

(2010) 12 JH CK 0030
In the Jharkhand High Court
Case No : S.A. No. 134 of 2005

Ramesh Chandra Jha

APPELLANT

Vs

Coal Mines Provident Fund Commissioner

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 5A, 2(17), 79, 80
Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 24(4)
Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 — Section 3A, 3B, 3C

Citation : (2011) 1 JLJR 373 : (2011) 1 JCR 440

Hon'ble Judges : N.N. Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—This second appeal was admitted on the following substantial question of law:

Whether the learned lower appellate Court has committed serious error in dismissing the Plaintiff's suit on the ground of non-joinder of Union of India and upsetting the judgment and decree of the trial Court without deciding whether the Coal Mines Provident Fund Commissioner is a public officer under the Union of India so as to attract the provision of Order XXVII, Rule 5-A of the Code of Civil Procedure?

2. The said question arose in view of the finding of learned lower appellate Court that the Coal Mines Provident Fund Commissioner is a public officer and in the suit filed by the Plaintiff-Appellant, the Union of India must have been made a party in terms of Order XXVII, Rule 5-A read with Section 79 of the Code of Civil Procedure. By holding so, learned lower appellate Court had set aside the judgment and decree of learned trial Court which was passed in favour of the Plaintiff (Appellant therein) decreeing his suit.

3. The Appellant had previously filed a title suit being Title Suit No. 78/1979

which was withdrawn on the ground that the Coal Mines Provident Fund Commissioner being a public servant, suit was not maintainable without serving a notice u/s 80 of the Code of Civil Procedure.

4. The Appellant, thereafter, served notice u/s 80, CPC and filed Title Suit No. 102/1998 praying for decree for setting aside the order of removal from service and for other reliefs.

5. The Plaintiff's case, in brief, was that he was a permanent employee of Coal Mines Provident Fund Organization, Dhanbad. He was working as a Lower Division Clerk and had been discharging his services to the utmost satisfaction of the superior officers. He was also adjudged as an employee with excellent service records. Several testimonials were also issued to him by the superior officers from time to time. The Plaintiff, under the verbal instruction of the then C.M.P.F. Commissioner, had occupied Qr. No. III/8 on 1.1.1973. Occupation report dated 1.1.1973 was also submitted to the C.M.P.F. Commissioner, Dhanbad with request to deduct rent from his monthly salary. The allotment was approved by the then C.M.P.F. Commissioner and was recommended by the Allotment Committee. However, allotment order was not issued in spite of the repeated requests of the Plaintiff. Subsequently, penal rent @ Rs. 100 per month for the period from 1.9.1973 to 31.8.1975 was deducted from the Plaintiff's salary. Later on the rent was enhanced @ Rs. 110 per month. The said rent was deducted from the salary of the Plaintiff treating him in permissible occupation of the said quarter. Suddenly, the Plaintiff was put under suspension w.e.f. 1.9.1975 without informing him any charge. But it was suo motu revoked on 23.5.1976. The Appellant's increment for the period from 1975 to 1978 as also his promotional dues were withheld. He was also denied house rent allowance. A memorandum dated 17.3.1977 containing statement of articles of charges, list of documents was served on him. The Plaintiff filed his explanation on 26.3.1977 (Ext.2). A Departmental Enquiry Committee was constituted and Enquiry Officer and Presenting Officer were appointed. The Plaintiff requested for supply of the relevant documents, but the same were not supplied to him. The Plaintiff's request for supply of documents was refused on the ground that some of the documents cannot be produced in the public interest and extract thereof can be taken, but the same were neither given nor shown to the Plaintiff-Appellant. Without waiting for his explanation the enquiry proceeded. The Presenting Officer and other four witnesses were examined. The Appellant's request for further cross-examination of PW-4 (Sri B.K. Yadav) was rejected by the Enquiry Officer. The Appellant requested for allowing opportunity of hearing, was also rejected by letter dated 7.8.1978. The Enquiry Officer conducted enquiry in gross violation of the principles of natural justice and submitted his enquiry report in haste on 18.10.1978 holding the Plaintiff-Appellant guilty of the Charge Nos. I, II, III & V. The Appellant was then given a memorandum dated 13.11.1978 calling upon him to submit his explanation as to why punishment of removal from service be not imposed on him. The Plaintiff-Appellant filed explanation dated 8.12.1978 requesting for affording, inter alia, proper opportunity of defending himself in

