
(2005) 07 BOM CK 0096
In the Bombay High Court
Case No : Writ Petition No. 717 of 1991

Sunil Pathak

APPELLANT

Vs

Maharashtra State Mining Corporation

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Conduct, Discipline and Appeal Rules, 1952 — Rule 10B, 16
Constitution of India, 1950 — Article 226, 227
Contract Act, 1872 — Section 199

Citation : (2005) 4 ALLMR 524 : (2005) 107 BOMLR 1441 : (2006) 1 MhLj 495

Hon'ble Judges : D.D. Sinha, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : Kalyani Marpakwar Deshpande, for the Appellant; A.B. Choudhari, for the Respondent

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Heard Mrs. Kalyani Marpakwar, (Deshpande), learned Counsel for Petitioner and Mr. A.B. Choudhari, learned Counsel for respondent.

2. The learned Counsel for the petitioner contended that on 16.11.1974, the petitioner was appointed as Mines Foreman and was posted at Pohara Mines in Bhandara District. The petitioner was confirmed on the post of Junior Mining Engineer by order dated 13.08.1991. On 15.09.1983, the petitioner resigned from the post. In the year 1986 the petitioner again applied to the respondent for appointment on the post of Mining Engineer / First Class Mines Manger, on the fixed pay of Rs. 1550/- per month plus other allowances in the pay scale of Rs. 1100 - 50 - 1550 - 75 - 1700. On 5.02.1988, the petitioner was confirmed on the post of Mining Engineer/First Class Mining Manager w.e.f. 07.04.1987.

3. That on 10.08.1988, the petitioner was transferred to Nagpur. On 19.08.1988, the petitioner was placed under suspension for contemplated enquiry. On 15.02.1989, memorandum of charges was handed over to the petitioner. The charge was under Rule 10(B)(iii) of the Conduct, Discipline and Appeal Rules of

the Respondent. There were total 6 charges leveled against the petitioner. Along with the memorandum of charges dated 15.02.1989, the petitioner was supplied with statement of allegations, list of witnesses and other documents. The petitioner was served with another charge sheet dated 17.03.1990, wherein two additional charges were framed against the petitioner. On 10.08.1983, Shri S.D. Solke, was appointed as Enquiry Officer to conduct the departmental enquiry against the petitioner. On 24.02.1989, the petitioner submitted representation and demanded various documents and also requested that he be allowed to be represented by a Lawyer. However, on 28.03.1989, the Managing Director refused permission to the petitioner to engage services of Lawyer. On 16.11.1989, the petitioner submitted his reply and denied all the charges leveled against the petitioner. On 20.03.1990 petitioner demanded copies of various documents, however, the said request of the petitioner was rejected by the respondent vide their reply dated 10.04.1990.

4. It is contended by the learned Counsel for the petitioner, that on 31.05.1990 the petitioner had supplied his list of witnesses to the respondent. However, all the witnesses shown in the said list were not examined and in a arbitrary manner the enquiry was completed. Petitioner was pressurised to submit final statement of defence and therefore, on 20.06.1990, the petitioner supplied his final statement of defence.

5. The learned Counsel for petitioner further contended that on 4.10.1990, the Enquiry Officer submitted his report and concluded that Charge No. 3, 4, and 8 were not proved, whereas Charge Nos. 1, 2, 4 and 6 were proved as well as charge No. 7 was partly proved. On 6.11.1990, the petitioner was served with final show cause notice, and the petitioner was dismissed from service by the respondent on 25.01.1991. Being aggrieved by the action of dismissal by the respondent, the petitioner is constrained to invoke the extra ordinary jurisdiction under Article 226 and 227 of the Constitution of India by way of this Writ Petition, wherein the order of dismissal dated 25.1.1991, passed by the respondent is impugned.

