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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on :30th April, 2012*
Judgment Pronounced on:4th May, 2012

+ RFA(OS) 79/2008

V.K.SAYAL Appellant
Represented by: Mr.Sujoy Kumar, Advocate.

versus

BHARAT HEAVY ELECTRICALS LTD. & ORS. Respondents
Represented by: Mr.J.C.Seth, Standing Counsel with
Mr.M.K.Pathak, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

PRADEEP NANDRAJOG, J.

1. Suit filed by the appellant praying that the order dated July 06, 2001 dismissing the appellant from service and the order dated September 18, 2001 dismissing the departmental appeal filed by the appellant be declared illegal as also the related enquiry proceedings and as a consequence order dated August 28, 2000 rejecting appellant's application seeking voluntary retirement be declared illegal.

2. Relevant would it be to state that only declaratory reliefs have been prayed without any monetary benefits i.e. consequential reliefs, but no issue pertaining to the maintainability of the suit on said count was urged either before the learned Single Judge or before us in appeal.

3. Vide impugned order dated March 04, 2008, allowing I.A. No.1167/2007 filed by the respondents, invoking Order 7 Rule 11 of the Code of Civil Procedure on two grounds, the plaint has been held to be not maintainable. Firstly, that the suit was

barred by limitation. Secondly, with respect to the prayer for request seeking voluntary retirement not being accepted, the claim being barred by res judicata.

4. On the bar of limitation pleaded, it was the case of the respondents that the order dismissing appellant from service was passed on July 06, 2001 and the order rejecting the departmental appeal was passed on September 18, 2001. The suit was instituted in October 2006 i.e. after more than five years of the order in the departmental appeal being passed. Since declaratory decrees were prayed for, it was highlighted that the applicable Article as per the Schedule under the Limitation Act, 1963 was Article 58, as per which the limitation period prescribed was three years from when the cause of action accrued to sue. It was highlighted that the cause of action accrued to sue on September 18, 2001.

5. With respect to the prayer that it be declared that rejection of appellant's request for being voluntary retired vide order dated August 28, 2000 is illegal, it was pointed out that the said order was challenged by the appellant by an under W.P.(C) No.5359/2000 which was dismissed by a learned Single Judge vide judgment and order dated May 04, 2001. Intra Court appeal, registered as LPA No.289/2001, was dismissed vide order dated December 09, 2004. Review sought before the Division Bench was dismissed on February 18, 2005 and Petition for Special Leave to Appeal filed before the Supreme Court was declined on July 07, 2006. It was pleaded that having litigated right upto the Supreme Court on the subject of request for voluntary retirement not being accepted, the claim could not be re-agitated by way of a suit.

6. Both pleas have merited acceptance by the learned Single Judge.

7. To appreciate the reasoning of the learned Single Judge it needs to be highlighted that whereas the writ petition filed by the learned Single Judge was dismissed on merits by a reasoned decision, LPA No.289/2001 was dismissed as having become infructuous, inasmuch as the learned Division Bench noted that as a result of the appellant being dismissed from service, the question of appellant's request for being voluntary retired could not be accepted. Seeking review before the Division Bench, the appellant pointed out that the issue of denial of appellant's request for being voluntary retired had arisen much prior to the date when appellant was dismissed from service, though not specifically pleaded, the principle of relation back was invoked to bring home the point that decisions by the Courts always have retrospective application since Court decisions settled disputes as of the date when they arise, unless while deciding a lis, the Court specifically direct that its decision would be prospective. The review application was dismissed.

8. Another fact of relevance and importance be also noted. During pendency of W.P.(C) No.5359/2000, an interim protection was sought by the appellant by way of the respondents being prohibited from proceeding ahead with the departmental enquiry. The request was declined vide order dated September 14, 2000, but it was observed:-

“Any action in the direction of holding departmental enquiry by the respondents shall be without prejudice to the rights and contentions of the parties in the writ petition.”

9. After the writ petition was dismissed on merits, probably since the enquiry proceedings were at a terminal stage and anticipating an adverse finding, when LPA No.289/2001 was filed, vide C.M.No.728/2001 an interim protection was sought for to prohibit the respondents from passing any final order with

respect to the charge-sheet issued, resulting in an interim order dated June 11, 2001 being passed as under:-

“In the meantime, any action taken by the respondents in the departmental proceedings initiated against the appellant will be subject to further orders in the application.”

10. On the subject of the declaratory relief prayed for pertaining to appellant's request to be voluntarily retired being rejected, the learned Single Judge has opined that notwithstanding the appellate challenge being negated on the ground that the issue raised had become infructuous inasmuch as during pendency of the Court proceedings the services of the appellant were terminated on disciplinary grounds, since the writ petition filed by the learned Single Judge was dismissed on merits, the bar of res judicata would be attracted since the Writ Court was a Court of competent jurisdiction to adjudicate upon the matter and adjudicated upon the matter on merits.

