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Court : Patna

Decided On : Jan-17-2000

Judge : R.M. Prasad, J.

Acts : Companies Act; Constitution of India - Article 12

Appeal No. : C.W.J.C. No. 6993/1995

Appellant : Ashok Kumar Singh

Respondent : Bihar Industrial and Technical Consultancy Organisation Ltd. and ors.

Advocate for Pet/Ap. : Mr. Shivendra Kishore

Prior history : R.M. Prasad, J. 1. In this writ petition, petitioner has assailed the validity of office order No. 8/95-96 dated June 21, 1995 whereby and whereunder after consideration of charges, findings of Inquiry officer, showcause submitted by the original petitioner and his due representation, the management of the Bihar Industrial and Technical Consultancy Organisation Limited (hereinafter called as BITCO), decided to dismiss him from the service of the said Company with effect from the date of its

Judgement :

R.M. Prasad, J.

1. In this writ petition, petitioner has assailed the validity of office order No. 8/95-96 dated June 21, 1995 whereby and whereunder after consideration of charges, findings of Inquiry officer, showcause submitted by the original petitioner and his due representation, the management of the Bihar Industrial and Technical Consultancy Organisation Limited (hereinafter called as BITCO), decided to dismiss him from the service of the said Company with effect from the date of its issuance.

2. Earlier, a preliminary objection was raised on behalf of the Respondent-Company as regards maintainability of this writ petition, as against the company registered under the Companies Act and its employees are appointed by the Board of Directors and that it is not a State within the meaning of Article 12 of the Constitution. This Court vide order dated November 3, 1995 accepted the said preliminary objection and thus held that the respondent-Company was not amenable to the writ jurisdiction of this Court. Accordingly, the writ petition was dismissed as not maintainable. Thereafter the writ petitioner filed L.P.A. No. 1614 of 1995 against the said order. The Division Bench in the said L.P.A. held that the writ petition is maintainable against BITCO and remanded the matter for consideration on merits vide judgment and order dated April 29, 1997, certified copy of which has been produced by the learned counsel for the petitioner. Accordingly, this matter has come up for fresh consideration on merits.

3. It appears that during the pendency of the writ petition original petitioner died and a Petition for substitution of the heirs and legal representatives was filed vide I.A. No. 13015 of 1999 by his wife. Meanwhile amendment petition bearing I.A. No. 1899 of 2000 was also filed on behalf of the petitioner seeking appropriate modification in the relief. Both the amendment petition and substitution petition were heard and finally allowed vide order dated March 27, 2000, whereafter the matter has come up for admission.

4. Heard Mr. Shivendra Kishore, learned counsel for the petitioner and Mr. Lala Sachindra Kumar, learned counsel appearing for the Respondents.

5. It is submitted by the learned counsel for the petitioner that the impugned order of dismissal is vitiated on account of fact that the petitioner was denied subsistence allowance during the inquiry and that the order of dismissal was passed by the authority who was himself the appellate-authority under the Regulation of the Company. In this regard, he referred to the judgment of this Court against the same Company filed by one Apurba Kumar Chanda being C.W.J.C. No. 3468 of 1995 disposed of on September 17, 1999. It has been submitted that in view of the law settled by the Apex Court in the case of State of Maharashtra v. Chandrabhan and analogous cases, reported in AIR 1983 SC 803 : 1983 (3) SCC 387 : 1983-II-LLJ-256 and in the case of Fakirbhai Fulabhai Solanki v. Presiding officer and Anr., reported in AIR 1986 SC 1168 : 1986 (3) SCC 131 : 1986-II-LLJ-124, denial of subsistence allowance during the inquiry has been held to be amounting to violation of the principles of natural justice and consequently vitiates the whole proceedings. He also submitted that this Court in the case of Rama Kant Sharma v. The Pataliputra Central Co-operative Bank and Ors. relying upon the decision of the Apex Court in the case of Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank and Ors., AIR 1995 SC 1053 : 1995 (2) SCC 474 : 1995-II-LLJ-68 held that where there is provision of appeal against the order of disciplinary authority and the appellate or higher authority against whose order there is no appeal, exercise the power, such order shall vitiate. In view of the settled law, learned Counsel for the Respondents has not been able to defend the order of punishment.

6. Writ petition is, thus, allowed. The impugned order contained in Annexure-33 is quashed.

7. However, a question arose as to for

what relief the petitioner is entitled in the

peculiar facts and circumstances of the case. It

was submitted by the learned counsel for the

Respondent- Company that since the order of punishment has been quashed on technical ground in view of the settled principle such matter is normally remitted back for fresh consideration, but in the present case since the delinquent employee is dead the question of remitting the matter back to the competent authority may not be possible, but at the same time the order having been quashed on technical ground, substituted petitioner cannot be granted any relief. This Court is unable to accept the said submission of the learned counsel for the Company.

8. In this regard, learned counsel for the petitioner has relied on the decision of this Court in the case of Sumitra Devi v. Union of India, 1987 P.L.J.R. 714, wherein under more or less similar circumstances, this Court quashed the order removing the original petitioner from service as being devoid and inoperative in law and further directed the Railway to pay to the legal representatives all: salaries due to the employee concerned as if he continued in service till the date of his death and directed to pay them also other benefits admissible to the employee concerned including pension, etc. It has been submitted by the learned counsel for the petitioner that after the order of punishment goes and in the peculiar facts and circumstances, the matter cannot be remitted back to the disciplinary authority, the position as it stood before the order of punishment was passed stood restored and consequently, the heirs and legal representative of the deceased employee will be entitled for all the benefits.

9. This Court finds substance in the said submission of the learned counsel for the petitioner. Having regard to the fact that the order of punishment against the deceased employee does not exist and after his death no fresh inquiry can be held and order can be passed the position will stand revived as it stood before the order of punishment was passed. As such, this Court does not find any justification to deny the consequential benefit which view also stands supported by the aforementioned decision of this Court in the case of Sumitra Devi v. Union of India.

10. Respondent-company is, thus, directed to pay the salary due to the employee concerned as if he continued in service till the date of his death and also other benefits admissible to him including pension, family pension, if any to his successor-in- interest. The Respondents must pay the said benefits within six weeks.