

JAIPUR VIDYUT VITRAN NIGAM LTD. AND ORS. A

v.

NATHU RAM

(Civil Appeal No. 7721 of 2009)

NOVEMBER 23, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.] B

Service Law:

Rajasthan State Electricity Board Employees Service Regulations, 1964 – Regulation 41 – Employee allegedly caught accepting bribe and suspended from service – Criminal case – Conviction by trial court – In view thereof, termination of employee – Acquittal by High Court – Re-instatement of employee by virtue of the acquittal – Employee granted full pay and allowances from date of suspension to date of termination and again from date of acquittal to date of re-instatement – Entitlement of employee-respondent to receive pay and allowances for period between date of termination and date of acquittal – Held: Entitled, in view of circular dated 3rd September, 1975 (adopted by appellant-employer) read with Regulation 41. C D

Constitution of India, 1950 – Article 136 – New plea – Plea raised for first time in Supreme Court – Cannot be entertained. E

Appellant-Corporation had adopted the Rules, Regulations and directions issued by its predecessor, the erstwhile Rajasthan State Electricity Board. F

Respondent, an employee of Appellant-Corporation, was allegedly caught accepting bribe by the Anti-Corruption Bureau and suspended from service on 30th November, 1979. In 1982, he was convicted by the Special Judge, Anti-Corruption Cases and sentenced to one year rigorous imprisonment. Respondent filed appeal before High Court. Meanwhile, in view of the conviction, appellant terminated the service of respondent by order dated 28th G

A December, 1982.

Subsequently by order dated 15th December, 1997, the High Court acquitted the respondent and by virtue of the acquittal order, the appellant, by order dated 2nd June, 1998, reinstated respondent in service w.e.f. 15th

B December, 1997 and granted him full pay and allowances for the period of suspension i.e. from 30th November, 1979 to 28th December, 1982 and from 15th December, 1997 till his joining of duty. Respondent joined duty on 3rd June, 1998 and retired on 31st May, 2003.

C After retirement, respondent filed writ petition *inter alia* claiming that the period from 29th December, 1982 to 14th December, 1997 be also treated as period spent on duty for all purposes with full pay and allowances.

The High Court placed reliance upon a circular dated

D 3rd September, 1975 issued by the appellant's predecessor (the erstwhile Rajasthan State Electricity Board), and directed the appellant to pay backwages from 29th December, 1982 to 14th December, 1997 in form of salaries and allowances to the extent of what would have been payable to the respondent had he remained under suspension from the date of termination to the date of acquittal.

F In appeal to this Court, it was contended (1) that the High Court could not have entertained the writ petition filed by respondent since he filed the same after long delay without any explanation and (2) that the respondent was not entitled to any remuneration for the period 29th December, 1982 to 14th December, 1997.

Dismissing the appeal, the Court

G HELD: 1. The question of delay in filing the writ petition was raised for the first time in the Special Leave Petition before this Court, hence, it cannot be entertained at this stage. [Para 8] [1090-A]

H 2.1. The Circular dated 3rd September, 1975

specifically provides that the period between the date of dismissal and the date on which the employee resumed his duty should be dealt with under Regulation 41(2) of the Employees Services Regulations, 1964. At the same time, Regulation 41 also clearly says that when an employee who has been dismissed and thereafter reinstated, the authority competent to make the order of reinstatement shall consider the pay and allowances to be paid to the employee for the period of his absence from duty. This Circular along with Regulation 41, therefore, makes it clear that the authority is bound to take into consideration regarding pay and allowances to be paid to the employee for the period of his absence from duty. The Circular also clearly says that in doing so, the employee should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement. It is clear that the case of the respondent was fully covered by the Circular of the erstwhile Board dated 3rd of September, 1975. [Para 10] [1092-D-H; 1093-A]

2.2. The appellant-Corporation have themselves given full pay to the respondent from the date of suspension i.e. 30th November, 1979 to the date of dismissal i.e. 28th December, 1982 and from the date of acquittal i.e. 15th December, 1997 to the date of reinstatement i.e. 3rd June, 1998. Such being the state of affairs, there was no reason for the Corporation not to give the suspension allowances for the period between the date of termination i.e. 28th December, 1982 and the date of acquittal i.e. 15th of December, 1997 in terms of the circular dated 3rd of September, 1975. This circular also says that for the period from the date of dismissal to the date of acquittal, the employee should not be allowed pay and allowances less than what would have been admissible to him had he remained under suspension. Therefore, from a reading of the Circular, it would be evident that the respondent may be paid the pay and allowances admissible to him had he remained under suspension. In view of the circular dated

A 3rd of September, 1975, the respondent is entitled to back wages as directed by the High Court in the writ petition. [Paras 10 and 11] [1093-D-G; 1094-E-F]

Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat and another

B 1996 (11) SCC 603 and *Union of India & Ors. v. Jaipal Singh*
2004 (1) SCC 121, held inapplicable.

