wages has not been substantiated. It has not been shown how the amount has been worked out. The claim cannot therefore be allowed.

11. The plaintiff claims Rs. 43,200/- on account of damages due to wrongful termination of service. Her service was terminated at the age of 24 years and she was entitled to work up to the age of 60 years. Her minimum average pay

was Rs. 100/- per month. On the basis of this calculation she has claimed Rs. 43,200/-.

12. The measure of damages is the loss incurred. Prima facie this is the loss of wages which would have been earned had the employment continued according to contract.....But, in estimating the loss, due allowance must be made for the emoluments obtained before the trial, or of any emolument likely to be obtained before the contract would have expired. It is the servant's duty to minimize the damage, and for this purpose to seek and accept suitable employment" (Mayne: Treatise on Damages, 11th Ed., P293).

13. Reliance was placed on this principle in awarding damages in Jyotirmoyee Sharma Vs. Union of India (UOI), . The evidence of the appellant that she did not receive any employment goes un-challenged. She has stated in cross-examination that she applied to different establishment for employment. On the basis of her claim of Rs. 100/- per month for her remaining period of 36 years she is entitled to recover Rs. 43,200/-.

14. In view of what we have stated above the appeal stands allowed. The judgment and decree of the Court below are set aside. The appellant do get a decree for Rs. 43,200/- against the respondent No. 1, Philips India Ltd. with costs. The appellant do recover the amount on payment of deficit Court fee, if any.

15. Let a copy of this judgment together with Lower Court Record go down to the Court below forthwith.

A.K. Nandi, J.

A.M. Bhattacharjee, J.

16. The only thing that I may usefully add is that I entirely agree. Let that be recorded.

A.M. Bhattacharjee, J.