accordance with the prescribed rules and principle of natural justice and to supply the copies of the documents for filing effective written statement. But the department, in course of the said enquiry proceeding, instituted an eviction case against the Appellant being Case No. CPF/Eviction/ED(1)/78. in the Court of the Estate Officer. C.M.P.F. Dhanbad for eviction of the Plaintiff from the quarter in question, under the provisions of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971. The said case also proceeded in hurried pace and concluded against the Appellant. In the meanwhile, the department issued the impugned order of Plaintiff's dismissal by Letter No. CPF/258(4)/ADMN dated 13/16.03.1979. The Plaintiff preferred departmental appeal under the provisions of Coal Mines Provident Fund Act before the Appellate Authority i.e. the Chairman, Board of Trustees, Coal Mines Provident Fund Organization and then also filed Title Suit No. 102/1990 after complying with the provisions of Section 80 of the CPC challenging the said order of dismissal.

6. The Defendant-department contested the suit by filing written statement. It was, inter alia, alleged that the Plaintiff had forcibly occupied the quarter and did not vacate the same in spite of repeated letters. According to the conduct rules, forcible and unauthorized occupation of a quarter is a major offence and continuance of such occupation adds to the gravity of the offence. The mere fact that penal rent or market rent was realized from his salary does not absolve the Plaintiff. The departmental proceeding was initiated against the Plaintiff for his said gross misconduct and he has been rightly and legally awarded the punishment of removal from his services. The Defendant also took the ground that previously a suit was filed without complying with the provisions of Section 80, CPC and as such the Plaintiff's suit is barred under the provisions of the CPC. It was alleged that the suit was bad for non-joinder of the Union of India as a party. Learned trial Court on the basis of the said pleadings of the parties framed the following issues:

- (i) Is the suit legally maintainable?
- (ii) Is there cause of action for the suit?
- (iii) Is the suit barred by limitation?
- (iv) Is the suit bad for defect of charges?
- (v) Has the notice u/s 80, CPC been legally served?
- (vi) Is the Plaintiff entitled to the reliefs claimed in the suit?
- (vii) To what relief or reliefs the Plaintiff is entitled under law?
- (viii) Is the present suit legally maintainable against the Defendant?
- (ix) Whether entire departmental proceeding against the Plaintiff is vitiated as nullity for violation of the principles of natural justice?
- (x) Whether departmental proceeding has been conducted by Enquiry Officer in

accordance with the principle of natural justice?

(xi) Whether Plaintiff has been afforded proper and reasonable opportunity in defending himself in the departmental proceeding?

(xii) Whether order of dismissal passed by a competent authority on the basis of the findings of departmental proceeding is violative of the principles of natural justice against Plaintiff?

(xiii) Whether order passed by the Appellate Authority on appeal preferred by the Plaintiff is violative of the principle of natural justice against the Plaintiff?

(xiv) Whether the Plaintiff is entitled to the relief claimed in this suit against Defendant under the facts and circumstances of the case, if yes to what relief?

7. Both the parties adduced oral and documentary evidences. Learned trial Court considered all the evidences and after a detailed discussion of the facts, materials and evidences on record held that there was gross violation of the principles of natural justice. First enquiry was materially defective and the subsequent order on that basis was also violative of the principles of natural justice. The Enquiry Officer should not have proceeded with the enquiry without producing the relevant documents even for inspection, as prayed for by the Plaintiff. The Plaintiff has not been afforded reasonable opportunity to defend himself in the domestic enquiry. The departmental Appellate Authority also did not consider the Plaintiff's ground properly. There was no application of independent mind by the Appellate Authority. Learned trial Court further held that the Plaintiff happened to be an employee of the C.M.P.F Organization under the Coal Mines Provident Fund and Bonus Scheme Act. Section 24(4) of the said Act provided for recruitment of staff and it has been clearly mentioned that the persons appointed by the Board and paid from the fund shall not be deemed to be a Government servant. u/s 3(A), Board of Trustees has been constituted and the entire functioning of the C.M.P.F. is controlled by the Board of Trustees and as such the employees of the C.M.P.F. are not the employees of Central Government. Learned trial Court also answered the other issues in favour of the Plaintiff and decreed the suit.

