

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) No. 8219/2004**

RESERVED ON : 19th August, 2008

% DATE OF DECISION : September 5th , 2008

MRS. SARITA DEWAN

..... Petitioner
Through: Mrs. Rekha Palli, Advocate

Versus

NATIONAL FERTILIZERS LIMITED
& ORS.

....Respondents
Through: Mr. G. Joshi, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

J U D G M E N T

MANMOHAN, J:

1. The present writ petition has been filed under Article 226 of the Constitution of India for a Writ of Certiorari for quashing the Articles of Charge issued vide Memorandum dated 10th July, 2003 and the orders which arose consequent thereto vide Enquiry Report dated 22nd July, 2003, the order of the disciplinary authority dated 13th January, 2004 and the order of the Appellate Authority dated 7th April, 2004 upholding the order of Petitioner's

dismissal from Respondent No. 1's service. The Petitioner has also prayed for her reinstatement with all consequential benefits and dues that have accrued till date.

2. The facts of this case are that on 11th June, 1987, the Petitioner was appointed to the post of Steno Clerk in the Respondent Company.

3. On 10th August, 1987 the Petitioner applied to the Respondent Company for enrollment of herself, her husband, her mother-in-law and her sister-in-law for availing medical and LTC facilities. In this letter, it was stated that Petitioner's mother-in-law, now deceased, Late Smt. Ram Chameli Dewan and sister-in-law Kumari Kiran Lata have no source of income and were residing with the Petitioner and her husband. In fact, the sister-in-law of the Petitioner was mentally retarded and unmarried.

4. On 11th September, 1987 the Deputy Manager (Personnel) of the Respondent Company informed the Petitioner that only her mother-in-law was entitled to avail medical reimbursement facility in accordance with the Respondent Company Rules. However, the Petitioner's request for treating her mother-in-law and sister-in-law as her dependents for the purposes of LTC was turned down.

5. On 5th June, 1996 a Deed of Family Settlement was executed amongst the family members of the Petitioner's husband. Since the entire

controversy in the present petition revolves around the Deed of Family Settlement, the same is being reproduced hereinbelow for ready reference :-

“DEED OF FAMILY SETTLEMENT

THIS DEED OF FAMILY SETTLEMENT IS EXECUTED AT DELHI on this 5th day of January, 1996, between (1) Smt. Ram Chameli Dewan, wife of late Shri O.P. Dewan, aged 71 years, resident of 1/15, Old Double Storey, Lajpat Nagar-IV, New Delhi; (2) Smt. Sneha Lata Kumar, wife of Shri Gulshan Rai Kumar, aged 51 years, resident of BSS, Nagar Ward-9, Bargarh, Orissa; (3) Smt. Prem Lata Sharma, wife of Shri J.P. Sharma, aged 49 years, resident of 2631, Sector 40-C, Chandigarh; (4) Kum. Kiran Lata, daughter of late Shri O.P. Dewan, aged 45 years, resident of 1/15, Double Storey, Lajpat Nagar-IV, New Delhi and (5) Shri Bhupinder Kishore, son of late Shri O.P. Dewan, aged 42 years, resident of 1/15, Old Double Storey, Lajpat Nagar-IV, New Delhi (which expression shall unless expressly excluded by the context or by law; be deemed to include her/his heirs, executors, administrators, legal representatives, survivors and assigns);

WHEREAS party No. 1 is the sole owner and the allottee of property No. 1/15, Old Double Storey, Lajpat Nagar-IV, New Delhi, which was allotted to her by the Ministry of Rehabilitation in lieu of the property left behind during the partition in the partition now known as Pakistan, and the rest of the parties are her children (Parties No. 2, 3 and 4 are her daughters and party No.5 is her son);

Moreover there is another son of Smt. Ram Chameli Dewan i.e., Nand Kishore who has already written a Deed of Disclaimer in settlement of his claim in the said property, therefore, he has nothing to do with the said property i.e., 1/15, Old Double Storey, Lajpat Nagar-IV, New Delhi due to which he has not been made a party in the said deed. The said deed of disclaimer is registered documents vide No. 8534, in additional book No. I, Volume No. 6248 at pages 22 and is dated 21.11.1988.

