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C.A.No. 5845 OF 1997

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5845 OF 1997

ELECTRONICS CORPORATION OF INDIA LTD. & ORS.

.....
APPELLANT(S)

:VERSUS:

SATEESH S. RAO SONAWALKAR

.....
RESPONDENT(S)

(WITH C.A.No.5846/1997)

O R D E R

C.A.No.5845/1997:

By means of this appeal the order dated 27.12.1996 passed by the Division Bench of the A.P. High Court in writ appeal under clause 15 of the Letters Patent, providing for regularising the period of absence of the respondent and for making payment of his salary has been impugned. We have heard the learned counsel for the appellants and the respondent appearing in-person.

It appears that the respondent on his promotion as Manager was transferred from Hyderabad to the Aurangabad Unit of the Electronics Corporation of India Ltd. (ECIL) by order dated 2.5.1995. However, he had been making representations etc. for his retention at Hyderabad office itself. Ultimately, it transpires that on 17.7.1995 the appellants passed an order relieving the respondent from ECIL, Hyderabad. The respondent is said to have applied for leave from 17.5.1995 to 19.7.1995, which was, however, not granted by the appellants. The respondent then filed a writ petition in the High Court challenging the transfer order and an ex-parte stay order was granted on 20.7.1995. According to the respondent, on 21.7.1995 he reported for joining and he also seems to have signed the attendance register. But there seems to be a dispute about his joining since according to the appellant the respondent had already been relieved on 17.7.1995.

The respondent was not paid his salary, hence, he filed yet another Writ Petition No.26350/95, with a prayer for payment of his salary for the period from 17.7.1995 to 7.10.1995. He was being treated as absent from duty. The appellant moved an application for vacation of the stay order on 19.12.1995. On 8.4.1996 the stay order staying the transfer was vacated. The appeal preferred by the respondent against the order vacating the interim order of stay was dismissed on 26.4.1996. The two writ petitions, namely, one against the transfer order and the other for payment of salary, were heard and dismissed on 11.9.1996. Liberty was, however, granted to the respondent to make representations for his being retained at Hyderabad and for payment of his salary till he joins at Aurangabad. The respondent preferred two appeals but the Appeal No.1473/1996 preferred against the order of transfer was dismissed on 26.12.1996. Thus, the controversy relating to the transfer was set at rest since no appeal was preferred against the order dismissing the appeal in the matter of transfer of the respondent. The other appeal arising out of the proceedings for payment of the salary is the subject matter of the present appeal before us.

The Division Bench of the High Court, hearing the appeal relating to payment of salary, observed right in the beginning that since the appeal pertaining to the transfer matter had been dismissed there was no merit in the appeal relating to payment of salary as well. The Court, however, tried to evolve the best possible solution in the matter, in the given facts and circumstances.

tances of the case so as to avoid any problem or controversy in future. The Court thus passed an order with the agreement of the parties. The said order provides that the respondent would abide by the order of transfer and join his duty at Aurangabad. The present appellants - employer were required to release the arrears of salary to the respondent, who may, even though be considered absent from duty without leave and it was further observed that such period may be treated as on extraordinary leave without any break in service. The order then observes that the counsel for the employer - the present appellant before us, also found nothing objectionable in the order passed though it might give some benefit to the respondent.

Learned counsel for the appellants submits that the respondent had been relieved by passing the order dated 17.7.1995 and thereafter he remained absent. Under the rules, whatever period is admissible as earned leave that having been made available to the respondent, rest of the period is to be treated as the period on extraordinary leave but it has to be without pay, including the period during which the respondent had gone abroad on sanctioned extraordinary leave without pay. It is further submitted that any concession made by the counsel or if no objection is made by the counsel to a situation which may run contrary to the rules would not be binding. It is further submitted that a whole reading of the order passed by the High Court would show that the period of absence though not authorised yet it is to be treated as on sanctioned extraordinary leave. This is how the period was to be regularised. It is further submitted that the direction for payment of salary would only mean payment of salary for the period as admissible under the rules pertaining to the extraordinary leave or any other kind of leave. It is further submitted that considering the rule position, the appellants have regularised the whole period of absence treating the same as period covered by earned leave as well as extraordinary leave but no payment of salary is liable to be made except for the period of earned leave.