Case Law Reference :

1996 (11) SCC 603 held inapplicable Para 9
C 2004 (1) SCC 121 held inapplicable Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7721
of 2009.

From the Judgment & Order dated 19.11.2007 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. D Civil Special Appeal (Writ) No. 1085 of 2007 in S.B. Civil Writ Petition No. 6440 of 2003.

Sushil Kumar Jain, Puneet Jain, for the Appellants.

E Devashish Bharuka, Anuj Bhyandari, Ruchi Kohli, for the Respondent.

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

F 2. This appeal by way of a special leave petition at the instance of Jaipur Vidyut Vitran Nigam Ltd has been filed from a judgment and order dated 19th of November, 2007 in DB Civil Special Appeal (Writ) No.1085 of 2007 arising out of a writ petition filed by Nathu Ram (the respondent herein) for payment of back wages from 29th of December, 1982 to 14th of December, 1997 after he was reinstated in service by the G appellants.

3. Before we proceed further, we may say at this stage that while this Special Leave Petition was posted for hearing before a Bench of this Court, the following order was passed:-

H "Issue notice limited to the question of payment of amount

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which is to be paid from 28.12.1982 to 15.12.1997." A

4. The facts leading to the filing of this appeal may be narrated as follows:

Jaipur Vidyut Vitran Nigam Ltd. (hereinafter referred to as 'the Corporation') has come into existence as a result of dissolution of Rajasthan State Electricity Board to form separate companies. The Corporation adopted the Rules, Regulations and directions issued by the predecessor of the Corporation until they framed their own rules. A Circular dated 3rd of September, 1975, which relates to action to be taken in cases where employees of the Rajasthan State Electricity Board were convicted on criminal charges by a competent court of law, was issued by the Rajasthan State Electricity Board. B C

5. Nathu Ram, the respondent, was appointed as a casual labour in the erstwhile Rajasthan State Electricity Board and was subsequently regularized on the post of Helper Grade II. On 19th of September, 1979, the Respondent was allegedly caught accepting bribe by the Anti Corruption Bureau, as a result of which he was suspended from service by an order dated 30th of November, 1979. On 22nd of December, 1982, the learned Special Judge, Anti-Corruption cases, Jaipur held that the respondent was guilty of offences under Section 161 of The Indian Penal Code and under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 1947 and sentenced him to one year rigorous imprisonment with a fine of Rs.300/- for each of the said offence. An appeal was carried by the respondent to the High Court of Rajasthan at Jaipur challenging the aforesaid conviction passed against him. In view of the conviction passed against him, the Corporation terminated his service by an order dated 28th of December, 1982. By an order dated 15th of December, 1997, the High Court acquitted the respondent of the charges leveled against him. The Corporation, by virtue of this order of acquittal, reinstated the respondent in service w.e.f. 15th of December, 1997, i.e. the date of the acquittal and posted him in the office of Assistant Engineer (Rural), Rajasthan State Electricity Board, Kunda Ki Dhani by an order dated 2nd of June, 1998. The respondent was given full pay and allowances for the G H

A period of suspension, i.e. from 30th of November 1979 to 28th of December, 1982 and from 15th of December, 1997 till his joining the duty. From the above, it is clear that there was a break of 15 years in his service. On 3rd of June, 1998, the Respondent joined the service in the Corporation. He, however, retired on 31st of May, 2003. After retirement, he filed a writ petition being SB CWP No. 6440 of 2003 in the High Court of Rajasthan at Jaipur in which, inter alia, the following reliefs were claimed by the respondent :-

(1) amendment of the order dated 2nd of June, 1998 reinstating the respondent in service to the effect that the period from 29th of December, 1982 to 14th of December, 1997 may also be treated as period spent on duty for all purposes with full pay and allowances.

(2) consequential benefits of service from the date of his suspension i.e. from 30th of November, 1979 to 2nd of June, 1998, which was the date of his reinstatement, including pay and allowances, annual grade increment, bonus, liveries along with interest @ 12 % per annum from 2nd of June, 1998 to the date of payment, fixation benefits in revised pay scales for the years 1981, 1986, 1989 and 1996, selection scales as per Order dated 25th of January, 1992, arrears of pay and allowance with interest @ 12 % per annum from 2nd of June, 1998 to the date of payment.

(3) Pensionary benefits including pension, gratuity, and leave encashment after fixing his pay in revised pay scales and selection scale along with interest @ 12 % per annum from 1st of June, 2003 to the date of payment.

