HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.A.No.1794 OF 2017

JUDGMENT: (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged order dated 23.08.2017 passed in W.P.No.17545 of 1999 by the learned Single Judge of this Court whereby the writ petition filed by the 1st respondent was allowed, whereby held that, the 1st respondent would be entitled to salary with all attendant benefits including Pay Revision, if any, for the period from 02.05.1994 to 14.09.1998 and for the period from 13.04.1999 to 31.05.2005 with appropriate rate of interest.

2. Learned counsel appearing on behalf of the appellant submits that the present appeal has been filed on the ground that the learned single judge ought to have seen that applying Rule 5(15) of the Conduct, Discipline and Appeal Rules, 1978 only to such acts of an employee in collecting money in the work premises and not applying theory of notional extension of work premises in case of collection of money by the employee at residential premises, would result in unfair advantage to the employer, and contrary to the settled principles of interpretation of statues.

3. Further, the learned single judge failed to see that in the facts and circumstances of the case, the theory of

notional extension of work premises, as applied by the disciplinary authority, was correct since the premises/ residence of the 1st respondent was company-allotted premises, and even otherwise the act of receiving, at the residential of 1st respondent, money from the complainant in a criminal case was found to be a reward for services rendered by the 1st respondent.

4. Learned counsel further submitted that the 1st respondent was convicted in a criminal case and awarded one year Rigorous sentence, and thereafter, in the appeal, the sentence was set aside. However, in the departmental enquiry, the 1st respondent was held guilty, and accordingly, removed from the service.

5. The 1st respondent was working as Assistant Divisional Engineer (Electrical) in Hindustan Steel Works Constructions Limited. On the allegation that the 1st respondent demanded illegal gratification of Rs.1,000/- for processing a final bill, he was prosecuted under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 in C.C. No.17 of 1992 before the Special Judge for CBI Cases, Visakhapatnam and the 1st respondent was initially convicted vide order dated 16.03.1994. Based upon that conviction, the 1st respondent was dismissed from service on 02.05.1994. Challenging the conviction, the 1st respondent preferred Criminal Appeal No.252 of 1994 before this Court and the

same was allowed vide order dated 28.11.1997. Subsequent thereto, an enquiry was conducted into the following six charges against the 1st respondent, by issuing a charge memo dated 28.06.1998:

> *"i) Taking bribe on illegal gratification.*
>
> *ii) Failed to maintain absolute integrity.*
>
> *iii) Failed to act and conduct himself all the time in a manner which will enhance the reputation of the Company.*
>
> *iv) Acting in a manner prejudicial to the interest of the Company.*
>
> *v) Act of unbecoming of the employee of the company.*
>
> *vi) Collection without the permission of the competent authority of any money except as sanctioned by the any law of the land fro the time being in force of rules of the Company."*

6. Thereupon, the enquiry officer submitted a report dated 14.02.1999 stating that the judgment of this Court in Criminal Appeal is binding on him; that its finding that acceptance of money by the 1st respondent was not by way of illegal gratification in respect of official act, or that the 1st respondent by corrupt or illegal means did not obtain for himself any valuable thing or pecuniary advantage, is correct; and thus, charge (i) was not proved. He also held that charges (ii) & (iii) also could not be proved since charge (i) could not be proved and charge (iv) also was not proved. Accordingly held that charge (v) also cannot be sustained in view of finding on charge (i).

7. It is pertinent to note that on charge (vi) the enquiry officer held that money transactions have taken place at the residence of the 1st respondent and did not taken place within the premises of the company, and so, it is also not established.

8. We note that the Disciplinary Authority disagreed with the enquiry officer with regard to Charges (iii) to (vi) mentioned above and issued a show cause notice on 27.02.1999. The disciplinary authority passed proceedings dated 13.04.1999 dismissing the 1st respondent from service stating that occurrence of the money transaction has been accepted by the 1st respondent, that it was also proved during trial in Criminal Court, and merely because, the money transaction did not take place within the work premises, the 1st respondent cannot escape any punishment.

9. Learned Single Judge after considering the rival contentions of the parties has observed that a charge of receiving bribe or illegal gratification, which was charge (i), was also one of the charges in respect of which the disciplinary authority proceeded against the 1st respondent. In the notice dated 27.02.1999, issued by the disciplinary authority to the 1st respondent, nowhere, mentioned that charge of bribery is also being considered by the disciplinary authority and in fact in page-4 where the disciplinary authority indicated the charges which he is intending to

consider against the 1st respondent, the charge of bribery or receiving illegal gratification, is specifically omitted. Once the charge of receiving bribe or illegal gratification which was initially framed is dropped by disciplinary authority, the charges (ii) to (v) which are dependant on the charge (i) would automatically fall.

10. As regard to charge (vi) which deals with collection without permission of the competent authority of any money except as sanctioned by the law of the land for the time being in force or rules of the Company, it appears that either inadvertently or deliberately the words 'within the premises' mentioned in Rule 5 (15) of the Rules were omitted.

11. It is settled law that there is no power conferred on the disciplinary authority to *suo motu* modify the 'misconduct' defined in Rule 5(15) of the Rules by adding or omitting any words therein and this can only be modified by the Competent Authority which is the Board of Directors.

12. It is not in dispute that punishment of dismissal imposed by the disciplinary authority dated 13.04.1999 has been set aside and consequently there would have been a direction to reinstate. But since the 1st respondent attained superannuation on 31.05.2005 itself, therefore, the relief sought for could not be granted. However, the learned single Judge held that the 1st respondent is entitled to salary with all attended benefits including Pay Revision, if any, for the

period from 02.05.1994 to 14.09.1998 and from 13.04.1999 to 31.05.2005 with interest at the rate of 9% p.a. till the said payment is made, which shall not be more than three months from the date of receipt of a copy of that order.

13. In view of the above discussion and the facts and circumstances of the case, we find no ground to interfere with the impugned order dated 23.08.2017 passed in W.P.No.17545 of 1999 by the learned Single Judge of this Court. Consequently, the appellant is directed to comply with order dated 23.08.2017 passed in W.P.No.17545 of 1999 within four (04) weeks from the date of receipt of a copy of this order.

14. Accordingly, the Writ Appeal is dismissed. No order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

ABHINAND KUMAR SHAVILI, J.

Date : 09-07-2018
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