



W.A.No.2316 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

W.A.No.2316 of 2019
and
CMP.No.15256 of 2019

1. The Bharat Electronics Limited,
Rep. By its Chairman and
Managing Director
2. The Director (Other Units),
The Bharat Electronics Limited
3. The General Manager
(Personnel), Personnel &
Industrial Relations Dept.
(The office of the Appellants (1) to (3),
which was earlier at No.116/2, Race Course Road,
Bangalore-560 001, is now at
Outer Ring Road, Nagavaru,
Bengaluru-560 045.)
4. The Deputy General Manager
(S & A/MS-Services & Admn./
Management Services),
The Bharat Electronics Limited,
Nandambakkam, Chennai-89.

... Appellants

Vs.



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R.Karunakaran

Staff No.MD-0060, Exe. Asst.-II,
Engineering Services Department,
The Bharat Electronics Limited,
Nandambakkam, Chennai-89.

Retired on 30.09.2017 and now residing at:

No.1/197, Anna Street, V.G.P.
Amaravathi Nagar, Zalladianpet,
Medavakkam, Chennai-100.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 30.08.2018 passed in W.P.No.19531 of 2003.

For Appellants : Mr.S.Ravindran
Senior Counsel
for Mr.S.Venkataraman

For Respondent : Mr.C.Vigneswaran

J U D G M E N T

[Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**]

The Writ Appal has been instituted challenging the Writ Order dated 30.08.2018 passed in WP.No.19531 of 2003. The respondents in the Writ petition is the appellants before us. The respondent in the present Writ Appeal Mr.P.Karunakaran instituted a writ proceedings challenging the order of punishment of depromotion issued by the appellants-Management in



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Proceedings dated 15.03.2003 as confirmed by the Appellate Authority in proceedings dated 26.05.2003. The Writ Court considered the grounds raised by the respondent/writ petitioner and allowed the writ petition by setting aside order of punishment mainly on the ground that Charge Nos.(i), (iii) and (iv) are relating the Trade Union activity and the punishment could not have been imposed against the respondent/writ petitioner, in view of the provisions under Section 18 of the Trade Union Act.

2. With reference to the reasons for allowing the writ petition, the learned Senior Counsel Mr.S.Ravindran appearing on behalf of the appellants would submit that Section 18 of the Trade Union Act, 1926 denotes immunity from Civil suits in certain cases and not connected with the disciplinary matters initiated by the Management. In the present case, the reason in the writ order is not connected with Section 18 of the Trade Union Act and therefore, the writ order is liable to be set aside. The learned Senior Counsel would further submit that the respondent/employee was promoted to the Executive cadre and in his capacity as an Executive official was holding the post of General Secretary of Trade Union which is impermissible and therefore, the charges were framed in consonance with the service Rules. Thus, the writ order is liable to be set aside.



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3. The learned counsel for the respondent/employee Mr.C.Vigneswaran would oppose by stating that the respondent has already retired from service. The learned Single Judge considered the ground that the charges are flimsy and relating to Trade Union activities and therefore, the punishment of demotion to a lower post is hardship and accordingly, set aside the punishment. The case of the respondent was considered with reference to the facts and therefore, the writ appeal is to be rejected.

4. We have considered the rival submissions made on behalf of the parties to the *lis* on hand.

5. It is not in dispute that a charge memo has been issued against the respondent/employee. Four charges were framed. A departmental enquiry was conducted. Charges are held proved against the delinquent official. Accepting the findings of the Enquiry Officer, the Disciplinary Authority imposed the punishment of demotion to a lower rank for a period of 5 years. The petitioner suffered the punishment and thereafter, he was promoted to the Executive cadre once again and subsequently, retired from service on attaining the age of superannuation.



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6. The question arises whether the High Court in exercise of the powers of Judicial review under 226 of The Constitution of India can modify the punishment imposed by the Disciplinary Authority under the Discipline and Appeal Rules. The High Court is not expected to sit as Appellate Authority and modify the punishment imposed by the Disciplinary Authority under the Rules. In certain extraordinary cases, Courts have modified the punishment for strong reasons and the said proposition cannot be adopted in a routine manner. In such circumstances, if the High Court forms an opinion that the punishment imposed by the Disciplinary Authority is disproportionate to the gravity of the proved charges, the option left open is to remand the matter to the authority competent to reconsider the quantum of punishment but certainly not to usurp the powers of the Disciplinary Authority or the Appellate Authority in the matter of quantum of punishment with reference to the proved charges. The Hon'ble Supreme Court time and again emphasised in unequivocal terms that the High Court in exercise of the powers of judicial review cannot sit as a Disciplinary Authority or an Appellate Authority for modification of punishment imposed by the competent Authorities under the relevant service Rules in force.



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7. In the present case, the learned Single Judge gone into the nature of the charges and considered Section 18 of the Trade Union Act and quashed 3 charges relating to the Trade Union activities of the respondent/employee, who was holding the executive post. Such a finding is unnecessary in view of the fact that the respondent admittedly during the relevant point of time was holding the executive post and cannot continue as a Member or an office bearer of a Trade Union registered under the Trade Union Act. When the respondent/employee represented the Trade Union while holding the executive post in the Management, certainly it amounts to a misconduct and therefore, we do not find any infirmity in respect of the charges framed. But, Section 18 of the Trade Union Act has no application with reference to the charges framed. Section 18 deals with immunity from civil suit in certain cases and the said provision cannot be applied in departmental disciplinary matters.

8. In view of the fact that the reason stated for modification of punishment are neither candid nor convincing, we are inclined to interfere.



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9. Accordingly, the writ order dated 30.08.2018 passed in W.P.No.19531 of 2003 is set aside and consequently, the Writ Appeal stands allowed. No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
03.06.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes



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