AND WHEREAS with the joint co-operation of each other and blessing of Smt. Ram Chameli Dewan who is the Head of the Family, have grown so high, settled in life and they are intrinsically wedded with love and affection and they are collectively and individually respect their mother Smt. Ram Chameli at the highest esteem;

AND WHEREAS it has become necessary and expedient, in view of the fact that the executant No. 1 being Head of the Family and having attained the age of 71 and

moreover not keeping well, during her life time, settlement of every type may be arrived at, so that after her death any kind of disputes or misunderstanding may not arise. It is, therefore, felt necessary and expedient in the interest of all the parties that these may be reduced into writing as under:-

NOW THIS DEED OF FAMILY SETTLEMENT
WITNESSTH AS UNDER:

1. That this Deed of Family Settlement shall be effective immediately.
2. That flat/Property No. 1/15, Old Double Storey, Lajpat Nagar-IV, New Delhi allotted to party No. 1 by the Ministry of Rehabilitation now known as Land & Development Office in lieu of the property left behind at the time of partition in Pakistan and whereas at present Smt. Ram Chameli Dewean is staying with her unmarried daughter party No. 4 and the family of party No. 5.
3. That all the children of party No. 1 i.e., Smt. Ram Chameli Dewan are happily married and well settled in life except party No. 4 Kum. Kiran Lata who is still unmarried at the right age of 45 years and shall remain so till rest of her life. Moreover, she is not educated and not working, has no means of livelihood and is dependent upon her mother and brother i.e., party No. 1 and party No. 5 (i.e., Smt. Ram Chameli Dewan and Bhupinder Kishore).
4. That it is further settled between all the executants of this deed that the property at 1/15, Old Double Storey, Lajpat Nagar-IV, New Delhi shall hereafter belong to Kum. Kiran Lata to the exclusion of others.
5. That it is further settled that if Shri Bhupinder Kishore party No. 5 shall pay a nominal rent to his sister i.e., party No. 4 if he stays in the said property, otherwise one room at the back side shall be used by party No. 1 i.e., Smt. Ram Chameli Dewan and her daughter party No. 4 Kum. Kiran Lata and the front portion will be let out on rent and the rent shall be taken by Kum. Kiran Lata, party No. 4 for her livelihood and shall give receipt for the same as the owner of the property to the tenant then Shri Bhupinder Kishore shall make his own arrangements elsewhere.
6. That the expenses, if any, are to borne in connection with mutation of the property etc. by Kum. Kiran Lata Party No. 4 out of her income from the rent so received.
7. That in so far as moveable properties are concerned it has now been so arranged that mutation in that respect is not necessary as the constitution etc. has been so arranged so as

to suit each other and there is no likelihood of there being any disturbance of any kind. Further if any kind of dis-agreement of any disturbance or dispute of any kind arises before or after the death of party No. 1 i.e., Smt. Ram Chameli Dewan who is the Head of the Family, she authorizes her daughter Smt. Prem Lata Sharma, Party No. 3 to clear or sort out the matter in the peaceful manner and if not able to do so then take relief from the Court of Law. Further she shall also see that this Deed of Family Settlement is executed properly and shall keep the originals with her giving a copy to each of the parties.

8. That in so far as Smt. Ram Chameli Dewan party No. 1 is concerned she hereby in-deference to the wishes of all the executants including herself relinquishes her interest in the property in favour of party No. 4 Kum. Kiran Lata. However, so long as she remains alive she shall have the right of enjoyment of the said property.

IN WITNESS WHEREOF we the executants of the Deed of Family Settlement signed and put hands on this Deed of Family Settlement in the presence of the following witnesses on the day of the month and the year first above written.

WITNESSES :

PARTY NO. 1

PARTY NO. 2

PARTY NO. 3

PARTY NO. 4

PARTY NO. 5

[emphasis supplied]"

6. According to the Petitioner, in pursuance to the family settlement, she started paying a monthly rent of Rs. 2,000/- to her sister-in-law Kumari Kiran Lata. On furnishing of the said rent receipts, a sum of Rs. 2,000/- per month was reimbursed by the Respondent Company as House Rent Allowance, in accordance with its rules to the Petitioner. This reimbursement continued till the year 2003.

