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C.A.No. 5773 OF 2002

ITEM No.113

Court No. 2

SECTION XV

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

Civil Appeal No.5773 of 2002

SUDHIR PATHAK

APPELLANT(S)

VERSUS

BIHAR STATE ROAD TRANSPORT CORPORATION
& ORS.

RESPONDENT (S)

(With office report)

Date : 14/12/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE S.B. SINHA

For Appellant (s)
Mr. Gopal Prasad, Adv.
Mr. Anand Shekhar, Adv.

For Respondent (s)
Mr. Irshad Ahmad, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(Satish K. Yadav) (Prem Prakash)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5773 OF 2002

Sudhir Pathak ?..Appellant

Versus

Bihar State Road Transport Corporation & Ors. ?..Respondents

O R D E R

The appellant who was employed as a Driver in the Bihar State Road Transport Corporation was charged on the ground that he had misbehaved with a lady and that he had refused to drive the bus, being in a drunken state. In a departmental enquiry held, he was found guilty of the misconduct alleged against him and he was awarded the major punishment of dismissal from service as per the orders of the respondent dated 6.9.1991.

The petitioner filed a writ petition against the said order of dismissal in C.W.J.C. No.268/92 before the High Court of Patna at Ranchi. The High Court dismissed the said writ petition holding that the finding in the domestic inquiry was based on a question of fact, hence, it cannot reappreciate the said fact under Article 226 of the Constitution of India.

After the abovementioned judgment of the High Court, the respondent-Corporation filed a miscellaneous case under section 33(2)(b) of the Industrial Disputes Act, 1947 (the Act) for approval of the order of dismissal before the Industrial Tribunal. The Industrial Tribunal rejected the said application for approval without knowing the fact that the writ petition filed by the petitioner against the finding in the domestic inquiry has been dismissed. After the said application of the respondent-Corporation for approval was dismissed, no action was taken by the respondent-Corporation to reinstate the appellant on the ground that his writ petition had already been dismissed.

Since the writ petitioner was not taken back on duty, he filed a fresh writ petition CWJC No.3098/94 seeking issuance of a direction to the respondent-Corporation to give him consequential benefits in view of the decision of the tribunal refusing approval of the action of dismissal. The High Court dismissed the same holding that the jurisdiction of the Industrial Tribunal is inferior to the writ jurisdiction under Article 226 and, therefore, the earlier order of the High Court was binding on the tribunal. It also noticed the fact that the judgment of the High Court in the first writ petition CWJC No.268/92 was not brought to the notice of the Industrial Tribunal when it considered the application of the Corporation filed under section 33(2)(b) of the Act.

Being aggrieved by the said order of the High Court, the petitioner in LPA No.326/95, said LPA came to be disposed of holding that no purpose will be served by entertaining the said LPA. However, the LPA Bench held that it will be open to the appellant to pursue such relief as may be available to him in law under the provisions of the Act, including raising of a dispute under section 10 and claiming wages due under section 33(2)(c) of the Act. The LPA Bench also stated that it does not express any opinion on merit of the case or on the question of maintainability. It further held that the observations made by the High Court in CWJC No.3098/94 will not stand in the way of the appellant if he has a right to claim such relief from an appropriate forum.

Based on the above observations of the High Court in the Letters Patent Appeal, the petitioner filed an application under section 33(2) before the Labour Court, Ranchi. Said court dismissed the said petition holding that the Labour Court had no jurisdiction to decide the validity and the legality of the dismissal order when such order was affirmed by the High Court in CWJC No.368/92.

Being aggrieved by the above order of the Labour Court, the petitioner filed CWJC No.2390/2000 before the High Court which writ petition came to be dismissed with the following observations :

"? The Tribunal consequently came to a right conclusion that it has no jurisdiction to decide the validity and legality of the dismissal order when such order was affirmed by this Court.

For the reasons aforesaid, I did not find any merit in this Writ Petition which is accordingly dismissed."

Against the said order of the learned Single Judge, the petitioner once again approached the LPA Bench in LPA No.353/2000 wherein at the stage of preliminary hearing, the High Court observed thus :

"On hearing the appellant, prima facie, it appears that the judgment and order dated 29th January, 1992 passed in C.W.J.C. No.268 of 1992 @ and order dated 14th November, 1995 passed in C.W.J.C. No.3098 of 1994 @, as clarified by order dated 24th April, 1996, passed in L.P.A. No.326 of 1995 @, do not constitute any bar/resjudicate in the matter of decision under Section 33(2)(c) of I.D.Act.

In fact, no finding was given relating to legality and propriety of enquiry report, as re-appreciation of evidence under Article 226 of Constitution was not permissible.

The Presiding Officer of the Labour Court seems to have rightly applied his mind when passed order on 29th September, 1993 in Misc. Case No. 1/93.

In the facts and circumstances, let notice be issued on Respondent Nos. 1, 2 and 4 as to why the appeal be not admitted and, if possible, disposed of at the stage of admission.

Requisite etc. under Registered cover with A/D. must be filed within a week, failing which the memo of appeal, as against them, shall stand rejected without further reference to a Bench.

Place the case "For Admission" after service is complete."

However, when the matter came up for further hearing on 2.1.2001, another Bench which heard the abovesaid LPA, dismissed the same on 2.1.2001 without taking into consideration the various orders made earlier by the High Court and the liberty granted to the petitioner. It is against the said order dated 2.1.2001 dismissing the LPA filed against the judgment in CWJC No.2390/2000, the appellant is now before us.

From the above-narrated facts, it is clear that the appellant had no real opportunity of questioning the validity of the departmental inquiry in spite of getting certain favourable observations from the High Court.

Keeping in view the peculiar facts and circumstances of the case, we think that ends of justice would be met if we set aside all the orders from which this appeal arises or is connected with this appeal, and direct the Labour Court to reconsider the application filed by the respondent-Corporation under section 33(2)(b) of the Act seeking approval of the dismissal of the appellant afresh, without being in any manner influenced by any other earlier orders made by the Industrial/Labour Court or the High Court in any of the proceedings referred to hereinabove.

With the above observations, we allow this appeal and remand the matter to the Industrial Tribunal to hear and dispose of Misc. Case No.1/91 filed by the respondent-Corporation under section 33(2)(b) of the Act, in accordance with law. The appeal is allowed.

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(N. SANTOSH HEGDE)

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(S.B. SINHA)

New Delhi,
December 14, 2004.