11. Pertaining to the bar of limitation pleaded by the respondents, the plea raised by the appellant that he was entitled to await the outcome of the challenge to his request for being voluntary retired being denied and thus the cause of action accrued when the Petition seeking Special Leave to Appeal was dismissed by the Supreme Court on July 07, 2006, has been negated by the learned Single Judge on the reasoning that the right to sue accrued when the order dated September 18, 2001 was passed. The learned Single Judge has dealt with the submissions of the appellant that the effect of the interim orders dated September 14, 2000 and June 11, 2001 passed by the learned Single Judge during pendency of the writ petition and by the Appellate Bench during pendency of the appeal had the effect of making the dismissal order as also the appellate order being postponed till when the appeal was decided, by holding, in

para 8 of the impugned decision, that the meaning of the said two orders was that irrespective of whatever be the consequence of the enquiry proceedings the same shall have no bearing on the question pertaining to appellant's request seeking voluntary retirement being rejected.

12. Appellant's contention that he was entitled to the benefit of Section 14 has been dealt with by the learned Single Judge in para 14 of the impugned order and has been rejected, on a reasoning, which is not much clear.

13. Now, the issue urged by the appellant in the writ petition filed was: *Whether, in the absence of a charge memo issued, and on the mere contemplation of a disciplinary proceeding, could the respondents deny acceptance of appellant's request to be voluntarily retired?* The issue which arose as a result of appellant being dismissed from service on being found guilty at an enquiry was: *Whether the order dismissing appellant from service was legal and valid?* The two issues were entirely different and suffice would it be to state that Section 14 of the Limitation Act, 1963 comes into play, on the subject matter of computing the period of limitation, and requires to exclude the time spent in prosecuting with due diligence a civil proceeding on the same subject matter in issue in a Court which is unable to entertain the prior proceeding for want of jurisdiction or a cause of a like nature.

14. Thus, notwithstanding a writ proceeding being treated as a civil proceeding as urged by the appellant, since the subject matter of the writ petition filed embraced an entirely different subject matter in issue vis-à-vis what was embraced in the suit, the appellant would not be entitled to the benefit of Section 14 of the Limitation Act, 1963.

15. The plea of the appellant that the interim orders passed in the writ petition filed and the appeal filed by him, which orders we have noted hereinabove in paras 8 & 9, have the effect of postponing the implementation of the penalty order passed against him and therefore shift the date of the cause of action accruing to him when the Petition for Special Leave to Appeal was declined by the Supreme Court is negated by us and we concur with the reasoning of the learned Single Judge that the two interim orders do not mean that the penalty order would be subject to the decision, either in the writ petition or the appeal. The order dated September 14, 2000 passed by the learned Single Judge, clearly records that the departmental enquiry shall be without prejudice to the rights and contentions of the appellant and even the appellate order means the same i.e. that the passing of orders at the disciplinary enquiry would not have a bearing on the cause being litigated upon by the appellant, firstly before the Writ Court and secondly before the Appellate Court.

16. Undisputably, the cause of action accrued to the appellant to take recourse to a legal action when on September 18, 2001 the departmental appellate remedy was exhausted and appeal was dismissed and as a consequence order dated July 06, 2001 dismissing appellant from service was upheld.

17. Thus, the view taken by the learned Single Judge that the suit was barred by limitation and neither did the interim orders passed in the writ and the intra court appeal postponed the accrual of the cause of action nor Section 14 of the Limitation Act, 1963 was applicable are upheld by us.

18. In that view of the matter, it becomes irrelevant whether, on the subject of appellant's application seeking voluntary retirement not being accepted, the decision dated May

04, 2001 in W.P.(C) No. 5359/2000 operate as res judicata on LPA No.289/2001 being dismissed without dealing with the issue on merits, but would certainly observe that LPA No. 289/2001 had certainly not become infructuous for the reason the order dismissing appellant from service was not only a subsequent event, but a challenge thereto was on grounds entirely distinct from the grounds on which the Letters Patent Appeal was being urged. The issue in the appeal was: *Whether the learned Single Judge, while dismissing W.P.(C) No.5359/2000 was correct in taking the view that if an enquiry was contemplated against an employee and no formal decision was taken to charge-sheet the employee, could the department refuse to consider on merits an application seeking voluntary retirement.* And this issue was not rendered infructuous as a result of the appellant being dismissed from service subsequently and indeed, the appellant did seek a review of the order disposing of the appeal vide order dated December 09, 2004 on said ground and even urged the same before the Supreme Court, but without success. Thus, it is possible to take the view that the decision of the learned Single Judge would operate as res judicata at a second stage of a subsequent litigation on the same issue before a Civil Court.

19. The appeal is dismissed, but in the facts and circumstances of the case, we refrain from imposing costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

MAY 04, 2012
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