7. In April, 2002 the Petitioner was transferred to Nangal in Punjab, but on her representation to the Ministry against the transfer, the said transfer order was cancelled. According to the Petitioner, this was the beginning of her trouble as the Senior Management of the Respondent Company turned against her.

8. On 17th March, 2003 the Vigilance Department of the Respondent Company asked the Petitioner to clarify about genuineness of the rent receipts produced by her for claiming House Rent Allowance as well as to furnish documentary proof regarding ownership of the Lajpat Nagar house.

9. In response, the Petitioner clarified the aforesaid factual position vide her letter dated 24th March, 2003. A copy of the Deed of Family Settlement was also enclosed along with said letter.

10. The Vigilance Department of the Respondent Company then asked the Petitioner to clarify as to whether mutation of the Lajpat Nagar property had been carried out by the Municipal Corporation of Delhi in pursuance to the Deed of Family Settlement and whether said Deed had been registered or not?

11. The Petitioner vide her letter dated 7th April, 2003 clarified that to her knowledge the Family Settlement was not registered but her sister-in-law had applied for mutation of the said property with Municipal Corporation of Delhi vide her letter dated 18th April, 2000.

12. On 10th July, 2003 the Petitioner was issued a Memorandum wherein it was stated that the Respondent proposed to take disciplinary action against her in terms of Clause 32 of National Fertilizers Limited Employees (Conduct, Discipline, Appeal) Rules on the charges listed in the Statement of Articles of Charge and Imputation of Misconduct in support of articles of charge. The primary charge against the Petitioner was that in view of para 8 of the Deed of Family Settlement, the Petitioner's mother-in-law continued to be the sole and absolute owner of the house till the date of her death and the rent paid by the Petitioner was actually the income of her mother-in-law. Consequently, it was alleged that the mother-in-law was not dependent on the Petitioner and not entitled for reimbursement of her medical expenses. It was alleged that the Petitioner had concealed these facts with mala fide intention and continued claiming reimbursement of medical expenses for treatment of her mother-in-law by giving false statement that her income from all sources was less than as prescribed under the NFL Medical Attendance and Treatment Rules. Therefore, according to Respondent Company, Petitioner exhibited lack of integrity and devotion to duty and acted in a manner prejudicial to the interest of the company, thereby contravening Rules 5(1) (a), (b), (d), 6.4 and 6.5 of National Fertilizers Limited Employees (Conduct, Discipline, Appeal) Rules.

13. Thereafter an enquiry was conducted by the Respondent Company. It is the Petitioner's case that the said enquiry proceedings were conducted in violation of principles of natural justice inasmuch as the Enquiry Officer

permitted introduction of three documents without notice to her and further despite the Petitioner's request for an adjournment on the ground that her son was suffering from Dengue, the Enquiry Officer closed the enquiry proceedings and, therefore, she was not able to examine her sole witness – her husband.

14. On 22nd December, 2003 the Enquiry Officer in his report concluded that the mother-in-law was the absolute owner of the Lajpat Nagar property till she was alive i.e. till 31st January, 2003 and, therefore, the rental income belonged to the mother-in-law rendering her not entitled to reimbursement of medical claims. The Enquiry Officer further concluded that the Petitioner had concealed vital facts from the Management of the Respondent Company and had continued to claim medical reimbursement for her mother-in-law by giving false declaration that the income of her mother-in-law from all sources was less than the prescribed limit under the Medical Attendance and Treatment Rules. The basis of conclusion of the Enquiry Officer was a legal opinion given by the Company Secretary of the Respondent Company with regard to ownership of the Lajpat Nagar property with reference to the Deed of Settlement. In the said opinion the Company Secretary of Respondent Company had opined that Petitioner's mother-in-law, Ram Chameli, *"shall have the right of enjoyment of the property so long as she remains alive and Kumari Kiran Lata shall become owner of the property only after the death of Smt. Ram Chameli Dewan and whatever income has accrued from the property will belong to Smt. Ram Chameli."*

15. On the basis of the said opinion, the Enquiry Officer concluded that the Petitioner was “fully blameworthy of misconduct as alleged in the charge”.

16. The disciplinary authority not only accepted the finding of the enquiry report but also ordered imposition of major penalty of dismissal on the Petitioner under Rule 29(j) of NFL Employees’ (CDA) Rules.

