SUPREME COURT OF INDIA

Maharashtra State Mining Corporation

Vs.

Sunil

C.A.No.2228 of 2006

(Mrs. Ruma Pal, Dalveer Bhandari and Markandey Katju, JJ.)

24.04.2006

ORDER

1. Leave granted.

2. The respondent was employed by the appellant. On the basis that the respondent had indulged in various activities of misconduct, he was placed under suspension pending disciplinary enquiry. The respondent was served with a charge-sheet which was issued by the Managing Director of the appellant. An Enquiry Officer was appointed. After holding the enquiry, a report was submitted by the Enquiry Officer. According to the report, of the eight charges, four were proved, one partly proved and three not proved. The Managing Director concurred with the Enquiry Officer's findings and issued a show cause notice to the appellant why the punishment of dismissal of service should not be imposed upon him. No reply appears to have been given to this notice and the respondent was dismissed from service on 25th January, 1991. The order of dismissal was also passed by the Managing Director. Challenging the order of dismissal, the respondent filed a writ petition before the Nagpur Bench of the Bombay High Court.

3. While the writ petition was pending, the Board of Directors of the appellant Corporation passed a resolution ratifying the action taken by the Managing Director in respect of the disciplinary action against the respondent and also empowering the Managing Director to take decisions in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs. 4,700/- p.m. Prior to this resolution the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs. 1,800/- p.m. Admittedly, the respondent at the relevant time was drawing more than Rs. 1,800/- p.m. Therefore when the Managing Director issued the order dismissing the respondent, he was incompetent to do so.

4. In the writ petition the respondent had taken several grounds for challenging the dismissal order for example, that the relevant documents were not supplied, that he was not allowed to cross-examine the witnesses, that he was not allowed to engage a lawyer etc. However, a perusal of paragraph 6 of the impugned judgment of the High Court shows that the writ petitioner did not press any of the grounds. The only ground which was pressed was that the order of dismissal was passed by the Managing Director of the appellant, who had no authority or power to do so, as the same was vested in the Board of Directors of the appellant. In view of the fact that the respondent had not pressed these grounds before the High Court, we cannot allow him to urge these points before us. The only issue which the High Court was called upon to decide was whether the removal of the respondent from service was by a competent authority.

5. The High Court allowed the writ petition holding that the Managing Director was not competent to terminate the respondent's services as on the date of the passing of the order of termination and therefore the order of dismissal was invalid. The High Court was also of the view that this defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court accordingly set aside the order of termination. Since the respondent had already retired from service, the appellant was directed to reinstate the respondent notionally with effect from the date of termination in the same post and pay salaries up to the date of superannuation and to pay all retiral benefits after the date of superannuation.

6. Before us learned counsel appearing on behalf of the appellant has submitted that the High Court's decision was contrary to the decisions of this Court in Parmeshwari Prasad Gupta v. The Union of India, (1973) 2 SCC 543 and High Court of Judicature for Rajasthan v. P.P. Singh and another, (2003) 4 SCC 239. The respondent on the other hand submitted that the resolution of the Board was subsequent to the order of dismissal and, therefore, could not operate retrospectively. The respondent relied upon the decision in Krishna Kumar v. Divisional Assistant Electrical Engineer, (1979) 4 SCC 289 in support of this contention. AIR 1973 SC 2389

2003 AIR SCW 539AIR 1979 SC 1912

7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently 'rectified' by ratification of the competent authority. Ratification by definition means the making valid of an act

already done. The principle is derived from the Latin maxim 'Ratihabitio priori mandato aequiparatur' namely 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore ratification assumes an invalid act which is retrospectively validated.1

1 See: P. Ramanatha Aiyar's Advanced Law Lexicon (2005) Vol. 4 p.3939 et seq.

8. In Parmeshwari Prasad Gupta, the services of the General Manager of a company had been terminated by the Chairman of the Board of Directors pursuant to a resolution taken by the Board at a meeting. It was not disputed that that meeting had been improperly held and consequently the resolution passed terminating the services of the General Manager was invalid. However, a subsequent meeting had been held by the Board of Directors affirming the earlier resolution. The subsequent meeting had been properly convened. The Court held : AIR 1973 SC 2389,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 December 17, 1953".

9. The view expressed has been recently approved in the case of High Court of Judicature for Rajasthan v. P. P. Singh (supra)2. 2003 AIR SCW 539

2 See also Chaude-Lila Parulekar v. Sakal Papers (P) Ltd. (2005) 11 SCC 73.

10. The same view has been expressed in several cases in other jurisdictions. Thus in Hartman v. Hornsby (142 Mo 368, 44 SW 242, 244) it was said "Ratification" in the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorizedly performed in the first instance". 2005 AIR SCW 1892

11. In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors on 20th February 1991, and the Board of

Directors unquestionably had the power to terminate the services of the respondent. On the basis of the authorities noted, it must follow that since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it.

12. Reliance on the decision in Krishna Kumar v. Divisional Assistant Electrical Engineer, (1979) 4 SCC 289 by the respondent is misplaced. In that case, the appellant had been appointed by the Chief Electrical Engineer, the departmental head. He was removed from service by the Divisional Assistant Engineer. The question for determination was whether the appellant had been removed from the service by an authority subordinate to that which had appointed him in violation of Article 311(1) of the Constitution. Having considered the affidavits filed, the Court came to the conclusion that the appellant had been removed from the service by an officer who was subordinate in rank to the officer by whom he was appointed. The Divisional Assistant Engineer was, subsequent to the appellant's appointment, given the power to make an appointment to the post which the appellant held. It was urged by the respondent State that he, therefore, had the power to remove all persons holding that post. The submission was rejected on the grounds first that the right under Article311(1) is vested in an employee on the date of his appointment and that subsequent authorization of any subordinate officer would not confer the power on such subordinate officer to remove the employee. Secondly, merely because the subordinate officer was vested with the power to appoint would not make him equal in rank with the officer making the appointment. In other words, the Divisional Engineer did not cease to be subordinate to the Chief Electrical Engineer
AIR 1979 SC 1912 merely because the latter's power to make appointment to the post had been delegated to him.

13. That was not a case of ratification but of empowerment subsequent to the operative date. The case is, therefore, distinguishable not only on facts but also on the law applicable.

14. In view of the above, this appeal is allowed, the impugned judgment and order of the High Court is quashed, and the dismissal order dated 25-1-1991 is upheld. There shall be no order as to costs.

Appeal allowed