

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

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Date of decision: 12 August, 2013

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RFA No.939/2003

SANNAM BHARTI

..... Appellants

Through: Mr. Anukul Pradhan, Sr. Adv. with
Mr. K.C. Dubey.

Versus

D.T.C. & ORS.

.....Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal impugns the judgment and decree dated 16th August, 2003 of the Addl. District Judge of dismissal of suit No.150/2001 filed by the appellant/plaintiff for recovery of Rs.5 lacs as damages from the respondent no.1 Delhi Transport Corporation (DTC) and Shri M.K. Sardana the then Regional Manager (Inter-State) impleaded as respondent/defendant no.2, Shri S. Sanjay Saxena official of the respondent/defendant no.1 DTC impleaded as respondent/defendant no.3 and from Dr. V.K. Srivastava, Chief Medical Officer of the respondent/defendant no.1 DTC impleaded respondent/defendant no.4. The appeal was admitted for hearing and the Trial Court record requisitioned. None appeared for the appellant/plaintiff on 9th February, 2012 and 10th February, 2012 when appeal came up for

hearing. The appeal was accordingly dismissed in default of appearance of the appellant/plaintiff. The appellant/plaintiff thereafter applied for restoration and which was allowed.

2. None appears for the respondents/defendants today. Need is not felt to await their presence and the senior counsel for the appellant/plaintiff has been heard.

3. The appellant/plaintiff instituted the suit from which this appeal arises on 13th March, 2001 pleading:-

- (a). that he was employed with the respondent no.1 DTC since 8th November, 1978 as a Driver and was posted at Patparganj Depot of the respondent/defendant no.1 DTC;
- (b). that the appellant/plaintiff obtained leave of five days from the respondent/defendant no.3 Shri Sanjay Saxena then posted as Depot Manager, for the period from 17th May, 1996 to 21st May, 1996;
- (c). that though the appellant/plaintiff was to join back duty on 22nd May, 1996 but could not do so owing to being unwell and sought extension of leave on medical ground;

- (d). that the appellant/plaintiff reported for duty on 22nd July, 1996 but the respondent/defendant no.3 asked the appellant/plaintiff to put his signatures on certain blank papers on the plea that the same were required in connection with the leave account; thereafter the appellant/plaintiff was asked to sit outside the office room of the respondent/defendant no.3 and ultimately in the evening was asked to leave and await communication for joining the duty;
- (e). that a letter dated 26th July, 1996 was received by the appellant/plaintiff asking him to report to the respondent/defendant no.4 Dr. V.K. Srivastava for medical examination on 27th July, 1996;
- (f). that though the appellant/plaintiff went for such medical examination but was neither examined nor issued the fitness certificate;
- (g). that the appellant/plaintiff in first week of August, 1996 received another letter asking the appellant/plaintiff to submit documents in support of his sickness to the respondent/defendant no.4 on 10th August, 1996;

- (h). that though the appellant/plaintiff tendered those documents but was again asked to wait;
- (i). that in this manner the appellant/plaintiff was not permitted to join duty and was vide letter dated 26th August, 1996 asked to consult Psychiatrist of a Government Hospital;
- (j). the aforesaid direction was uncalled for and mischievous and a calculated move to humiliate and harass the appellant/plaintiff and to prevent him from joining duty;
- (k). that though the appellant/plaintiff contacted G.B.Pant Hospital but which on 5th November, 1996 reported that the appellant/plaintiff was not found suffering from any psychosis or any other serious psychopathology;
- (k). that the appellant/plaintiff inspite thereof was not permitted to join duty but again asked to appear before the Medical Board;
- (l). that the successor to the respondent/defendant no.3 Shri O.P. Birdi thereafter issued charge sheet dated 19th February, 1997 to the appellant/plaintiff for non-compliance of the direction to report to the Medical Board;

