

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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Writ Appeal No.664 of 2014

and

W.A.No.1080 of 2014

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COMMON JUDGMENT: (Per the Hon'ble Sri Justice L.Narasimha Reddy)

Since both the appeals are connected, they are being disposed of through a common judgment.

The 1st respondent (for short 'the respondent') was working as Second Engineer in the Dredging Corporation of India, the 1st appellant. In the year 1995, he was on duty on a Dredger by name Mandovi-II. The Vessel capsized on 26.03.1995, in the wet basin of the Hindustan Ship Yard. Since the damage was phenomenal, enquiries from various angles were caused and departmental proceedings were also initiated against the respondent. A charge sheet was issued on 12.04.1995. The respondent submitted his explanation on 28.04.1995. In a detailed enquiry conducted into the charges, they were held proved. Taking the same into account, the disciplinary authority passed an order, dated 31.01.1996, dismissing the respondent from service. Statutory appeal preferred against it was rejected. Questioning the same, the respondent filed W.P.No.14278 of 1997. The writ petition was disposed of on 14.12.1999, setting aside the order passed by the appellate authority and directing fresh consideration and disposal thereof. Through its order, dated 24.04.2000, the appellate authority confirmed the order of dismissal. Challenging the order of dismissal, as confirmed by the appellate

authority, the respondent filed W.P.No.10669 of 2000.

The respondent pleaded that he has taken every possible care to protect the Dredger, but when the wedge pipe got detached, there was a potential danger of flooding of the vessel. He stated that on account of the failure of the hydraulic system, the danger could not be averted. He further pleaded that other senior officials such as Chief Engineer, Captain, etc. were let off in the matter and he alone was punished. He contended that in an enquiry conducted by the Department of Shipping, the senior official, by name Paramandandan, made an observation to the effect that there was system failure, and in that view of the matter, the charge against him cannot be said to have been proved.

The appellants filed a detailed counter-affidavit, opposing the writ petition. According to them, all the systems in the dredger were proper intact, and on account of the imperfect handling of the grave situation by the respondent, the vessel capsized, resulting in not only huge financial loss, but also serious dent, to the reputation of organisation.

Learned Single Judge allowed the writ petition though order, dated 28.01.2014. The order of dismissal was set aside and the respondent was directed to be reinstated with continuity of service and attendant benefits. However, back wages were denied. While the appellants filed W.A.No.664 of 2014, challenging the order of the Single Judge, in so far as it has set aside the order of dismissal, the respondent filed W.A. (SR) No.87487 of 2014, feeling aggrieved by the denial of back wages.

Heard Sri D.V.Sitarama Murthy, learned Senior Counsel for the appellants, and Sri G.Vidyasagar, learned Senior Counsel for the

respondent.

A catastrophe of a very higher magnitude took place in the dredging Corporation of India, with the capsization of a dredger. Since the matter was very serious in nature, not only the Corporation, but also the Government of India in the Ministry of Transport ordered enquiries. The charge against the respondent was that he did not ensure that the hydraulic system is properly handled and on account of the improper handling of the situation, the vessel capsized. Obviously, with a view to ensure that such incidents do not recur, the ministry also ordered preliminary enquiry. While in the departmental enquiry, the charges framed against the respondent are proved, in the enquiry conducted by the Department of Transport, an observation was made by a Member to the effect that there was a possibility of systematic failure. The learned Single Judge took that into account and held that the charge is not proved.

The departmental proceedings, on the one hand, and an administrative enquiry, on the other, have totally different purposes to serve. Though there may be some overlap of both the sets of enquiries or investigations, it is difficult to read the conclusions in one, as constituting the basis in the other.

The respondent cannot escape totally, from the liability arising out of the unfortunate incident of the capsization of the dredger. Being a senior official, he ought to have ensured that every system is in order. It is only when systems are checked in the normal times, that an emergency situation can be handled effectively. Being a senior official, he just cannot plead that there was hydraulic system failure. It was obligatory on his part, to ensure that dredger is put to use only

after ensuring that all the systems are perfect.

The learned Single Judge has virtually given a clean chit to the respondent. We, however, made an attempt to strike decent balance between two extremities. The respondent has since attained the age of superannuation in the year 2004, before he came to be dismissed from service. He had a career, spread over decades, in the appellant organisation. There is some ambiguity or uncertainty as to what exactly has gone wrong with the Dredger, when the unfortunate incident took place. Responding to our suggestion, the appellants came forward with a proposal to pay a lumpsum amount of Rs.4,90,000/-, in lieu of the claims of the respondent. When we suggested that a round figure of Rs.5 lakhs to be received by the respondent and the matter be given quietus, a positive response emerged from both the parties.

Hence, we partly allow the writ appeals, modifying the order passed by the learned Single Judge to the effect that the order of removal shall stand set aside and the respondent shall stand retired compulsorily by offering a sum of Rs.5 lakhs, in lieu of all the benefits for the service rendered by him in the appellant organisation. The amount shall be paid within four weeks from today. There shall be no order as to costs.

The miscellaneous petitions filed in these writ appeals shall also stand disposed of.

L.NARASIMHA REDDY, J.

CHALLA KODANDA RAM, J.

Date:25.07.2014

GJ