6. After the Corporation appeared and contested the writ application by filing an affidavit to the writ petition, a learned Single Judge of the High Court of Rajasthan passed a final order on the writ application directing the Corporation to pay back wages from 29th of December, 1982 to 14th of December, 1997

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when he was acquitted. While doing so, the learned Single Judge directed that the respondent shall be paid salaries and allowances to the extent of what would have been payable to him had he remained under suspension from the date of termination to the date of acquittal. According to the learned Single Judge, this period ought to have been treated as spent on duty without any break. The Corporation was also directed to fix his pay in the revised Pay Scales, as claimed, and to consider his case for selection scale. Thus, the writ petition of the respondent was partly allowed. While directing so, the learned Single Judge had relied on a Circular of the erstwhile Rajasthan State Electricity Board issued on 3rd of September, 1975 as noted herein earlier. From the order of the learned Single Judge, it also appears that the learned Judge had relied on para (iii) of the circular dated 3rd of September, 1975. As regards regularization of the period from the date of dismissal i.e. 28th of December, 1982 to the date of reinstatement i.e. 14th of December, 1997, it was held that the respondent was entitled to the payment of subsistence allowance in terms of the Circular dated 3rd of September, 1975, which in fact, clearly states that the period between the date of dismissal etc. and the date on which the employee resumes duty should be dealt with under Regulation 41 of the Employees Services Regulations 1964 (in short the 'Regulations').

7. Feeling aggrieved by the order of the learned Single Judge, an appeal was carried to the Division Bench of the High Court, which affirmed the order of the learned Single Judge and accordingly, this Special Leave Petition has been filed by the Corporation against the order of the Division Bench, which on grant of leave, was heard in presence of the learned counsel for the parties.

8. Before us, the learned counsel appearing on behalf of the Corporation at the first instance submitted that since a Writ petition was filed by the respondent after along delay and even after joining the service, without explaining why such delay was caused, the High Court could not have entertained the writ petition. We are not in a position to accept this submission of the learned counsel for the Corporation on the question of delay only because the question of delay in filing the writ petition was

- A not even taken by the Corporation either before the learned Single Judge or even before the Division Bench of the High Court. This question was only raised for the first time in the Special Leave Petition before this Court. The question of delay not having been raised before the High Court, we are
- B unable to entertain this question at this stage. Accordingly, this submission of the learned counsel for the Corporation stands rejected.

- 9: Secondly, it was contended that since the respondent had not worked during the period of dismissal, he was not entitled to any remuneration for the period mentioned herein earlier. In support of this submission, the learned counsel for the Corporation had drawn our attention to two decisions of this Court in the case of *Ranchhodji Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, Gujarat and another* [1996 (11) SCC 603] and
- D *Union of India & Ors. Vs. Jaipal Singh* [2004 (1) SCC 121]. Before we deal with the aforesaid two decisions as relied on by the learned counsel for the Corporation, we may consider the Circular dated 3rd of September, 1975, issued by the erstwhile Rajasthan State Electricity Board, on which strong reliance was placed by the courts below, needs to be looked into. It cannot be disputed that the said circular itself was binding on the Corporation. Therefore, at this stage, we may reproduce the said Circular dated 3rd of September, 1975 as well as Regulation 41 of the Regulations which are as follows :
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- F "Sub: Action to be taken in cases where Board's employees are convicted on a criminal charge by a competent court of law.

- G The following procedure should be adopted in a case of conviction of a Board's employee by a Court of Law on a criminal charge:

- H (i)...
- (ii)...
- (iii) If an appeal/revision against the conviction succeeds and Board's employee is acquitted, the order of dismissal,

removal or compulsory retirement based on his conviction which no longer stands, becomes liable to be set aside. A copy of the judgment of the appellate Court should be immediately procured and got examined with a view to decide whether despite the acquittal, the facts and circumstances of the case are such as to call for the departmental enquiry against the Board's employee on the basis of the allegation on which he was previously convicted.

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If it is decided that a departmental enquiry should be held, formal orders should be made: (1) setting aside the order or dismissal, removal or compulsory retirement, and

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(2) ordering such a departmental enquiry.

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Such an order should also state that under Regulation No. 9 of the RSEB (CC & A) Regulations 1962, the Board's employee is deemed to be under suspension with effect from the date of the dismissal/removal/compulsory retirement (A Standard Form-II is enclosed).

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In case where neither of the aforesaid course is allowed, a formal order should be made setting aside the previous orders of dismissal, removal and compulsory retirement and reinstating him in service (A Standard Form No. III for such an order is enclosed).

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The period between the date of dismissal etc. and the date on which he resumes duty should be dealt with under Regulation No. 41 of the Rajasthan State Electricity Board Employees Service Regulations and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement, such period being counted for duty for all purposes and for the period from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had he remained under suspension.

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While issuing orders for dismissal, it should be borne in mind that the order is issued by the authority competent to inflict major penalty against that person."