- (m). that the appellant/plaintiff filed CW No.1084/1997 in this Court and in which vide order dated 9th April, 1997 the respondents/defendants were directed to consider the representation of the appellant/plaintiff;
- (n). the appellant/plaintiff thereafter filed another CW No.4075/1997 and in which vide order dated 30th August, 1999 the appellant/plaintiff was directed to approach the Psychiatry Department of All India Institute of Medical Sciences (AIIMS);
- (o). that the appellant/plaintiff was found fit and not suffering from any kind of mental disorder;
- (p). that vide order dated 10th February, 2000 in CW No.4075/1997 the appellant/plaintiff was asked to report to the Medical Board of the respondent/defendant no.1 DTC along with the said report of AIIMS;
- (q). that CW No.4075/1997 was ultimately disposed of vide order dated 21st February, 2000 with a direction to allow the appellant/plaintiff to join duty and to pay the entire salary for the intervening period i.e. from 23rd July, 1996 till the date of joining duties;

- (r). that the appellant/plaintiff was in compliance thereof permitted to join duties on 22nd February, 2000 and also paid all arrears of salary;
- (s). that it was on account of willful and deliberate actions of the officials of the respondent/defendant no.1 DTC particularly respondent/defendant no.2 Shri M.K. Sardana and personal bias, prejudice and vindictive attitude that the appellant/plaintiff could not join duty for nearly three years;
- (t). that owing to the aforesaid the appellant/plaintiff has suffered extreme hardship, humiliation and an impression was cast upon the entire staff of the respondent/defendant no.1 DTC that the appellant/plaintiff was suffering from a mental disorder; that the appellant/plaintiff was thus subjected to extreme mental torture and financial hardship, all due to extreme bias, capricious attitude, indifferent behaviour, malicious actions on the part of the respondents/defendants no.2 to 4; and,
- (u). that the appellant/plaintiff got legal notice dated 2nd August, 2000 issued to the respondents/defendants claiming damages to the extent of Rs.8 lacs.

Upon the same being not replied, the suit was filed for recovery of damages in the sum of Rs.5 lacs.

4. The respondent/defendant DTC contested the suit by filing a written statement *inter alia* pleading:

- (i). that the appellant/plaintiff in his application dated 22nd July, 1996 for joining duty had stated that he was suffering from *Bhoot and Prait* and was asked to bring documents of his illness as per the rules of the Corporation and show the same to the Chief Medical Officer of the respondent/defendant no.1 DTC;
- (ii). that the Medical Board could not attend to the appellant/plaintiff on 8th November, 1996 owing to pre-occupation and the appellant/plaintiff was accordingly asked to appear on the next date;
- (iii). that similarly after receipt of report of G.B. Pant Hospital the appellant/plaintiff was again asked to report to the Medical Board and which the appellant/plaintiff failed to do so; and,

(vi). that similarly the appellant/plaintiff was after receipt of the report of AIIMS directed to appear before the Medical Board and was allowed to join duty.

5. The appellant/plaintiff filed a replication *inter alia* pleading that the action of the respondents/defendants of asking the appellant/plaintiff to appear before the Medical Board was without any cause and on one pretext or the other and was wrong and denying that he gave any application stating that he was suffering from *Bhoot Prait* or any other ailment.

6. On the pleadings of the parties, the following issues were framed in the suit on 26th November, 2001:-

- “(1). *Whether the suit of the plaintiff is not maintainable in view of the preliminary objection No.1 to 3? OPD*
- (2). *Whether the plaintiff is entitled to the damages as claimed? OPP*
- (3). *If Issue No.2 is proved in favour of the plaintiff, whether the plaintiff is entitled to the interest? If so, at what rate? OPP*
- (4). *Relief.”*

7. The appellant/plaintiff examined himself only in support of his case. The respondents/defendants examined respondent/defendants no.2 to 4 as witnesses in their defence.