6. Mrs. Deshpande, The learned Counsel appearing for the petitioner contended that though the petitioner is challenging the order of respondent dated 25.01.1991, on various grounds such as; relevant documents were not supplied to the petitioner during the course of enquiry and therefore, proper opportunity was denied to the petitioner, which resulted in vitiating the whole enquiry. Similarly, the delinquent was not allowed to cross examine the witnesses during the departmental enquiry, and therefore right of petitioner to cross examine the witness is taken away without any justification, which has also resulted in vitiating the departmental enquiry. Similarly, during the course of departmental enquiry, representation of petitioner for permitting him to engage services of lawyer has been denied, which has also resulted in causing serious prejudice to the petitioner, and therefore, it has vitiated the departmental enquiry. However, the petitioner does not want to press these grounds, and for the purpose of

controversy in issue the petitioner is relying only on the ground that, the order dated 25.01.1991, passed by the respondent i.e. The Managing Director of Maharashtra State Mining Corporation is without authority, power since the appointment of petitioner was made by the Board of Directors of Maharashtra State Mining Corporation. It is submitted that the appointing authority being a Board, the same authority alone was competent to issue order of dismissal of the petitioner, however, in the instant case it is not in dispute that the impugned order of dismissal dated 25.01.1991, is issued by the respondent Managing Director of the Maharashtra State Mining Corporation, and not by the Board, and therefore, the said order is not sustainable in law. In order to substantiate the contention reliance is placed on the judgment reported in Krishna Kumar Vs. Divisional Assistant Electrical Engineer and Others, .

7. Mr. Choudhari, the learned Counsel appearing for respondent on the other hand supported the impugned order of dismissal passed by the respondent Managing Director. It is contended that in view of the misconduct by the petitioner, he was suspended by the Managing Director of the Corporation w.e.f. 18.08.1988. When the petitioner was under suspension he was in the pay scale of Rs. 1100-1700 (pre revised) and as drawing a basic of Rs. 1700/- per month. It is contended by Mr. Choudhary, that as per the powers delegated to the respondent - Managing Director, by the Board of Director of MSMC u/s II-1-7, the Managing Director had full powers for creation of new posts and termination of service of a employee of the Corporation who are placed in the grades of pay for which the maximum did not exceed Rs. 1800/- per month.

8. Mr. Choudhari, the learned Counsel for respondent, further contended that the departmental enquiry was initiated against the petitioner and on conclusion of the departmental enquiry some of the charges relating to misconduct were proved and therefore the Competent Authority i.e. the respondent Managing Director dismissed the petitioner from services of Manager w.e.f. 25.01.1991. It is contended that during the pendency of the departmental enquiry against the petitioner, the pay structure of employees of respondent Corporation were revised in accordance with the recommendations of Fourth Pay Commission of the Government of Maharashtra. The respondent Corporation received the communication regarding the revision of the pay scale from the Government of Maharashtra in December, 1989 and the revised pay scale were implemented in January, 1990. On account of this revision of pay scale, the old pay scale of petitioner of Rs. 1100-1700 of Mines Manager (first Classes) was amended and the petitioner was given pay scale of Rs. 3200-4625/-. The basic pay of petitioner was raised to Rs. 3875/- at the time of passing of the order of dismissal by the respondent.

9. Mr. Choudhari, the learned Counsel appearing for respondent has contended that, had the pay scale of the petitioner not revised, then the Managing Director had all the powers to dismiss the petitioner in January, 1991. However, because of the higher pay scale given to the petitioner w.e.f. January, 1990 the action of

the Managing Director of dismissing the petitioner was rectified by the Board of respondent by circular resolution dated 20.02.1991. Similarly, by this circular resolution the delegation of powers of the Managing Director were also amended and by the said amendment the Managing Director were given full powers to terminate the services of the employees of the Corporation in the grades of pay, maximum of which did not exceed Rs. 4700/- per month.

10. Mr. Choudhari, the learned Counsel for respondent, submitted that in the instant case, though the Managing Director at the relevant time under the delegated powers from the Board, was competent to terminate the services of the employee of the respondent Corporation, who was placed in the grades of pay for which maximum do not rise Rs. 1800/- per month, and though the basic pay of petitioner at that relevant time was Rs. 3875/- per month, even then the order of dismissal of petitioner dated 25.01.1991, passed by the respondent Managing Director, is not invalid, since the Board at later point of time i.e. by circular dated 20.02.1991, rectified the action of the Managing Director, which validated the order of dismissal passed by the Managing Director. It is contended that the Board having rectified the action of the Managing Director, of dismissal of petitioner, the impugned order dated 25.01.1991, cannot be said to be an invalid order and the lacuna, if any, in the order dated 25.01.1991, stands cured by subsequent rectification of the said order by the Board of Directors. Mr. Choudhari, the learned Counsel for respondent submitted that in view of the rectification done by the Board of Directors, the order of dismissal dated 25.01.1991, passed by the respondent Managing Director is sustainable in law, and therefore, the contentions canvassed by the learned Counsel for the petitioner in this regard are misconceived. In order to substantiate the contention reliance is placed upon the judgment of Supreme Court reported at Shri Parmeshwari Prasad Gupta Vs. The Union of India (UOI), : High Court of Judicature for Rajasthan Vs. P.P. Singh and Another, , 1984 LIC 886 (V. Rajgopala Reddy v. Andhra Pradesh State Electricity Board and Ors.).