8. It is relevant to mention that in Title Suit No. 102/90, the Board of Trustees constituted under Para-3 of the Coal Mines Provident Fund Scheme, through the Coal Mines Provident Fund Commissioner, was the Defendant, but the Board of Trustees did not prefer any appeal. However, the Coal Mines Provident Fund Commissioner preferred appeal against the judgment and decree of learned trial Court in the Court of the District Judge, Dhanbad, even without taking leave for the same. The said appeal was registered as Title Appeal No. 29/02. The said appeal was ultimately heard and disposed of by the Additional District Judge-XIII, Dhanbad, by the impugned judgment.

9. Learned lower appellate Court in his judgment concurred with the findings of facts arrived at by learned trial Court holding that the Plaintiff was denied

opportunity to defend himself, he was not supplied the documents demanded by him, the Appellate Authority rejected the appeal of the Plaintiff without applying his mind. However, learned lower appellate Court allowed the appeal and set aside the judgment and decree of learned trial Court on the ground that the matter relates to the Central Government and the Union of India is necessary party in terms of Rule 5, Order XXVII and Section 79 of the CPC but the Central Government has not been made a party and the suit fails on that ground.

10. The Plaintiff-Respondent-Appellant has filed this second appeal assailing the said appellate Court's judgment and decree.

11. This second appeal has been heard on the aforesaid substantial question of law, in view of the said finding of learned lower Appellate Court.

12. The Appellant appeared in person and submitted that he had filed the suit against the Board of Trustees and not against the Coal Mines Provident Fund Officer. The Board of Trustees certainly is not an employee of a Central Government and hence there was no question of adding the Union of India as a party to the said suit. He further submitted that there is absolutely no application of the provisions of Rule 5(A) of Order XXVII or Section 79 of the CPC In the instant case, learned lower Appellate Court has concurred with all the findings of facts and law arrived at by learned trial Court, but has erroneously picked up an issue which is irrelevant and was never earlier raised, not even in memorandum of appeal. The impugned judgment and decree of learned Court below is, thus, perverse and vitiated due to the said irrelevant consideration and unfounded and erroneous finding that the Union of India is a necessary party in terms of the provisions of Rule 5-A, Order XXVII of the CPC The impugned judgment and decree of learned lower Appellate Court is unsustainable and liable to be set aside.

13. Learned Counsel appearing on behalf of the Respondent, on the other hand, submitted that the C.M.P.F. Commissioner is a public officer and the Union of India is a necessary party in terms of Order XXVII, Rule 5(A) and Section 79 of the CPC The provisions of Rule 5(A) of Order XXVII stipulates that in any suit instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit. Learned Counsel referred to and relied on a judgment of the Hon"ble Supreme Court in Coal Mines Provident Fund Commissioner v. Ramesh Chandra Jha Civil Appeal No. 1932/1982 (between the same parties) in which the Apex Court has held that the C.M.P.F. Commissioner is a public officer within the meaning of Section 2(17) of the CPC The order terminating the Appellant was issued by the C.M.P.F. Commissioner in exercise of his power in official capacity and the said order was sought to be set aside which is certainly an act done in official capacity and is covered by the provision of Section 2(17) and Order XXVII, Rule 5(A), CPC Learned Counsel submitted that learned lower appellate Court has considered the said aspect and has rightly allowed the Defendant's appeal and dismissed the Plaintiff's suit for non-

compliance of the provisions of Order XXVII, Rule 5(A), Code of Civil Procedure

14. In order to properly appreciate the rival contentions and submissions of the parties, it is necessary to see the provisions of Section 79 and Order XXVII Rule 5(A) Code of Civil Procedure

15. Section 79 of the CPC reads as follows:

[79. Suits by or against Government.--In a suit by or against the Government, the authority to be named as Plaintiff or Defendant, as the case may be, shall be--

(a) in the case of a suit by or against the Central Government, the Union of India, and

(b) in the case of a suit by or against a State Government, the State.]

16. On plain reading of the said Section, it is evident that the said provision has application in a suit instituted by or against the Government.

17. Admittedly the Plaintiff-Appellant had filed Title Suit No. 102/90 against the Board of Trustees constituted under Para-3 of the Coal Mines Provident Fund Scheme, through the Coal Mines Provident Fund Commissioner and not against any Government.

18. The Plaintiff happens to be an employee of the Coal Mines Provident Fund Organization under the Coal Mines Provident Fund and Bonus Scheme Act, 1948. Section 24(4) of the said Act provides for recruitment of staffs and reads as follow:

Persons appointed by the Board and paid from the Fund shall not be deemed to be Government servants notwithstanding that the Central Government may direct that any service rules applicable to Government servants may apply with or without modifications to such persons.