8. The learned Trial Court has in the impugned judgment found/observed/held:-

- (I). that the leave applications submitted by the appellant/plaintiff had been proved as Ex.PW1/D1 to D6 for the period from 16th May, 1996 to 15th July, 1996, all to the effect that he was ill;
- (II). that the appellant/plaintiff after sending all these applications for leave on medical ground, reported for duty on 22nd July, 1996 without any medical and fitness certificate issued by any doctor;
- (III). that the various memos vide which the appellant/plaintiff had been directed to report to the Medical Board were proved as Ex.PW1/D9 to D12;
- (IV). that vide endorsement at the back of Ex.PW1/D9, the Medical Officer of the DTC, after examining the appellant/plaintiff had asked the appellant/plaintiff to consult Psychiatrist of Government Hospital and to report to the Medical Board after 10 days; similarly vide memo Ex.PW1/D11 the appellant/plaintiff was directed to appear before the Medical

Board of the respondent no.1 DTC along with the certificate of the Psychiatrist of the Government Hospital;

- (V). that the report dated 5th November, 1996 of the G.B. Pant Hospital was required to be produced by the appellant/plaintiff before the Medical Board;
- (VI). that though the appellant/plaintiff appeared before the Medical Board on 7th November, 1996 but on account of pre-occupation of the Board was directed to come back on 8th November, 1996;
- (VII). that the appellant/plaintiff instead of appearing before the Medical Board on 8th November, 1996 sent report of the G.B. Pant Hospital directly to the Depot Manager without being declared fit by the Medical Board;
- (VIII). that there was nothing wrong in the conduct of the Medical Officer asking the appellant/plaintiff on 7th November, 1996 to come back on the next date;
- (IX). that as per the Rules & Regulations, the appellant/plaintiff was required to submit the report of G.B. Pant Hospital to the Medical Board and only upon the fitness certificate being issued by the Medical Board, the appellant/plaintiff could be

allowed to join duty; however the appellant/plaintiff as aforesaid did not appear before the Medical Board along with the report of G.B. Pant Hospital;

(X). that the appellant/plaintiff prior to sending the legal notice dated 2nd August, 2000 had nowhere complained that his signatures were obtained on any blank papers or that the application mentioning that he was suffering from *bhoot prait* had been fabricated thereon; that had there been any truth in the same the appellant/plaintiff immediately on receipt of communication dated 22nd July, 1996 from the Depot Manager vide which he was directed to appear before the Medical Board, would have done so;

(XI). that as per the Rules of the respondent/defendant no.1 DTC the appellant/plaintiff after admittedly remaining absent from duty or on leave from 16th May, 1996 to 22nd July, 1996 on medical grounds, could not have joined duty without a fitness certificate;

(XII). that the appellant/plaintiff inspite of having been given opportunity had failed to comply with the said Rules;

- (XIII).that all actions of the respondents/defendants no.2 to 4 being officials of the respondent/defendant no.1 DTC were in consonance with the Rules of the DTC;
- (XIV).that the appellant/plaintiff has not led any evidence oral or documentary that his children had to discontinue their studies or for the purpose of marriage they have become overage on account of any action of the respondent/defendant no.1 DTC or its officials or that he was ever called '*Pagal*' by any staff of the respondent/defendant no.1DTC; that there was also no evidence to establish that the appellant/plaintiff during the said interregnum had to take any loan;
- (XV).that there was no oral or documentary evidence that the respondents/defendants no.2 to 4 ever entered into any malicious campaign against the appellant/plaintiff to declare him insane or under the influence of evil spirits and the said enquiry was ordered as per the application of the appellant/plaintiff that he was suffering from *Bhoot Prait*; and,
- (XVI). that even this Court in the writ petition preferred by the appellant/plaintiff notwithstanding the report of AIIMS

permitted the appellant/plaintiff to join duty only after the report of the AIIMS had been considered by the Medical Board of the respondent/defendant no.1 DTC; there was thus nothing wrong on the part of the respondent/defendant no.1 DTC in, inspite of the report of G.B. Pant Hospital, directing the appellant/plaintiff to appear before the Medical Board.