11. Mr. Choudhari, the learned Counsel for respondent, alternatively contended that the relation between the petitioner and respondent being of a contractual one and Section 199 of the Contract Act, 1972 is attracted, and as per the provisions of the said Section a person rectifying any unauthorized act done on his behalf, rectifies the whole of the transaction of which such act formed a part. It is submitted that the Managing Director was acting on behalf of the Corporation and even if it is presumed that the action of the respondent Managing Director dismissing the petitioner vide order dated 25.01.1991, was an unauthorized act, even then in view of the provisions of Section 199 of the Contract Act, the rectification of the such Act by the Board is permissible and is also sustainable in law.

12. We have given out anxious thought to the above referred various contentions canvassed by the respective counsel. In the instant case, though the petitioner has challenged the order of dismissal on various grounds, however, since the

learned Counsel for the petitioner has pressed into the action a sole ground i.e. the removal of the petitioner from service by order dated 25.01.1991 is by the authority subordinate in rank to the appointing authority, and therefore, the order of dismissal is not sustainable in law, and therefore, in the instant case we are required to consider the validity of the order of dismissal dated 25.01.1991 in the light of the above referred ground raised by the petitioner.

13. In the backdrop of the above referred facts, it is not in dispute that on 25.1.1991, i.e. the date on which the respondent Managing Director passed the order of dismissal, the basic pay of the petitioner was Rs. 3875/-. It is also not in dispute that at the relevant time as per the powers delegated to the respondent Managing Director, by the Board of Director of MSMC, the Managing Director has powers to terminate the service of any employee of the Corporation, who was getting the grade of pay for which the maximum did not exceed Rs. 1800/- per month. It is therefore, evident, that on the date of passing of the order impugned the Managing Director was not competent to terminate the service of the petitioner, since the powers delegated by the Board in this regard to the Managing Director were only empowered him to terminate the services of the employees who were placed in the grades of pay for which maximum does not exceed Rs. 1800/- per month. It is therefore, quite clear that the Managing Director on 25.01.1991 was not competent, nor had power or authority to terminate the service of the petitioner. Consequently the said order of dismissal undoubtedly is without authority of law. Nor the Managing Director was vested with the powers to terminate the service of the petitioner.

14. It is not in dispute that the appointing authority of the petitioner was the Board of Directors of the respondent Corporation and therefore, there is no dispute that it was the Board of Director alone, entitled, competent and was vested with the powers to terminate the services of petitioner, and no body else was entitled to exercise these powers which were vested in the Board alone. In the instant case, it is the contention of Mr. Choudhari, the learned Counsel appearing for respondent that the order passed by the Managing Director dated 25.1.1991, having been rectified by the Board of Directors vide circular resolution dated 20.02.1991, the lacuna in the said order stands cured, which renders the impugned order dated 25.01.1991, sustainable in law. In order to substantiate this contention, reliance is placed on the above referred judgment, and therefore, it will be appropriate for us to consider the said decision of the Supreme Court. So far as the case of Sri Parmeshwari Prasad Gupta (cited supra), is concerned, the question which fell for consideration of the Apex Court is stated in para No. 13 of the judgment, which reads thus.

"13. Then, the question for consideration is, what is the effect of the confirmation of minutes of the meeting of the Board of Directors held on December 16, 1953 and the action of the Chairman in terminating the services of the appellant by his telegram and letter, dated December 17, 1953, in pursuance to the invalid resolution of the Board of Directors to terminate his services, in the meeting of

the Board of Directors held on December 23, 1953?"

15. The conclusion recorded by the Apex Court are stated in para No. 14 of the said judgment, which reads thus.

"14. The agenda of the meeting of the Board of Directors held on December 23, 1953 shows that one item of business was the confirmation of the minutes of the meeting of the Directors held on December 16, 1953. The confirmation of the minutes of the meeting of the Directors held on December 16, 1953 would not in any way show that the Board of Directors adopted the resolution to terminate the services of the appellant passed on December 16, 1953. It only shows that the Board passed the minutes of the proceedings of the meeting held on December 16, 1953. But the resolution of the Board of Directors to confirm the action of the Chairman to terminate the services of the appellant by his telegram and letter dated December 17, 1953 would show that the Board ratified the action of the Chairman. Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company in doing so because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company."

