

(2008) 01 CAL CK 0047

In the Calcutta High Court

Case No : G.A. No. 2528 of 2007 and A.P.O. No. 332 of 2007 and G.A. No. 2799 of 2007 and A.P.O.T. No. 473 of 2007

Sri Sudhir Kumar Manna

APPELLANT

Vs

Bengal Chemicals and Pharmaceuticals Ltd. and Others

 Bengal Chemicals and Pharmaceuticals Ltd. and Others
Vs Sri Sudhir Kumar Manna

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2008) 1 CHN 928 : (2008) 117 FLR 289 : (2008) 2 LLJ 466

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Arunabha Ghosh and Soumya Majumdar, in A.P.O. 332/2007 and Indranath Mukherjee and Dipak Kumar Bhattacharjee, in A.P.O.T. 473/2007, for the Appellant; Indranath Mukherjee and Dipak Kumar Bhattacharjee, in A.P.O. 332/2007 and Arunabha Ghosh and Soumya Majumdar, in A.P.O.T. 473/2007, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—Both the appeals have been preferred assailing the same judgment and order dated 12th July, 2007 passed by the learned Single Judge whereby and whereunder the writ petition filed on behalf of the employee concerned was finally disposed of. The aforesaid appeals have been heard analogously and are disposed of by this common judgment.

2. The employee concerned while working as a Senior Packer in the Patna Depot of the Bengal Chemicals and Pharmaceuticals Ltd. (hereinafter referred to as the ?said company?) was served with a charge-sheet on the allegations that on several occasions the said employee in connivance with the then Area Sales Manager, Patna Depot had taken out the goods from the stock maintained at the said Patna Depot under false invoice and making false entries in BIN cards and the goods had not been actually delivered to the concerned parties. According to the management of the company, aforesaid allegations mentioned in the charge-

sheet against the employee concerned constituted misconduct under Rule 20(b) and (d) of Bihar Shops and Establishments Rules, 1955 framed under Bihar Shops and Establishments Act, 1953.

3. From the available records we find that the employee concerned, namely, the writ petitioner herein replied to the charge-sheet pointing out various infirmities and specifically denying all the charges mentioned in the said chargesheet. The Enquiry Officer upon conducting the enquiry proceeding found the employee concerned guilty of misconduct as mentioned in the charge-sheet and submitted the enquiry report before the Disciplinary authority. The said Disciplinary authority awarded punishment of removal from service to the employee concerned. The employee concerned thereafter, preferred an appeal from the aforesaid order of the Disciplinary authority before the Managing Director of the company, which was also rejected.

4. In the aforesaid circumstances, the employee concerned filed a writ petition challenging the charge-sheet, order of removal passed by the Disciplinary authority and the order passed by the Managing Director of the company as the Appellate authority. The said writ petition was ultimately disposed of by the learned Single Judge by the judgment and order under appeal wherefrom the present appeals have been preferred.

5. On behalf of the company, a preliminary objection was raised regarding maintainability of the writ petition on the ground of lack of territorial jurisdiction which was, however, rejected by the learned Single Judge of this Court by the order dated 11th April, 2001. The said order was, however, not challenged by the company and the issue with regard to the territorial jurisdiction of this Hon^{ble} court to entertain the writ petition filed by the employee concerned had, therefore, attained finality. The relevant portion of the aforesaid order dated 11th April, 2001 passed by the learned Single Judge is quoted hereunder:

As regards the territorial jurisdiction of this Court raised by the respondents, I am of the view that this Court has territorial jurisdiction to entertain the writ application as the disciplinary authority which passed the impugned order in the instant case is respondent No. 4 within the jurisdiction of this Court. The appellate authority being respondent No. 3 which disposed of the appeal of the petitioner is also within the jurisdiction of this Court and passed the orders within the jurisdiction of this Court. Hence the objection as to the territorial jurisdiction of this Court is hereby rejected....

6. The learned Counsel of the company once again urged the aforesaid issue before us while assailing the judgment and order under appeal although the company did not choose to prefer any appeal challenging the aforesaid order passed by the learned Single Judge on 11th April, 2001. It has been argued on behalf of the company that the writ petitioner is governed under Bihar Shops and Establishments Act and, therefore, cannot seek any remedy under the said Act before this Hon^{ble} court by filing the writ petition.

