

Oriental Insurance Co. Ltd.

Vs

Gokulprasad Maniklal Agarwal

Civil Appeal Nos. 4736 and 4737 of 1999

(G. T. Nanavati, S. N. Phukan JJ)

20.08.1999

JUDGMENT

G.T. Nanavati, J. –

1. Delay condoned. Leave granted.

2. The respondent-Gokulprasad Maniklal Agarwal was working as an Assistant Administration Officer with the Appellant insurance company. He challenged initiation of disciplinary proceedings against him by the appellant by filing Writ Petition No. 2128/84 in the High Court of Bombay. While the departmental proceedings were pending a promotion list for the Western Zone for promotion to the post of Administrative Officer was published by the appellant on 8.2.1988. The respondent's name appeared at serial No. 1. Instead of promoting him, by letter dated 22.2.1988, the respondent was informed by the appellant that as the disciplinary proceedings were pending against him his promotion to the rank of Administrative Officer has been kept in abeyance till the result of the enquiry.

3. The disciplinary proceedings ended with an order dated 19.11.1993 whereby the respondent was awarded penalty of reduction in basic pay by one stage in the time scale of pay on permanent basis. The respondent feeling aggrieved by the letter dated 22.2.1988 and the order of punishment dated 19.11.1993, amended the Writ Petition and challenged the said letter and order also. The High Court considered the punishment imposed upon the respondent as a minor penalty and held that imposition of such a minor penalty could not come in the way of promotion. Taking this view the High Court allowed the Writ petition and quashed the letter/decision dated 22.2.1988.

4. The appellant then filed Special Leave Petition (Civil) No. 3413 of 1998, in this Court. It was withdrawn as the appellant wanted to file a Review Petition before the High Court. The appellant, thereafter, did approach the High Court by way of a Review Petition but the same was dismissed on the ground that there was no error apparent on the face of the record. Aggrieved by both the orders of the High Court, the appellant has filed these appeals. The respondent though served has not thought it fit to appear.

5. What is contended by the learned counsel for the appellant is that the punishment imposed upon the respondent was a major penalty and not a minor penalty. He submitted that it was a mistake on the part of the learned counsel appearing for the Insurance Company to have conceded before the High Court that it was a minor penalty. He further submitted that this error has vitiated the order passed by the High Court.

6. Learned counsel drew our attention to the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 and we find that Rule 23 of the said Rules clearly describes reduction to a lower time scale or to a lower stage in a time as a major penalty. Obviously, the learned counsel who appeared for the Insurance Company had committed a mistake while describing it as a minor penalty. When this mistake was pointed out to the High Court it should have really reviewed its earlier order.

7. As departmental proceedings for a major penalty were started against the respondent, the appellant was justified in not promoting him till the enquiry was over. The learned counsel for the appellant pointed out to us that soon after the order of punishment was passed, the case of the respondent was again considered by the Promotion Committee. He was considered for succeeding years also but was not found fit for promotion on merits. The Promotion Committee for the year 1999-2000 having found him fit he has now been promoted to the higher post.

8. In our opinion the High Court was not right in setting aside the decision of the appellant as contained in the letter dated 22.2.1988 and allowing the petition filed by the respondent. We accordingly allow these appeals, set aside the judgments of the High Court in Writ Petition No. 2128 of 1984 and Miscellaneous Civil Application No. 429 of 1998 and dismiss the Writ Petition filed by the respondents.