19. It has been clearly mentioned in this section that the persons appointed by the Board and paid from the fund shall not be deemed to be Government servants.

20. The said provision has been noticed by learned trial Court as well as by learned lower appellate Court. Learned trial Court has clearly held that in view of the provisions of Section 24(4) of the said Act, the Plaintiff is not a Government servant. Learned lower appellate Court has not differed from the said finding of learned trial Court. He has concurred with the findings of facts arrived at by learned trial Court.

21. In my considered view, learned trial Court has rightly recorded its finding in view of the terms of Section 24(4) which clearly mentions that the persons appointed by the Board and paid from the fund shall not be deemed to be Government servants.

22. The Plaintiff-Appellant being an employee of the C.M.P.F. Organization, thus, cannot be held to be a Government servant and there is absolutely no application of Section 79 of the CPC in the instant case.

23. So far as the application of Rule 5(A) of Order XXVII. CPC is concerned, it speaks about joining of Government as a party in a suit against a public officer.

24. In the instant case, the suit is against the Board of Trustees. Though the Plaintiff had challenged the order of termination which was issued by the Coal Mines Provident Fund Commissioner.

25. The Apex Court in its judgment passed in Civil Appeal No. 1932/1982 filed by the C.M.P.F. Commissioner against the Plaintiff Ramesh Chandra Jha, which had arisen out of the previous suit filed by the same Plaintiff, has held that the Coal Mines Provident Fund Commissioner is a public officer within the meaning of the terms in Section 2(17)(h) of the CPC. The question before the Supreme Court was as to whether the suit challenging the order of the Coal Mines Provident Fund Commissioner without serving notice u/s 80, CPC was incompetent. The Hon'ble Supreme Court discussed the relevant provisions of the CPC and the relevant judicial pronouncements on the subject and finally held that the Coal Mines Provident Fund Commissioner is a public officer and the suit filed without service of notice u/s 80, CPC was not competent. In the said judgment no such point relating to the provision of Order XXVII, Rule 5-A was involved.

26. Rule 5(A) of Order XXVII, CPC runs as follows:

5-A. Government to be joined as a party in a suit against a public officer.-- Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.

27. Order XXVII, Civil Procedure deals with the suits by or against the Government or the public officers in their official capacity. On plain reading of Rule 5(A), it is manifest that the Government has to be added as a party in a suit instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity.

28. Rule 8(B) of Order XXVII defines Government and Government pleader as follows:

8-B. Definitions of "Government" and "Government pleader".--In this Order "Government" and "Government pleader" mean respectively--

(a) in relation to any suit by or against the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order;

(c) in relation to any suit by or against a State Government or against a public officer in the service of a State, the State Government and the Government

pleader, or such other pleader as the State Government may appoint, whether generally or specialty, for the purposes of this Order.

29. Rule 8(B) of Order XXVII, Civil Procedure clearly provides that the "Government" and "Government pleader" mean respectively in relation to any suit by or against the Central Government, or against a public officer in the service of that Government, the Central Government and in relation to any suit by or against a State Government or against a public officer in the service of the State Government. (Emphasis supplied)

30. The expression "Government" or "public officer" mentioned in Rule 5(A) is, thus, unequivocally specified in Rule 8(B).

31. Accordingly, if a suit is instituted against a public officer, who is either in the service of the Central Government or in the service of the State Government, in that case only the Government has to be added as a party as required by Rule 5(A) of Order XXVII.

32. In the instant case, though the Coal Mines Provident Officer Commissioner has been held to be public officer in terms of Section 2(17) of the Civil Procedure, which includes several categories of public officer, he was in the service of the Board at the relevant time. Rule 5(A) of Order XXVII, Civil Procedure specifies public officer by providing a definite definition in Rule 8(B) of Order XXVII, which clearly speaks of public officer in service of either Central Government or State Government and no other public officer.

33. The Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 provides for framing coal mines provident fund scheme for the establishment of a provident fund for the employees. It has been clearly provided that the fund shall vest in and be administered by a Board constituted u/s 3(A) of the said Act. Section 3(B) specifies that the Board of Trustees constituted u/s 3(A) shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

34. The Plaintiff, accordingly, had sued the Board of Trustees constituted u/s 3(A) making the trustee as the sole Defendant. Section 3(B) of the said Act also specifically mentions that the suit shall be filed by or against the Board of Trustees and not against any Government, Central or State Government. The provisions of Sections 3(B) and 3(C) provide that Coal Mines Provident Fund Commissioner shall be as the Chief Executive Officer of the Board, subject to the general control and superintendence of the Board.