16. In the backdrop of the above referred observations of the Apex Court, particularly in paragraph No. 14 of the judgment it is evident that in the said case the services of the appellant were terminated by the Chairman who was acting in pursuance of the resolution of the Board of Directors, passed on December 16, 1954 though the said resolution was invalid, however, the fact remains that, the Board in fact has passed a resolution on December 16, 1953 and the agenda of the meeting of the Board of the Directors held on December 23, 1953 shows that one item of business of the said meeting was to confirm the minutes of the meeting of the Board of Directors held on December 16, 1953. It is therefore, evident that in the said case the Chairman, undoubtedly was acting in pursuance of the resolution though invalid, which the Board of Directors have rectified in the meeting which was held on December 23, 1953. In such situation the Apex Court arrived at a conclusion that though the Chairman was not duly authorized to terminate the service of the appellant in the said case, he was acting on behalf of the Company in doing so, in pursuance of the invalid resolution and therefore, it is concluded by the Apex Court that it was open for the regularly constituted meeting of the Board of Directors to rectify the same. However, in the instant case, the respondent Managing Director at the relevant time was not either authorized by the Board of Directors to exercise its powers, nor there was any resolution of Board of Directors to terminate the services of

the petitioner, and in absence thereof we are afraid that the observations of the Apex Court in the said judgment is of no help to the respondent. In the case in hand, it is not disputed at all that at the relevant time, the respondent Managing Director acted de-hors of the resolution of the Board of Directors whereby the Managing Director was competent to terminate the service of the employee whose grade of pay, maximum did not exceed Rs. 1800/- per month, on the date of passing of the impugned order dated 25.01.1991, the respondent Managing Director undoubtedly had no power, authority or competence to issue such order of dismissal, and therefore, the said order is without any authority of law and this defect or lacuna, in our considered view cannot be rectified by the subsequently circular resolution dated 20.02.1991 by the Board of Directors.

17. The element which is essential for lawful exercise of powers is that, it should be exercised by the Authority upon whom it is conferred, and by no one else. The principle is to be strictly applied except in cases where it may be reasonably inferred that the power was intended to be delegable. In the normal set of circumstances, the power of authority under law is to be exercised by the person or body, who is competent and entrusted with such powers, and in exercise of such powers by the person other than the one vested with such power is possible only in cases where such person is expressly authorised to exercise such powers by the Authority endowed with the power. The delegation requires a distinct act by which the power is conferred upon some person not previously competent to exercise it.

18. In the instant case the power or authority to terminate the service of the employee was totally vested in the Board of Directors of the respondent Corporation. It is therefore, evident that only the Board was legally competent to terminate the services of the employee and no body else. Even if it is presumed that the Managing Director of the respondent Corporation was entitled to act on behalf of the Board, however, such exercise of powers by the Managing Director on behalf of the Board, cannot be extended to include termination of services of the employees of the Corporation, who were getting pay more than Rs. 1800/- P.M.. In the case is hand, we cannot turn nelsons eye to the fact that, the Board had specifically delegated the power to terminate the services of employee of the Board to the Managing Director with a specific rider that such power could be exercised by the Managing Director only in respect of such employees who were placed in the grade of pay, maximum did not exceed Rs. 1800/- per month. It is therefore, evident that at the relevant time the managing Director of the respondent Corporation except in respect of class of employees referred to herein above, was not empowered to terminate the services of other employees of the Board. It is not in dispute that the petitioner at the relevant time was drawing the basic pay of more than Rs. 1800/- per month, and therefore, the Managing Director who dismissed the petitioner vide order dt. 25.01.1991, could not do so, either under the powers delegated to him in this regard by the Board, nor could exercise the same on behalf of the Board. It is evident that the Managing Director while dismissing the petitioner from services has exceeded the ambit

within which he was required to exercise his powers, and therefore, in the facts and circumstances of the present case it was not permissible for the Board to rectify the act of the Managing Director by subsequent resolution. Since the action taken by the Managing Director was not while acting on behalf of the Board and therefore same was completely illegal and without any authority in law. In the instant case the order of dismissal dated 25.1.1991, passed by the Managing Director is undoubtedly without authority of law, as well as in excess of the powers delegated to him by the Board and was also not while acting on behalf of the Board, and therefore, the impugned order is unsustainable in law.

