

Bharat Coking Coal Ltd. and Others

Vs

Babulal and Another

Civil Appeals No. 10866 of 1996 with No. 10867 of 1996

K. Ramaswamy, G.B. Pattanaik JJ)

05.08.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. These appeals arise from the order made on 21-11-1995 by the Division Bench of the Calcutta High Court in FMATs Nos. 1548 of 1990 and 250 of 1992. Admitted position is that the respondent Babulal was a Senior Mining Engineer and the other first respondent Maheshwari Sharma was a Manager working in the South Govindpur Colliery, Govindpur area. On 30-6-1989, an accident had occurred at 2.00 p.m. due to fall of the roof in XI Seam (of coal) due to which five miners died and two miners were seriously injured. It is the case of the appellant that both the first respondents were not present at the site nor had they taken necessary safety precautions to aver accident to the miners. A fact-finding committee came to be appointed to find out the cause for the death of five and injury to two miners. The report dated 1-7-1989 appears to have put it pointedly that there was dereliction of duty on the part of the respondents resulting in the mine accident. Consequently, the appellant exercised the power under Rule 12.4(1)(c) of the Common Coal Cadre Rules, 1974 which reads as under :

"12.4 Termination. - (1) Unless otherwise specifically provided, the contract of appointment of the executive Cadre employee may be terminated otherwise than on disciplinary grounds :

#(a)-(b) * * *##

(c) With three months' notice or pay in lieu thereof on confirmation in the service, on either side."

4. On the basis thereof, the service of both the first respondents came to be terminated. It is not in dispute that this Court in G.P. Lal v. Coal India Ltd. [CA No. 3673 of 1988] had struck down the rule as violative of Article 14 of the Constitution. Consequently, the rule was never in vogue to invoke the exercise of the power by the appellants.

5. The question then is what would be the position of the respondents ? It is not far to seek that when charge of dereliction of duty was imputed to both the first respondents, it was necessary to hold an enquiry to give an opportunity to them before taking any disciplinary action for the alleged dereliction of duty. It is, therefore, necessary that the appellant should hold an enquiry against the

first respondents giving reasonable opportunity to them according to the rule. The Constitution Bench rendered the decision in *Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] which had held that the delinquent must be deemed to be under suspension pending enquiry.

6. In view of the above, we hold that the respondents are entitled to the subsistence allowance during the pending enquiry. Enquiry should be completed within six months from the date of the receipt of the order. Subsistence allowance shall be paid within six weeks from the date of receipt of the copy of the order.

7. The appeals are accordingly disposed of. No costs.