The respondent-in-person tried to make a submission that the order of his transfer was mala fide. However, we find no relevance in that aspect of the matter since it became final with the dismissal of his appeal against the matter pertaining to his transfer. The matter was not taken up any further by the respondent. The next contention which has been raised by the respondent-in-person is that the rules relating to extraordinary leave, as provided in the ECIL Service Rules, are applicable only to the ECIL but not to its officers, namely the General Managers of different departments who have been impleaded as respondents in this appeal. The argument is fallacious on the face of it and such a plea cannot be entertained that he may be allowed extraordinary leave with salary and the officers may be directed to make the payment of the same.

We have, however, considered the whole matter including the order passed by the High Court. The High Court thought in the best interest of both the parties, namely the organisation as well as the respondent to pass the impugned order. The direction was to regularise the period of absence even though it was without sanction of leave, by treating the period spent on extraordinary leave as per the relevant rules. As indicated by the learned counsel for the appellants, extraordinary leave for a period of three months at one stretch can be granted by the management without pay and for period beyond that may be granted by the higher authorities. It is further submitted that the period with effect from 17.7.1995 to 8.11.1995 can be adjusted against earned leave on full salary. Thereafter, the respondent was granted three months' extraordinary leave without pay w.e.f. 9.11.1995 to 7.2.1996 during which period he went abroad, namely USA. The rest of the period may be allowed to be treated as the period on extraordinary leave without pay. We, however, find that the respondent had on 19.7.1995 obtained the stay order of his transfer. The respondent reported on duty with that order on the next day. The appellants sat tight over the matter for a period of five months, without bringing to the notice of the Court that the respondent stood relieved on 17.7.1995 and moved for vacation of the stay order only on 19.12.1996 and the stay order was vacated only on 8.4.1996, that is to say, the stay order remained operative w.e.f. 19.7.1995 till the date of its vacation i.e. on 8.4.1996. The respondent had made himself available and had reported on duty on 20.7.1995. This kind of relieving order, if passed on 17.7.1995, should have been brought to the notice of the Court at the earliest, rather than to allow it to continue for such a long time even though appearance on behalf of the appellants was put in, before the Court much earlier. In the circumstances, the case of relieving of the respondent in the manner as indicated by the appellants is not liable to be accepted.

Therefore, we provide that the period from 17.7.1995 to 8.4.1996 shall be treated as the period spent on duty and the appellants shall pay full salary for the said period, excluding the period of three months w.e.f. 9.11.1995 to 7.2.1996 for which extraordinary leave was granted to the respondent to visit USA. The period after 8.4.1996 shall be adjusted against earned leave or any other such leave which according to the appellants have been made admissible to the respondent for the period from 17.7.1995 to 8.11.1995. The rest of the period has only to be regularised as against extraordinary leave without pay. In this manner the continuity of service of the respondent is also maintained and all the period of service would also stand regular

ised in the spirit of the order passed by the High Court. The arrears of salary to be calculated in the manner indicated above shall be worked out and paid within six weeks from today.

We decline to entertain the request made by the respondent for allowing any kind of interest over the amount, if the same is paid within six weeks, as provided above, failing which it shall entail an interest at the rate of 12%.

The appeal stands finally disposed of in the manner indicated above.

C.A.No.5846/1997:

In view of the order passed in C.A.No.5845/1997, relating to the matter of payment of salary etc., arising out of the order dated 27.12.1996, the contempt notice issued by the High Court in Contempt Case No.278/1997, is discharged and the proceedings are dropped. The matter stands finally disposed of as indicated above.

.....J
(BRIJESH KUMAR)

.....J
(ARUN KUMAR)
NEW DELHI;
MARCH 18, 2004.

ITEM NO.101 COURT NO.10SECTION-XIIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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:VERSUS:

SATEESH S. RAO SONAWALKAR

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RESPONDENT(S)

(With Appln.(s) for stay and with Office Report)

WITH C.A.No.5846/1997

(With Appln.(s) for stay and with Office Report)

Date : 18/03/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)Mr. V. Shekhar,Adv.

Mr. S. Ganesh,Adv.

Mr. Anuj Narain,Adv.

For Respondent (s)RESPONDENT-IN-PERSON

UPON hearing counsel the Court made the following

O R D E R

Mr. V. Shekhar, learned counsel for the appellants commenced arguments at 10.40 a.m. and concluded at 11.25 a.m. Thereafter, the respondent-in-person made his submissions for about 15 minutes.

The appeals are finally disposed of in terms of the signed order.

(A.S. BISHT)(PROMILA NAGPAL)

COURT MASTER

COURT MASTER

[Signed order is placed on the file]