19. So far as the case of High Court of Judicature for Rajasthan (cited supra), is concerned, the relevant observations made in para Nos. 37, 38, 39, 40, 41 and 42 of the judgment which demonstrate that the Apex Court had considered the law laid down by the Apex Court in the case of Parmeshwar Gupta v. Union of India, however, same was in different context and in totally different facts. The observations of the Apex Court in case of High Court of Judicature for Rajasthan, will have to be considered in the light of the facts and circumstances involved in the said case, as well as the facts and circumstances involved in the case of Parmeshwar Gupta (cited supra).

20. The facts involved in the case of High Court of Judicature for Rajasthan, are as follows:

(1) On or about 30.04.1990, the Committee of Two Hon'ble Judge's of Rajasthan High Court was constituted by the Full court for the purpose of consideration of individual merit of the judicial officers of Rajasthan Higher Judicial Services relating to appointment to selection scale. In furtherance thereof, the committee of two Judges considered the same and suggested that last 5 years of A.C.R's., to be considered in the merit criteria therefor. However, the Full Court by resolution dt. 5.10.1990 took a decision to take into consideration 3 good ACRs., out of 5 ACRs. Only for the said purpose. As regards grant of super time scale. The Acting Chief Justice of Rajasthan High Court however constituted a committee consisting of two Judges of the said Court to consider/examine and to make recommendations for confirmation of finding, promoting Rajasthan Higher Judicial Service Officers for their substantive appointment in their services and for promotion of R.J.H.S. Officers in the ordinary scale to selection scale by order dated 26.03.1998. The committee submitted its report on 30.03.1998, upon considering the cases of all eligible candidates in the light of the existing rules as also the full Court resolution, with a view to arrive at a finding the Committee further, found those officers fit and meritorious for grant of selection grade to obtain at least 5 outstanding/very good/good ACRs out of the 7 and where no adverse entry was recorded. As regards those whose ACRs, have not been recorded for one reason or the other, the committee deferred the consideration of their cases for the time. The committee however, filed additional report on 24.07.1999, in the matter of whose cases were deferred. The matter was placed before the Full Court on

30.04.1999, by Hon"ble the Chief Justice. 20 Hon"ble Judges of the High Court participated therein. By a resolution dt. 30.08.1999, the Full court considered the report submitted by the two Judge committee and approved the names of the 16 officers who were found fit for grant of selection scale. The case of the respondents herein along with four other, however, were deferred. The matter relating to the additional report of the said two Judge committee was again before the Full Court on 27.11.1999. It accepted the report of the committee and declined to grant selection scale to the respondents herein. In furtherance of the impugned recommendation made by the High Court the Governor by a notification dt. 5.2.2000, made appointment of the officers of the Higher Judicial Services to the post of selection grade with effect from the date mentioned against their names respectively.

21. Further facts are stated as follows:

The Judicial Officers who were not granted selection scale filed Writ Petitions before the Jaipur Bench of the Rajasthan High Court, questioning the non grant of selection grade to them, and the Jaipur Bench of the Rajasthan High Court interalia held as follows:

(1) The Acting Chief Justice was not authorised to constitute two Judge committee and thus, it could not make/lay down any merit criteria;

(2) As all the Judges of the High Court have not been consulted, the Committee appointed by the Acting Chief Justice alone could not evolve the merit criteria in view of the Sub-rule (h) of Rule 15 of the 1952 Rules.

(3) The earlier policy decision adopted by the Full Court could not be changed as Rule 15 of the 1952 Rules provides for prior consultation of the Judges of the High Court and as all Judges were not consulted in the matter subsequent approval thereof could not cure illegality.