Accordingly the suit was dismissed.

9. The senior counsel for the appellant/plaintiff has instead of finding any error in the findings of fact reached by the Trial Court has pegged his case on the argument that the appellant/plaintiff having been admittedly harassed by being not permitted to join duty for a period of three years and by being compelled to file two writ petitions in this Court, is entitled to damages / compensation. Reliance is placed on para 11 of ***Lucknow Development Authority Vs. M.K.Gupta*** AIR 1994 SC 787 to contend that the appellant/plaintiff is entitled to damages merely for the reason of being so harassed and having suffered mental agony.

10. Besides the fact that the judgment cited by the senior counsel for the appellant/plaintiff has been distinguished in ***U.T. Chandigarh Administration Vs. Amarjeet Singh*** (2009) 4 SCC 660 and in ***Bihar School***

Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC 483, on the aspect of applicability of the Consumer Protection Act, 1986, I am unable to find the judgment in *Lucknow Development Authority* also to be laying down any such proposition. The senior counsel for the appellant/plaintiff relies thereon in so far as holding that the authority empowered to function under a statute, while exercising power discharges public duty; it has to act to subserve general welfare and common good; in discharging this duty honestly and *bona fide*, loss may accrue to any person and he may claim compensation which may in circumstances be payable; but where the duty is performed capriciously or the exercise of power results in harassment and agony then it has to be decided as to who is to bear the loss determined, but fails to notice that the Supreme Court further held that public administration involves a vast amount of administrative discretion which shields the action of administrative authority; but where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment, then the officer can no more claim to be under protective cover. It is thus not as if the Supreme Court has held that merely because harassment has been caused to someone by administrative action, the sufferer becomes entitled to damages/compensation; what has been held

is that only where the action is found to be *mala fide* is the sufferer entitled to compensation.

11. The matter is placed beyond any pale of controversy in the recent judgment of the Supreme Court in ***Municipal Corporation of Delhi Vs. Uphaar Tragedy Victims Association*** (2011) 14 SCC 481 where after noticing a plethora of earlier decisions of the Supreme Court and of the English and Canadian Courts, it was held in para 54 that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. It was further held that with regard to performance of statutory functions and duties, the Courts will not award damages unless there is malice or conscious abuse.

12. What has been held by the Supreme Court in relation to statutory duties, I fail to see, why should not apply to official / public duties also.

13. Reference in this regard may also be made to ***Common Cause Vs. Union of India*** (1999) 6 SCC 667 in para 86 whereof it is held that apart from tort which may be committed by a private individual, the officers of the Government would also be liable in damages for their wrongful acts

provided the act does not fall within the purview of 'act of the State'. The said tort was described as 'misfeasance in public office' and defined as malicious abuse of power, deliberate maladministration and unlawful acts causing injury. Malice e.g. personal spite or a desire to injure for improper reasons was held to be a necessary ingredient of the said tort. Reliance was placed on *Dunlop Vs. Woollahra Municipal Council* (1981) 1 All ER 1202 (PC) laying down that mere invalidity of the order would not give rise to any liability for payment of damages in an action in tort to the aggrieved party unless the action is actuated by malice. It is worth mentioning that *Lucknow Development Authority* supra was also referred to in this judgment and was not held to be laying down any different proposition.

14. Reference may lastly be made to *Punjab State Civil Supplies Corporation Ltd. Vs. Sikander Singh* (2006) 3 SCC 736 which was a converse case of an employer suing the employee in tort for damages. The same principle was applied and it was held that without malice, no misfeasance can be accepted and even nonfeasance i.e. omission to discharge duty, to be actionable must be impressed with the same characteristic namely malice or bad faith.

15. This view was recently reiterated in *Natural Resources Allocation, in Re, Special Reference No.1 of 2012* (2012) 10 SCC 1 where also it was held that only where the public functionary exercises discretion capriciously or for considerations which are *mala fide*, the public functionary should shoulder the burden of compensation found payable.

