

SUPREME COURT OF INDIA

Girish Bhushan Goyal

Vs.

B.H.E.L.

C.A.No.9868-9869 of 2013

(Sudhansu Jyoti Mukhopadhaya and V.Gopala Gowda, JJ.)

01.11.2013

JUDGMENT

V. Gopala Gowda, J.

1. Leave granted.

2. The appellant has filed two separate Civil Appeals before this Court. The Civil Appeals arising out of SLP (C) Nos. 30883-30884 of 2012 are filed questioning the correctness of the judgment and order dated 20.12.2010 passed in the Writ Petition No. 129 of 2009 (S/B) and order dated 28.6.2011 passed in the Review Application No. 431 of 2011 to the Writ Petition No. 129 of 2009 (S/B), whereas Civil Appeal arising out of SLP (C) No.30877 of 2012 is filed against the judgment dated 22.2.2011 passed in Writ Petition No. 292 of 2009 (S/B) by the High Court of Uttarakhand at Nainital, urging various facts and legal contentions in justification of his claim.

3. Through Civil Appeals arising out of SLP (C) Nos.30883-30884 of 2012, the appellant challenged the impugned order of the High Court by which the High Court dismissed the Writ Petition No. 129 of 2009 and Review Application No. 431 of 2011 filed by the appellant against the termination Order of his service. Through the Civil Appeal arising out of SLP (C) No.30877 of 2012, the appellant claims the pensionary and other monetary service benefits due to him against three decades of service rendered by him which has been withheld by the respondent- Company.

4. Necessary relevant facts are stated hereunder to appreciate the case of the appellant and also to find out whether the appellant is entitled for the relief as prayed in these appeals.

5. The appellant joined the service of the respondent-Company in 1970 and rose to the post of D.G.M. [Deputy General Manager]. He was to retire on 24.3.2009. It is the case of the appellant that four months prior to his retirement, an enquiry was initiated against him. The appellant accepted the charges of negligence on his part and also explained that the negligence was a part of the chain system which included his superiors as well as his subordinates.

6. It is further the case of the appellant that it is he who carried out a routine verification of the stock in the month of July-August, 2008 when he realized that there were some major discrepancies in the stocks of tea-leaves and milk powder in the canteen which was under his supervision by virtue of being in-charge of the canteen (HR). He therefore carried out a physical store checking and a report was prepared accordingly on 30.8.2008. The appellant thereafter, issued a notice to Sh. B.S. Rana, the in-charge of Canteen Store Operation on 10.9.2008. Since there was no reply to the aforesaid notice, the appellant informed the superior authority regarding the matter. A notice was also sent to the suppliers of the tea- leaves and milk powder. The suppliers – ‘Gupta & Co.’ and ‘Bombay Sales’ have admitted to the discrepancy in supply. They further admitted that the goods which have not been supplied against the Bill were lying with them and they were ready to supply the deficient material. However, after the conclusion of enquiry and six days prior to the retirement date of the appellant, he was served with the notice of termination.

7. It is further the claim of the appellant that his termination, which is based on the findings of the Enquiry Officer, is not sustainable for various reasons. Firstly, the report of the Enquiry Officer nowhere mentions the loss of Rs.35 lakhs caused by the appellant as is blamed against him. Secondly, no charges of embezzlement or misappropriation have been leveled against the appellant either in the charge-sheet or anywhere in the report. Thirdly, the term ‘irregularity’ used in the Enquiry Report has been, without any reason, converted to the term ‘malpractice’ in the termination order served on the appellant. Therefore, it is urged by the appellant that a bona fide mistake has been portrayed as a malicious act on the part of the appellant for extraneous reasons.

8. It is the further claim of the appellant that his superiors who were also involved in the chain of events have been relieved from any accusation. His juniors were also meted with minor punishment of stopping one increment, whereas the appellant was served with the notice of termination just six days prior to his retirement on attaining the age of superannuation thereby negating pensionary benefits for which the appellant is legally entitled to in lieu of three decades of service rendered to the respondent-Company.

9. The High Court vide its judgment dated 20.12.2010 opined that the claim of the appellant of being targeted for being a whistle blower cannot be sustained since he did not raise this issue when enquiry was being held against him. Further, even if it is presumed that the appellant was a whistle blower, the same, according to the High Court, would suggest that the appellant was aware of the people taking advantage of him to cause financial gain at the cost of the employer of the appellant. Despite that, the appellant did not produce anything on record to prove that he was doing something to protect the interest of the employer. Also, regarding the claim made by the appellant that other people against whom the charge of negligence was made were not proceeded against, it was held by the High Court that though initiating simultaneous disciplinary proceedings against other persons involved in the issue may have been possible, the appellant at no time, made any request to any authority to conduct disciplinary proceeding against him along with others.

10. In the light of the facts and circumstances of the case, the following points would arise for consideration:

1. Whether the High Court was right in dismissing the appeal filed by the appellant against the Order of his dismissal served on him by the respondent-Company?
2. Whether the appellant is entitled to the pensionary and other monetary benefits which accrued to him against the service provided by him to the respondent-Company?
3. To what relief is the appellant entitled to?

11. While deciding on this issue, it is pertinent for us to ascertain the responsibility of the appellant against which he has been held negligent and also his role in the same. As per the Enquiry Report produced against him which is annexed with the appeal by the appellant, he was held negligent under Rules 5(5) and 5(9) of the BHEL Conduct, Discipline and Appeal Rules, 1975 (hereinafter referred to as the "BHEL Conduct Rules") for being negligent while performing his duty and acting in a manner which is prejudicial to the interest of his employer. The Enquiry Report reads as under:

"....As in-charge of the canteen [HR- Canteen], it was incumbent responsibility of Shri G.B. Goyal to conscientious discharge on his side responsibility as the irregularities stated above amply prove has complicity beyond any shadow of doubt in the sordid state of affair present in the canteen operations.