22. In the light of the above referred facts the decision rendered by the Jaipur Bench of the Rajasthan High Court, the Apex Court was considering the issue in the case of High Court of Judicature for Rajasthan (cited supra), and finally recorded its conclusion in paragraph Nos. 37, 38, 39, 40 and 42. The conclusions recorded reads thus:

"37. Further more the terminology "consultation" used in Rule 15 having regard to the purpose and object thereof must be given its ordinary meaning. In Words and Phrases (Permanent Edition, 1960 Vol.9 p.3), to "consult" is defined as "to discuss something together, to deliberate". Corpus Juris Secumdum (Vol.16-A, 1956 Edn. p. 1242) also says that the word "consult" is frequently defined as meaning "to discuss something together, or to deliberate". By giving an opportunity to consultation or deliberation the purpose thereof is to enable the Judges to make their respective points of view known to the others and discusses and examine the relative merits of their view. It is neither in doubt nor in dispute that the Judges present in the meeting of the Full Court were supplied with all

the requisite documents and had full opportunity to deliberate upon the agenda in question.

38. There is another aspect of the matter which may require consideration. For all intents and purport the report of the two-Judge committee has been approved by the full Court. Once approved, it terminated into a decision of the Full Court itself. In the instant case even the Governor has acted upon the recommendations of the High Court. The Writ Petitioners first respondents herein did not question the appointments of the appointees before the High Court. Thus, there cannot be any doubt whatsoever that for all intents and purport the opinion of the two Judge committee received approval at the hands of the Full Court.

39. The High Court, in our opinion, further committed a manifest error in arriving at its conclusion insofar as it failed to take into consideration that Rule 15 does not postulate the prior approval of the Full Court in relation to any action which may be initiated by the Chief Justice.

40. When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.*) in the instant case both the aforementioned requirements have been fulfilled.

23. The decision in the case of Parmeshwar Prasad Gupta, was considered and in para No. 42, the Apex Court has observed thus:

42. In any view of the matter, even in a case where the initial action is illegal, the same can be ratified by a body competent therefor. This aspect of the matter has not been considered by the High Court at all. In *Parmeshwari Prasad Gupta v. Union of India*, this Court held : (SCC pp. 546-47, para 14.)

"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company in doing so because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17.12.1953."

24. The Apex Court in view of the above referred facts and circumstances allowed the appeals and set aside the impugned judgment of the Jaipur Bench of the Rajasthan High Court. While answering this issue and in view of the facts and circumstance and law involved in the said case, the Apex Court concluded the

issue by holding that when a approval is required an action holds good. Only if it is disapproved it loses its force. Only when the permission is required the decision does not become ineffective till the permission is obtained. The facts and circumstances involved are completely distinct and different and as we have already observed herein above, in the case in hand the Managing Director was neither competent under the delegated power given to him by the Board to terminate the services of the petitioner, nor was acting on behalf of the Board of Directors, while issuing the order of termination and therefore, the action of the Managing Director is ab-initio void and subsequent ratification by the Board of Directors, in our considered view could not cure this illegality, particularly when the action of termination came into force on the day of passing of the order of dismissal, and the petitioner ceased to be the employee of the Corporation from the date of passing of the order of dismissal. It is therefore, evident that the action of dismissal was completed on the same date on which the order of termination is passed and it such action is without authority of law. It suffers from manifest illegality which cannot be cured, merely by passing some resolution by the Board of Directors. We are afraid that the judgment of the Apex Court in the case of High Court of Judicature for Rajasthan (cites supra), is also of no help to the respondent.

25. The contentions of Shri Choudhari, the learned Counsel appearing for respondent, that the rectification done by the Board is valid and sustainable, in view of Section 199 of the Contract Act, is also misconceived, since under the delegated powers the Managing Director was only entitled to terminate the services of the employee falling in the particular pay scale and since the petitioner was drawing the pay above the pay scale applicable to the category of employees who can be terminated by the Managing Director under the delegated powers, and therefore, on the date of passing of the order of termination of petitioner, the Managing Director exceeded the power delegated to him in this regard, and therefore, the action of the Managing Director is without authority of law, and beyond the powers delegated to him by the Board, and such action in our considered view could not be rectified at the later point of time, since the Managing Director was not acting on behalf of the Board.

26. For the reasons stated hereinabove, the Writ Petition is allowed. The impugned order dated 25.1.1991, passed by the Managing Director of the respondent Corporation is quashed and set aside. Since the petitioner has already retired from service, we direct the respondent to reinstate the petitioner notionally from the date of termination i.e. from 25.1.1991 in the same post which the petitioner was holding at the relevant time, and pay the arrears of salary which was applicable to the post held by the petitioner at the time of his termination, till the date of his retirement, including other consequential reliefs and retiral benefits, if any, within a period of six months.

27. Rule is made absolute in above terms. No order as to costs.