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A *Regulation 41 :-*

"Re-instatement after suspension, removal or dismissal:

When an employee who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specified order

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1. (a) Regarding the pay and allowance to be paid to the employee for the period of his absence from duty, and

(b) Whether or not the said period shall be treated as a period spent on duty.

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(c) Whether or not the suspension, removal or dismissal was wholly unjustifiable.

2. Where such competent authority holds that the employee has been fully exonerated or in the case of suspension that

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it was wholly unjustified, the employee shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be."

10. On a close examination of the Circular dated 3rd of E September, 1975 and Regulation 41(2) of the Regulations, as noted hereinabove, it would be clear that the Circular of the Corporation specifically provides that the period between the date of dismissal and the date on which the respondent resumed his duty should be dealt with under Regulation 41(2) of the said Regulations. At the same time, Regulation 41 also clearly says

F that when an employee who has been dismissed and thereafter reinstated, the authority competent to make the order of reinstatement shall consider the pay and allowances to be paid to the employee for the period of his absence from duty. This Circular along with Regulation 41, therefore, makes it clear that

G the authority is bound to take into consideration regarding pay and allowances to be paid to the employee for the period of his absence from duty. The Circular also clearly says that in doing so, the employee should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement. From the above discussions, it is clear that

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the case of the respondent was full covered by the Circular of the erstwhile Board dated 3rd of September, 1975. The period in question, as noted herein earlier, for payment of allowance is from the date of dismissal i.e. 28.12.1982 to the date of acquittal i.e. 15.12.1997. As noted herein earlier, last paragraph of the Circular dated 3rd of September, 1975 which is important for our purpose may be reproduced as follows :

"The period between the date of dismissal etc. and the date on which he resumes duty should be dealt with under Regulation No.41 of Rajasthan State Electricity Board Employee Service Regulation and in doing so he should be deemed to be entitled to full pay and allowances for the period from the date of his acquittal to the date of his reinstatement, such period being counted for duty for all purpose and for the period from the date of dismissal to the date of acquittal he should not be allowed pay and allowances less than what have been admissible to him had he remained under suspension."

It is not in dispute that the appellant-Corporation have themselves given full pay to the respondent from the date of suspension i.e. 30th of November, 1979 to the date of dismissal i.e. 28th of December, 1982 and from the date of acquittal i.e. 15th of December, 1997 to the date of reinstatement i.e. 3rd of June, 1998. Such being the state of affairs, it is not acceptable that there was any reason for the Corporation not to give the suspension allowances for the period of termination i.e. 28th of December, 1982 to the date of acquittal i.e. 15th of December, 1997 in terms of the circular dated 3rd of September, 1975. This circular also says that the period from the date of dismissal to the date of acquittal, the employee should not be allowed pay and allowances less than what would have been admissible to him had he remained under suspension. Therefore, from a reading of the Circular, it would be evident that the respondent may be paid the pay and allowances admissible to him had he remained under suspension. This was the view expressed by the learned Single Judge as well as the Division Bench of the High Court. Further, as noted herein earlier, the learned counsel for the Corporation had drawn our attention to two decisions of this

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- A Court. So far as the decision in *Ranchhodji's* case (supra) is concerned, we are of the view that the principle laid down in the said decision is not applicable to the facts and circumstances of the present case. The facts of the present case are quite different from that of the said decision. Apart from that, in that decision, a disciplinary proceeding was initiated and subsequently, it was decided that back wages should be paid if the employer had taken action by way of disciplinary proceeding and the action was found to be unsustainable in law. So far as the present case is concerned, no disciplinary proceeding was initiated. Only the termination order was passed by the
- B Corporation as a result of his conviction in a criminal case. Accordingly, this decision in *Ranchhodji's* case (supra) is of no help to the Corporation.

- 11. So far as the other decision on which strong reliance was also placed by the learned counsel for the Corporation, D namely, *Union of India & Ors. Vs. Jaipal Singh* [2004 (1) SCC 121] is concerned, similarly this decision of this Court, in our view, is also equally not applicable in the facts and circumstances of the present case. It is true that in that decision this Court has held that an employee is not entitled to pay back wages for the period of absence i.e. from the date of dismissal to reinstatement, which would otherwise be counted towards his service, but in view of the circular dated 3rd of September, 1975 particularly the last paragraph of the said circular as noted herein earlier, it cannot now be said that the respondent is not entitled to pay back wages as directed by the Division Bench of the High Court in the writ petition.

- 12. In view of our discussions made hereinabove and considering the Circular dated 3rd of September, 1975. we do not find any merit in this appeal. No other point was urged by the learned counsel for the Corporation before us. Accordingly, this G appeal fails and dismissed. There will be no order as to costs.

B.B.B.

Appeal dismissed.