7. Admittedly, the registered office and head office of the company is in Calcutta which is within the jurisdiction of this Hon'ble court wherefrom the charge-sheet was issued to the writ petitioner. Furthermore, the venue of the enquiry was also in Calcutta and the order of removal as well as the order of the Appellate authority were passed by the concerned authority of the company from Calcutta.

8. In the present case, Clause (1) of Article 226 of the Constitution of India is clearly attracted as the head office of the company, which is an authority within the meaning of Article 12 of the Constitution, is in Calcutta. Under the similar circumstances, a Division Bench of this Hon'ble court in the case of Pottery Mazdoor Panchayat and Anr. v. Union of India and Ors. reported in 1989 (1) C.L.J. 324 has held:

4. "Under these circumstances, the relief in the Writ Petition was rightly sought, inter alia, against the Second Respondent Company whose Head Office, as earlier stated, is situate in Calcutta. By virtue of the provisions contained in Clause (1) of Article 226 of the Constitution, therefore, this Court was competent to entertain and decide the Writ Petition. The question with respect to the cause of action, wholly or in part, arising within the territorial jurisdiction of this Court was not directly relevant, since Clause (1) of Article 226 of the Constitution is attracted in the present case in view of the fact that the Head Office/Registered office of the Second Respondent Company, which is an authority within the meaning of Article 12 of the Constitution, is situate in Calcutta?."

9. The cause of action, in the present case, has wholly arisen within the jurisdiction of this Hon'ble court in view of issuance of the charge-sheet to the employee concerned, conducting the disciplinary proceeding, issuance of the order of punishment of removal from service by the Disciplinary authority and also passing of the order by the Appellate authority disposing the appeal preferred by the employee concerned from the office of the company in Calcutta. The writ petitioner herein claimed relief challenging the acts and/or actions and/or decisions of the company whose registered office and head office is within the territorial jurisdiction of this Hon'ble court.

10. In the aforesaid circumstances, the learned Single Judge has rightly rejected the preliminary objection raised on behalf of the company as to the territorial jurisdiction of this Hon'ble court to entertain the writ petition filed by the employee concerned and we approve the same.

11. It has also been argued on behalf of the company that the service of the writ petitioner is governed by the Bihar Shops and Establishments Act and, therefore, the said writ petitioner should have filed a proper application before the prescribed authority as provided in Section 26(2) of the Bihar Shops and Establishments Act, 1953. We do not find any merit in the aforesaid argument as the writ petitioner herein, admittedly, preferred appeal from the order passed by the Disciplinary authority (Chief General Manager, Marketing) before the Managing Director of the company and the said Managing Director entertained

the said appeal preferred by the writ petitioner and also disposed of the same on merits by the reasoned order dated 15th January, 2001. The concluding portions of the aforesaid order passed by the Managing Director as the Appellate authority are set out hereunder:

I have carefully considered the matter, your Appeal and the punishment imposed and having regard to grave circumstances the undersigned is not inclined to interfere in the matter of punishment imposed. This dispose of your Appeal dated nil received on 6.12.2000.

12. The authorities of the respondent company by their own conduct did not adhere to the provisions of the Bihar Shops and Establishments Act, 1953 and the Managing Director of the company acted as an Appellate authority in the matter while deciding the appeal preferred by the writ petitioner. The authorities of the company are, therefore, now estopped from raising any issue challenging the validity of the said order passed by the Managing Director as the Appellate authority.

13. Furthermore, going through the judgment and order under appeal, we find that the learned Single Judge was pleased to set aside the order of punishment as no copy of the enquiry report was supplied to the writ petitioner to enable him to submit a proper representation before issuance of the order of punishment. The learned Single Judge following the decision of the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., held that the disciplinary proceeding cannot be sustained in law from the stage of passing the order of punishment by the Disciplinary authority.

14. The order of punishment issued to the writ petitioner was set aside by the learned Single Judge on the ground of violation of the principle of natural justice due to non-supply of the enquiry report and liberty was granted to the Disciplinary authority to pass final order in the disciplinary proceeding afresh.