17. Though the Petitioner filed an appeal before the Appellate Authority, (Chairman and Managing Director of the Respondent Company) against the dismissal order, but the same was rejected on 7th April, 2004.

18. Learned Counsel for the Petitioner, Mrs. Rekha Palli submitted that in pursuance to the Family Settlement dated 5th June, 1996, the Petitioner’s mother-in-law was no longer the owner of the Lajpat Nagar property. In this connection Mrs. Palli relied upon the judgment of the Apex Court in ***Tek Bahadur Bhujil Vs. Debi Singh Bhujil & Ors. reported in AIR 1966 Supreme Court 292*** wherein it has been held, “*It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration.*”

19. Mrs. Palli also relied upon observations to the same effect in ***Ram Chander Das Vs. Girja Nandini Devi & Ors. reported in AIR 1966 Supreme Court 323 para 11.***

20. In the alternative, she submitted that even if the Petitioner's mother-in-law continued to be the owner of the Lajpat Nagar property, then also how could rent paid by the Petitioner to her sister-in-law be treated as rent paid to the mother-in-law.

21. She further submitted that even if the rental income was presumed to be Petitioner's mother-in-law's income then also how could it be concluded that the Petitioner had concealed any fact from the Respondent Company. She contended that at best it could be held that the Petitioner had committed a mistake in interpretation of the Deed of Family Settlement but it could not be held that the Petitioner had deliberately concealed some vital facts to take undue advantage. Mrs. Palli also raised issue of violation of principle of natural justice by the Enquiry Officer inasmuch as he had allowed the Respondent Company to introduce three new documents at a belated stage and not allowed the Petitioner's husband to be produced as a witness.

22. Lastly, Mrs. Palli submitted that in the present facts of the case the punishment imposed upon the Petitioner was very excessive and disproportionate to the alleged misconduct. In this connection she relied upon a judgment of this Court in ***Ramesh Chander Vashisth Vs. Chief General Manager State Bank of India reported in (2002) 62 DRJ 193***

wherein it was held, *“The rule does not specify as to what kind of misconduct is to be visited with a minor or major punishment. The service rules only fix the gradation of the punishment but evidently leave the discretion in this regard to the disciplinary authority and in appeal to the appellate authority. Since the service rules enumerate and list out various punishments by way of minor and major penalty and the effect of both the penalties is materially different, the provision casts a duty on the authority concerned to record its reasons while awarding a particular punishment, more so when a major penalty is proposed. Recording of reasons would otherwise be necessary because unless the reasons are indicated, the higher authority cannot find out as to what weighed with the concerned authority to inflict a particular punishment. Needless to say that a penalty has to be commensurate with the gravity of the misconduct for that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India, warranting interference by this Court.”*

23. Mr. G. Joshi, learned Counsel for the Respondent Company submitted that a Family Settlement can convey an interest in immovable property only if the same was registered. In this connection Mr. Joshi referred to and relied upon Sections 17 and 49 of the Registration Act, 1908. The said Sections are reproduced hereinbelow for ready reference :-

“17. Documents of which registration is compulsory.- (1)
The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI

of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

- (a) instruments of gift of immovable property;*
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;*
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and*
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;*
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:*

49. Effect of non-registration of documents required to be registered.- *No document required by Section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-*

- (a) affect any immovable property comprised therein, or*
- (b) confer any power to adopt, or*
- (C) be received as evidence of any transaction affecting such property or conferring such power,*

unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]”

24. In this connection Mr. Joshi also referred to the judgments of the Apex Court in ***Raghunath & Ors. Vs. Kedar Nath AIR 1969 Supreme Court 1316***. The Supreme Court in the said judgment has held that in the absence of registration of a document, the same cannot be received in evidence of any transaction effecting the property in view of Section 49 of the Registration Act.

25. Mr. Joshi contended that the Petitioner had given wrong information to the Respondent Company with regard to the ownership of the Lajpat Nagar property and as the rental income was actually the Petitioner's mother-in-law's income, she was not liable to be treated as a dependent upon the Petitioner and consequently she was not entitled to any medical reimbursement. Mr. Joshi pointed out that in fact, Respondent Company had filed a suit for recovery of monies reimbursed to the Petitioner on account of medical expenses incurred on the treatment of Petitioner's mother-in-law.

