

U

C.A.No. 6205 OF 2001
ITEM No. 101(PH)

COURT NO. 10

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 6205 OF 2001@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

TRANSMISSION CORPN. OF A.P. LTD. HYD. ...APPELLANT

VERSUS

SYED AHMED SIDDIQUI ...RESPONDENT
(With office report)

WITH C.A.NO.6206/2001 - (With office report)

Date : 27/02/2003 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. P.P. Rao, Sr.Adv.
Mr. Rakesh K. Sharma, Adv.

For Respondent (s) Mr. T.M. Mohammad Yousseff, Sr.Adv.
Mr. P. Sureshan, Adv.
Mr. S.A. Syed, Adv.

Mr. K. Ram Kumar, Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

Mr. P.P. rao, learned Senior Counsel appearing on behalf of the appellant started his arguments at 11.05 a.m. and concluded at 11.30 a.m. After that, Mr. T.M. Mohammad Yousseff, learned Senior Counsel made his submissions for 20 minutes.

After hearing learned counsel for the parties, the appeals are disposed of in terms of the signed order. No costs.

.SP1

Sarita (Shelly Sengupta)@@
AA
Court Master@@
AAAAAAAAAAAAA

(Signed order is placed on the file)

.PA
.PL58

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6205 OF 2001@@

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Transmission Corpn. of A.P. Ltd.Appellant
Hyderabad

Versus

Syed Ahmed Siddiqui ...Respondent

[With C.A.No.6206 of 2001]

O R D E R@@
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

These two appeals were filed by Andhra Pradesh Electricity Board (hereinafter called 'the Board') assailing the validity and correctness of the impugned orders passed by the Division Bench of the High Court of Andhra Pradesh. Subsequently, the Transmission Corporation of A.P. Ltd., Hyderabad being successor to the said Board was allowed to be substituted. The respondents herein were the employees of the Board. They remained unauthorisedly absent for a long period. Invoking Regulation 28(3) of A.P. State Electricity Board Service Regulations Part I they were deemed to have resigned from service. The said Regulation reads thus :

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP1

"28(3) Any employee of the Board who@@
AAAAA
remained unauthorisedly absent from duty for continuous period of one year shall be deemed to have resigned from service from the date of absence and shall automatically cease to be in the Board employment."

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

The respondents herein challenged the said orders by filing the writ petitions in the High Court. The respondent Sayeed Ahmed Siddiqui in Civil Appeal No.6205/2001 herein filed Writ Petition No.282/87 and the respondent Hameed Jabrey in Civil Appeal No.6206/2001 herein filed Writ Petition No.11932/88 in the High Court challenging the orders passed by the Board under Regulation 28(3) that they had ceased to be the employees of the Board. The learned Single Judge allowed the Writ Petition No.282/87 holding that the termination of services of the writ petitioner was invalid being violative of Section 25-F of the Industrial Disputes Act, 1947. In that view, while holding that the writ petitioner was entitled for reinstatement in service, in the circumstances of the case, did not award the backwages in full ; backwages were denied for the period between 16.12.1980 to 31.8.1989. Liberty also was reserved to the Board to take any disciplinary action in accordance with law. Challenging the said order of the learned Single Judge, the Board filed Writ Appeal No.1639/89. The Divison Bench of the High Court dismissed the writ appeal. The Writ Petition No.

11932/88 filed by Hameed Jabrey was disposed of by the Division Bench itself stating that the subject matter of the said writ petition was similar to the one decided in Writ Appeal No. 1639/89 filed by the Board against Sayeed Ahmed Siddiqui. In that view, it was held that the writ petitioner Hameed Jabrey was deemed to have been reinstated into service from the date of filing of writ petition and he was entitled to backwages from the date of filing of writ petition with all other consequential benefits. Hence, these two appeals by the Board as stated above.

Mr. P.P. Rao, learned Senior Counsel for the appellants in both these appeals contended that the learned Single Judge as well as the Division Bench of the High Court were not right and justified in quashing the orders passed by the Board holding that the respondents had ceased from service on account of their deemed resignation in terms of Regulation 28(3). He further submitted that the High Court was wrong in applying Section 2(o) and 25-F of the Industrial Disputes Act, 1947 to the facts of the cases. In support of his submission, he relied on the decisions of this Court in (i) Hindustan Paper Corporation vs. Purnendu Chakrobarty@
CC
& Ors. [(1996) 11 SCC 404]; (ii) Uptron India Ltd. vs.@
CC
Shammi Bhan & Anr. [(1998) 6 SCC 538 and (iii) Scooters@
CC
India Ltd. vs. M. Mohammad Yaqub & Anr. [(2001) 1 SCC@
CC

61. He submitted that on the basis of the legal position explained in these decisions once opportunities were given to the respondents under Regulation 28(3), the orders passed by the Board could be sustained.

In opposition, Mr. T.M. Mohammad Yousseff, learned Senior Counsel representing the respondents in these appeals made submissions supporting the impugned orders. He pointed out that before the Division Bench of the High Court the appellants urged only one ground as to the entitlement of the respondents for backwages; since no other point was urged before the Division Bench, it is not open to the appellants to raise other questions before this Court.

During the course of the hearing it is brought to our notice that pursuant to the directions given by the High Court in contempt proceedings, Hameed Jabrey, the respondent in Civil Appeal No.6206/2001 was reinstated on 17/7/1996 and so also Sayeed Ahmed Siddiqui, the respondent in Civil Appeal No.6205/2001 on 5/6/2000. Having regard to the facts and circumstances of these appeals, we felt that ends of justice would be met if the respondents are allowed to continue in service till superannuation without any backwages to be paid. The learned Senior Counsel for the respondents also submitted that appropriate orders as regards backwages could be made, but, however, the benefit of continuity of service may be given to the respondents for the purpose of calculating the retiral or terminal benefits. The learned Senior Counsel on behalf of the appellants submitted that the position of law as stated in the decisions aforementioned in regard to Regulation 28(3) is clear and the appellants are not entitled to any backwages even if the orders terminating the services could be upheld. We do not wish to proceed to consider on the merits of the respective contentions in the view we propose to take. The respondent in C.A.No.6206/2001 -

Hameed Jabrey appears to have retired by now and the respondent in C.A.No.6205/2001 - Sayeed Ahmed Siddiqui is left with hardly a few years to retire. These are not the cases where the respondents' services were terminated on account of any misconduct but their services, it is stated came to an end by operation of second Regulation 28(3). The respondents had given their own explanation for unauthorisedly remaining absent. At this length of time, taking overall view of the matter, on peculiar facts and circumstances of these cases, we pass the following order :

The respondents in these appeals shall be allowed to superannuate. We make it clear that the respondents shall not be entitled to any backwages. However, they shall be entitled for continuity of service only for the purpose of calculating the retiral or terminal benefits.

The appeals are disposed of accordingly. No costs.

.SP1

.....J.
(SHIVARAJ V. PATIL)

New Delhi,
February 27, 2003.

.....J.
(ARIJIT PASAYAT)