15. When principles of natural justice are violated, bar of alternative remedy does not operate and it is open to the High Court to interfere with the impugned order. In the present case, it has been established that the principle of natural justice has been flagrantly violated at the instance of the company, which is an authority within the meaning of Article 12 of the Constitution, as the copy of the enquiry report was not supplied to the writ petitioner in order to enable him to submit effective representation before the Disciplinary authority. Therefore, learned Single Judge has rightly entertained the writ petition and issued appropriate directions.

16. In view of quashing of the order of punishment by the learned Single Judge, competent authority of the company should have allowed the writ petitioner to resume his duties and if necessary, an order of suspension could be issued once again to the writ petitioner during the pendency of the disciplinary proceeding. Unfortunately, the authorities of the company neither allowed the writ petitioner to resume his duties nor even any order of suspension was passed afresh by the

competent authority of the company. It has been argued on behalf of the company that the writ petitioner did not submit any representation in compliance with the order passed by the learned Single Judge. The writ petitioner could submit the representation before the Disciplinary authority only after restoration of the employer-employee relationship and such relationship could be restored only after allowing the said writ petitioner to join his duties after quashing of the order of punishment by the learned Single Judge.

17. It is not in dispute that the competent authority of the company did not allow the writ petitioner to resume his duties as an employee of the company and thus, refused to restore the employer-employee relationship as a result whereof the writ petitioner could not submit representation in connection with the enquiry report before the Disciplinary authority as an employee of the company. The learned Counsel representing the company also desperately argued before this Court that the order of suspension was not set aside by the learned Single Judge and, therefore, the writ petitioner should be treated as a suspended employee.

18. We do not understand how the order of suspension issued earlier to the writ petitioner could be set aside by the learned Single Judge since the said order of suspension merged with the final order of punishment which was undisputedly quashed by the said learned Single Judge. The competent authority of the company, admittedly, did not issue any further order of suspension after quashing of the final order of punishment by the learned Single Judge.

19. In the aforesaid circumstances, we hold that the writ petitioner herein should be deemed to be a regular employee of the company in view of quashing of the order of punishment by the learned Single Judge. The learned Single Judge, however, did not consider the issue relating to payment of back wages to the employee concerned even after quashing of the order of punishment as liberty was granted to the Disciplinary authority to pass final order in the disciplinary proceeding afresh after considering the representation of the writ petitioner on the enquiry report.

20. In any event, the writ petitioner is very much entitled to receive all the service benefits immediately after quashing of the order of punishment by the learned Single Judge and the same cannot be denied on the ground that the said writ petitioner did not resume his duties as undisputedly, the writ petitioner was not allowed to resume his duties by the concerned authority of the company even after quashing of the order of punishment by the said learned Single Judge.

21. For the aforementioned reasons, the writ petitioner herein would be entitled to receive all admissible salaries and allowances immediately after quashing of the order of punishment by the learned Single Judge i.e. with effect from the very next day of the judgment and order passed by the said learned Single Judge i.e. on and from 13th July, 2007. The authorities of the Bengal Chemicals and Pharmaceuticals Limited are, therefore, directed to allow the writ petitioner to resume his duties immediately and pay all the admissible salaries and allowances

w.e.f. 13th July, 2007.

22. Needless to mention that the writ petitioner shall submit his representation in connection with the enquiry report before the Disciplinary authority within three weeks from the date of his joining the duties and the Disciplinary authority will pass the final order thereafter, in compliance with the direction passed by the learned Single Judge. We make it clear that in the event, no representation is filed by the employee concerned within the period mentioned hereinabove then the Disciplinary authority will be at liberty to pass final order in the disciplinary proceeding after expiry of the period to submit the representation as directed by the learned Single Judge.

23. However, we also make it clear that this order will not prevent the authorities of the company to issue order of suspension afresh if so advised during the pendency of the disciplinary proceeding.

24. With the aforesaid observations and directions, we affirm the judgment and order under appeal passed by the learned Single Judge and dispose of both the appeals without any order as to costs.

25. Let xerox copies of this judgment duly countersigned by the Assistant Registrar of this Court be supplied to the parties herein on undertaking to apply for the certified copy of the same immediately.

LATER:

26. After pronouncement of the judgment, the learned Counsel of the Company prays for stay of the operation of the judgment and order. We find no reason to grant such stay.

27. Accordingly, the prayer for stay is refused.