XXX XXX XXX Mr. G.B. Goyal has admitted the charges leveled against him as contained in the Article of charges as elaborated in Statement of Imputations of Misconduct stating that he had been negligent in the performance of his duties in the capacity of overall in-charge of canteen by placing blind reliance upon his subordinates operating in a three tier system of checking and verification".

12. From the perusal of the above findings of the Enquiry Report, the allegation of misconduct of negligence was established against the appellant under Rules 5(5) and 5(9) of the BHEL Conduct Rules.

It is therefore imperative to discuss the BHEL Conduct Rules to decipher if the conduct of the appellant amounts to misconduct under the Rules to attract 'major penalties' to be imposed upon him as mentioned in Rule 25 of the BHEL Conduct Rules. Rule 25 of BHEL Conduct Rules reads as under:

“25(1). No order imposing any of the major penalties specified in Clause (f), (g), (h), (i) and (j) of Rule 23 shall be made except after an enquiry is held in accordance with the rule. Proceedings under this Rule may be initiated, for conduct which lends itself to both criminal prosecution as well as disciplinary action, notwithstanding that a criminal case against the employee in respect of the same conduct is under investigation or trial”.(emphasis supplied)

13. The major punishment which is awarded to the appellant through the order of dismissal dated 18.3.2009, is covered under Rule 23(i) of BHEL Conduct Rules considering that the appellant had reached the age of superannuation. However, the order of termination does not mention any form of criminal charges against him, which is necessary to attract penalty under Rule 23(i) of BHEL Conduct Rules amounting to dismissal from service. On the other hand, the nature of charges leveled against the appellant was such that he omitted from performing his duty of being a responsible vigilant officer which amounted to being negligent as against being an active participant in colluding with the employees against his employer and acting against the interest of the Company.

14. The consequence of the dismissal order served on him at the end of his service tenure not only results in inflicting disproportionate punishment on him in terms of bad name and reputation, but also deprives the appellant of his retiral benefits for which he has got statutory entitlement for rendering three decades of service to the Company whereas his negligence attracts minor penalty under Rule 23 of BHEL Conduct Rules. It is pertinent to mention the observation made on this issue by this Court on the premise of similar facts and circumstances. In the case of *Surendra Prasad Shukla vs. State of Jharkhand & Ors*¹, at paras 9-10, this Court held as under:

“9. There was no charge against the appellant that he had in any way aided or abetted the offence under Section 392 IPC or that he knew that his son had stolen the car and yet he did not inform the police. The appellant, as we have held, was guilty of negligence of not having enquired from his son about the car kept in front of the government quarters occupied by him. The appellant had served the Government as a Constable and thereafter as a Head Constable from 7-8-1971 till

he was dismissed from service on 28-2-2005 i.e. for 34 years, and for such long service he had earned pension. In our considered opinion, the punishment of dismissal of the appellant from service so as to deprive him of his pension for the service that he had rendered for 34 long years was shockingly disproportionate to the negligence proved against him.

10. We accordingly, allow this appeal in part and modify the punishment of dismissal from service to compulsory retirement. The LPA and the writ petition filed by the appellant before the High Court are allowed in part. There shall be no order as to costs.”

15. Therefore, in view of the principle laid down by this Court in the above referred case, we are of the opinion that dismissal order served on the appellant just 6 days prior to his retirement date is exorbitant and disproportionate to the gravity of misconduct particularly, because he was not involved in active collusion with the other employees of the Company who were involved in this incident, for causing financial loss to the respondent-Company but was negligent by an act of omission. We also should not lose sight of the fact that the appellant took steps to retrieve the materials which were due against the Bill from the suppliers which rectified the error. Accordingly, the order of dismissal served on him is liable to be quashed and is accordingly, quashed. However, we cannot lose sight of the fact that his negligence has caused financial loss to the respondent-Company. Therefore, keeping at par with the punishment awarded to Sh. B.S. Rana on ground of misconduct in terms of demotion to lower grade for 3 years as per letter dated 6.6.2011 from Central Public Information Officer, we award the similar punishment of deduction of one year increment on the appellant as per Rule 23(b) of the BHEL Conduct Rules since the appellant already reached the age of superannuation when the order of dismissal was served on him. Accordingly, the Civil Appeals arising out of SLP (C) Nos.30883-30884 of 2012 are allowed.

16. Since, we have answered point No. 1 in affirmative while allowing the Civil Appeals arising out of SLP (C) Nos.30883-30884 of 2012 and the dismissal order served on the appellant is quashed, the appellant becomes entitled to all the retiral and pensionary benefits under the relevant Rules for which he is statutorily entitled to. Accordingly, the Civil Appeal arising out of SLP (C) No.30877 of 2012 filed by the appellant is also allowed. All the arrears in pension and other retiral benefits should be paid to him with interest at the rate of 9% per annum from the date of application till the date of payment. Since, the appellant was terminated from his service just 6 days prior to his retirement whereby there was no further possibility of any increment; his last one year increment is liable to be deducted from the arrears which he is statutorily entitled to.

17. The appeals are accordingly allowed. The respondent-Company is directed to pay the pension to which the appellant is entitled to and also the arrears due to him, within eight weeks of the receipt of a copy of this order. There will be no order as to costs.

Judgment referred

12011 8 SCC 0536