35. The provisions of Sections 3(B) and 3(C) are as follows:

3-B. Board of Trustee to be a body corporate.--The Board of Trustees constituted u/s 3-A shall be a body corporate under the name specified in the Notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

3-C. Appointment of Officers.--(1) The Central Government shall appoint a Coal Mines Provident Fund Commissioner, who shall be the Chief Executive Officer of the Board and shall be subject to the general control and superintendence of the Board.

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4. The method of recruitment, salary and allowances, discipline and other conditions of service of the Coal Mines Provident Fund Commissioner shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the fund.

36. The Apex Court in the case of Coal Mines Provident Fund Commissioner (supra) has taken into consideration that since the Central Government appoints a Coal Mines Provident Fund Commissioner as the Chief Executive Officer of the Board, merely by placing his services at the disposal of the Board, he does not cease to be an officer and as such it is not proper to hold that the Coal Mines Provident Fund Officer is not a public officer within the meaning of the terms of Section 2(17)(h) of the Civil Procedure The Hon'ble Apex Court at the same time has held that his services are placed at the disposal of the Board and has also taken notice of Section 3(C) of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 that the Coal Mines Provident Fund Commissioner shall be the Chief Executive Officer of the Board, subject to the general control and superintendence of the Board, as his services are placed at the disposal of the Board.

37. In view of the above, any duty discharged as the Executive Officer of the Board, cannot be said to be the duty discharged as an officer of the Central Government or the State Government and if a suit is instituted challenging any order, it is against the Chief Executive Officer of the Board. According to Section 3(B), the Board of Trustees constituted u/s 3(A) has to be sued and not the Coal Mines Provident Fund Commissioner.

38. The Central Government, thus, does not come in picture at all for any act done in official capacity as the Chief Executive Officer of the Board and the Central Government or the Union of India cannot, at any stretch of imagination, be said to be a necessary party in a suit challenging the order of the Chief Executive Officer of the Board, particularly, in view of Section 3(B) which clearly provides for suing the Board of Trustees constituted u/s 3(A).

39. In Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , a Constitution Bench of the Apex Court has held that merely because the Government Companies/Corporations and Societies are discharging public functions and duties, that does not by itself make them agents of the Central or the State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central

and /or State Acts or under private law.

40. The Hon"ble Apex Court while dealing with the cases of Board and considering as to whether the Board in which the property of the Central Government is vested, is a department of Central Government, has held that a Board is not a department of Central Government, but it has distinct identity of a company. Reference may be made to the case of The Board of Trustees for the Visakhapatnam Port Trust Vs. The State of Andhra Pradesh and Others, .

41. In Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, , the Apex Court has specifically held that the Regional Provident Fund Commissioner under the Employees" Provident Fund Act and the Employees" Provident Fund Scheme, 1952 discharges statutory functions for running the scheme. It has not in anyway, been delegated with the sovereign powers of State so as to hold it as a Central Government even if it is held that administrative charges are paid by the Central Government.

42. In Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, , the Apex Court has distinctly held that the Board of Control for Cricket in India being not financially, functionally or administratively dominated by the Government and being not under control of Government, it cannot be said to be State only because Government exercises limited control, which is purely regulatory and not pervasive. It has been further held that all autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression "State".

43. The clear expression of Rule 8(B) of Order XXVII, Civil Procedure and the principles laid down by the pronouncements of the Apex Court lead to the considered conclusion that the Plaintiff-Appellant being an employee of the Coal Mines Provident Fund Organization, which is administered by the Board of Trustees, the suit filed by him against the Board of Trustees is not bad for non-joinder of the Central Government/ Union of India and the provision of Order XXVII, Rule 5(A) has no application to the facts of the case.

44. The finding of learned lower appellate Court holding the suit bad for non-joinder of Union of India is patently erroneous, contrary to law and unsustainable.

45. The substantial question of law framed in this appeal is, accordingly, answered in affirmative and the said finding and the judgment and decree of learned lower appellate Court is, hereby, set aside. Since learned lower appellate Court has concurred with the other findings of facts arrived at by learned trial Court, the judgment and decree of learned trial Court passed in Title Suit No. 102/90 Is restored.

46. This appeal is, accordingly, allowed with cost of Rs. 5,000/-.