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C.A.No. 1732 OF 2001
ITEM No.114

Court No. 8

SECTION XI

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.1732 OF 2001

U.P. STATE ELECTRICITY BOARD & ORS.Appellant (s)

VERSUS

FAZLUR RAHMAN KHAN (DEAD) BY LRS. Respondent (s)

Date : 19/08/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. S Borthakar, Adv.
Mr. Baijoyonta Barooah, Adv. for
Mr. Sunil Kr. Jain, Adv.

For Respondent (s)Mr. DK Garg, Adv.
Mr. Anis Suhrawardy, Adv. (not present)

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.
The appeal is disposed of in terms of the signed order.

(D.L.Chugh) (Vijay Dhawan)
AR-cum-PS Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1732 OF 2001

U.P. STATE ELECTRICITY BOARD & ORS.Appellant(s)

versus

FAZLUR RAHMAN KHAN (DEAD) BY LRS.Respondent(s)

O R D E R

Heard learned counsel for the parties.

U.P. State Electricity Board (hereinafter referred to as "the Board") has questioned legality

of the judgment of a learned Single Judge of the Allhabad High Court, Lucknow Bench holding that the departmental inquiry which finally culminated with the order of dismissal against one Fazlur Rahman Khan, Respondent No.1 herein, was not in accordance with law. The order of dismissal was quashed and the aforesaid Fazlur Rahman was held entitled to arrears of salary. During the pendency of the writ petition before the High Court Fazlur Rahman died on 11-05-1999 and, therefore, his legal heirs and representatives were directed to be paid the benefits flowing from the High Court's order.

A brief reference to the factual aspects which is as under would suffice:

Fazlur Rahman was appointed as Meter Reader in the month of May 1965. With effect from 1.7.1972 he was posted as Town In-charge. On 9.10.1980 a first information report was lodged against him by the Executive Engineer, Electricity Distribution Division, Basti, alleging misappropriation of Board's funds. On 30-10-1980 he was suspended and on 13-9-1983 the charge sheet was filed and Fazlur Rahman was given a copy thereof. By letter dated 26-10-1983 Fazlur demanded copies of the relevant documents referred to in the charge sheet. The Superintending Engineer wrote to him saying that since the record was voluminous, the copies of the same could not be supplied to him but he was given an option to inspect the documents on 5th and 6th January, 1984. Fazlur Rahman did not avail the opportunity and the matter went on. Finally, the order of dismissal was passed. It was, inter alia, observed therein that in spite of opportunities given Fazlur Rahman did not participate in the proceedings and the allegations levelled against him were amply established. A writ petition was filed before the High Court alleging violation of the principles of natural justice primarily on the ground that neither the documents asked for were supplied, nor the copy of the inquiry report was furnished to him. The Board's stand, on the contrary, was that ample opportunity was granted and dates were fixed for taking copies, which Fazlur Rahman did not avail and, therefore, he cannot make any grievance. In any event, it was submitted that no prejudice was caused to Fazlur Rahman as he was supplied with the copies of documents, the copy of the inquiry report along with the charge sheet. The High Court, unfortunately, came to take contradictory views. Firstly, it held that the case of Union of India & Ors. vs. Mohd. Ramzan Khan (reported in 1991 (1) SCC 588) had no application to the facts of the case in hand. It was noticed by the High Court that the order of dismissal was passed before the decision of the case of Mohd. Ramzan Khan (supra). Having held so on the basis of the aforesaid conclusion that Ramzan Khan's case (supra) had no application it was further held that Fazlur Rahman cannot take any advantage from the said decision. But, unfortunately it was observed in the subsequent paragraph that the inquiry report ought to have been supplied to Fazlur Rahman and that having not been done, the order of dismissal was illegal, solely on the ground that he was deprived of the opportunity to defend himself against the order of dismissal and the order of dismissal was held to be null and void.

We find that the basic issues were not considered by the High Court in its proper perspective.

Subsequent to Ramzan Khan's case (supra) in the case of Managing Director, ECIL, Hyderabad and others vs. B. Karunakar & Ors. (1993 (4) SCC 727) it was held that ultimate question to be decided was one of prejudice and if it was established on facts, that no prejudice was caused by mere non supply of the copy of the inquiry report, order of dismissal is not rendered invalid. Be that as it may, considering the fact that Fazlur Rahman has died on 11-5-1999 and the matter is still continuing it would be appropriate to give a decent burial to the litigation.

At this stage, as has been rightly observed by the High Court there is no question of reinstatement. The only question to be decided, therefore, relates to the entitlement, if any, of the legal heirs and representatives of Fazlur Rahman. Considering the peculiar facts and circumstances of this case we hold that the payment of 30 per cent of the amount of back wages from the date of dismissal upto the date of retirement/superannuation or death whichever is earlier, will meet the ends of justice. We direct the payment is to be made within three months from today. With the above directions this appeal stands disposed of.

.....J.

(ARIJIT PASAYAT)

.....J.

(D.M. DHARMADHIKARI)

New Delhi,
AUGUST 19, 2004