26. Mr. Joshi further submitted that it was not open to the High Court to act as a Court of Appeal and reappreciate the evidence. In this connection, he relied upon the judgment of the Apex Court in ***State Bank of India & Ors. Vs. Ramesh Dinkar Punde reported in (2006) 7 SCC 212***. Mr. Joshi further submitted that courts should interfere with penalty/punishment only where punishment is shockingly disproportionate to the misconduct. In the normal course even if punishment imposed was shockingly disproportionate, it would be appropriate for the court to direct the disciplinary or appellate

authority to reconsider the penalty imposed. In this connection, Mr. Joshi relied upon the judgment of the Apex Court in ***Union of India Vs. Dwarka Prashad Tiwari reported in (2006) 10 SCC 388.***

27. In my view, the submissions of Mr. Joshi are untenable in law as bona fide and voluntarily executed family arrangements/settlements have been held to be legal, valid and enforceable even though the said family arrangements may not be registered. In fact, the Hon'ble Supreme Court in the case of ***Kale & Ors. Vs. Deputy Director of Consolidation & Ors. reported in AIR 1976 Supreme Court 807*** has held as under :-

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b)?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the

sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

28. In the case of ***Hari Shankar Singhania & Ors. Vs. Gaur Hari Singhania & Ors. reported in (2006) 4 SCC 658*** the Apex Court has reiterated that the family arrangement/settlement stand on a different pedestal and technical considerations should not stand in the way of enforcement of family arrangement/settlement. In this judgment the case law regarding the family arrangement/settlement was discussed. The relevant portion of the said judgment is reproduced hereinbelow for ready reference :-

“42. Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family.....

53. Therefore, in our opinion, technical considerations should give way to peace and harmony in the enforcement of family arrangements of family arrangements or settlements.”

29. I am also of the view that para 8 of the Deed of Family Settlement only gives a life time interest of enjoyment of the said property to the Petitioner's mother-in-law. Since right, title and interest had already been conveyed to the Petitioner's sister-in-law, the same did not vest with the Petitioner's mother-in-law subsequent to the execution of the deed of settlement.

30. The case of ***Raghunath*** (Supra) referred to by Mr. Joshi has no relevance to the present case as the same does not deal with family settlements which, as pointed out hereinabove, are to be treated differently from any other formal commercial document.

31. Consequently the Respondent's argument and the legal opinion of the Company Secretary, which formed the basis of the Enquiry Officer's findings, that a non registered family settlement can convey no title or interest in the property and the Petitioner's mother-in-law continued to be the owner of the property is contrary to facts and untenable in law.

32. I am also of the view that as the Petitioner's husband and his family members have accepted the deed of family settlement and have acted in pursuance thereto, how can the Respondent Company contend that such a settlement conveys no right or title or interest in the property. In any event, since the Petitioner's husband and his family members have acted upon the said settlement, it is not understood as to how the Enquiry Officer, the disciplinary authority and the Appellate Authority came to the conclusion that the Petitioner had concealed vital facts and had continued to claim medical reimbursement for her mother-in-law by giving false declaration that the income of her mother-in-law was less than the prescribed limit. I am also in agreement with Mrs. Palli's argument that without a deeming statutory provision, it was not open to the Respondent Company to treat the rent paid by the Petitioner to her sister-in-law as income of the mother-in-law.

33. I am also of the view that the punishment meted out to the Petitioner is excessive and shockingly disproportionate to the alleged misconduct committed by the Petitioner. Since I have accepted the Petitioner's primary submission, I am not deciding the Petitioner's other submission with regard to the violation of principles of natural justice by the enquiry officer.

34. Consequently, the present writ petition is allowed and the Petitioner is directed to be reinstated in service. However, keeping in view the fact that the Petitioner has not worked with the Respondent Company during the interregnum, the Petitioner would not be entitled to any salary from the date of her dismissal to the date of her joining the service. However, this period would be counted for giving terminal benefits like gratuity, provident fund as well as for determining the Petitioner's seniority.

September 5th, 2008
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[Manmohan]
Judge