16. Though in the pleadings in the present case there is a vague averment of the actions of the respondent from which the appellant / plaintiff claims to be aggrieved being biased / capricious / malicious but neither is there any finding of the Trial Court in this regard nor is the appellant / plaintiff found to have in evidence established so. The senior counsel for the appellant / plaintiff has also not argued so.

17. It was in this context only that it is repeatedly asked from the senior counsel for the appellant/plaintiff that would not every unsuccessful disciplinary authority action cause harassment to an employee and if the proposition as agitated were to be accepted, every unsuccessful disciplinary action would give rise to a cause of action for damages/compensation. That is not the law. If the disciplinary action,

even though unsuccessful, is found to be *bona fide* and undertaken in exercise of administrative power, the question of the same giving rise to any liability for compensation does not arise.

18. It is not every prosecution which gives rise to a tortious liability. It is only malicious prosecution which gives rise to a tortious liability. If the intent of law had been that every prosecution should lead to a claim for damages the word ‘malicious’ would not have been used. As far as civil proceedings are concerned, the Privy Council as far back as in ***Mohamed Amin Vs. Jogendra Kumar Bannerjee*** AIR 1947 PC 108 though held the word ‘prosecution’ in the expression ‘malicious prosecution’ to be not used in the technical sense which it bears in criminal law but held that action lies for malicious prosecution of only certain classes of civil proceedings viz. falsely and maliciously presenting a petition in bankruptcy or a petition to wind up a company and not for falsely and maliciously prosecuting an ordinary civil action. The reason given was, because such an action does not necessarily and naturally involve damage to the party sued and the party wrongfully sued will be indemnified against his expenses by the award of costs and the law does not award damages for mental anxiety or for extra costs incurred.

19. This Court also in ***C.B. Aggarwal Vs. P. Krishna Kapoor*** AIR 1995 Delhi 154 held that ordinarily civil action even if decided against a party would not normally give right to an action for damages on that ground unless a tort of abuse of process of the Court is established, except in relation to attachment of property, bankruptcy or winding up.

20. The Supreme Court in ***West Bengal State Electricity Board Vs. Dilip Kumar Roy*** (2007) 14 SCC 568 was concerned with a suit for damages for mala fide initiation of disciplinary proceedings with an intent to lower the reputation and prestige of the plaintiff employee. The Trial Court and the High Court had awarded damages including on account of malicious prosecution. The Supreme Court while setting aside the judgment of the High Court quoted passage from Advanced Law Lexicon, 3rd Edition by P. Ramanatha Aiyar holding that in general, a person may utilize any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful; but an action lies for initiating civil proceedings, such as presentation of a bankruptcy or winding up petition, an unfounded claim to property, not only unsuccessfully but maliciously and without reasonable and probable

cause and resulting in damage to the plaintiff and for malicious abuse of process of Court.

21. The House of Lords also in *Gregory Vs. Portsmouth City Council* (2000) 1 ALL ER 560 (HL) held that the tort of malicious prosecution is available only in respect of proceedings where the criminal law without reasonable and proper cause is set in motion and in a few special cases of civil legal process and that it is unnecessary and undesirable for the said tort to be extended to civil proceedings generally or to disciplinary proceedings, for the reason of existence of other closely related torts including of misfeasance in public office which provide alternate remedy to protect those subjected to malicious disciplinary proceedings.

22. I therefore do not find any merit in the sole contention urged by the senior counsel for the appellant/plaintiff.

23. Though the factual findings of the learned Trial Court as recorded hereinabove have not been challenged but during the course of hearing I have gone through the evidence recorded and the documents proved and do not find any error in the impugned judgment and decree.

24. There is thus no merit in this appeal which is dismissed; however the respondents/defendants having not contested, no order as to costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

AUGUST 12, 2013

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