

(2006) 07 DEL CK 0146

Delhi High Court

Case No: Writ Petition (C) 14137 of 2005

Rakesh Kumar Sharma

APPELLANT

Vs

The Chairman and Managing
Director, Bharat Heavy Electricals
Limited

RESPONDENT

Date of Decision: July 14, 2006

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2006) 132 DLT 124

Hon'ble Judges: J.M. Malik, J

Bench: Single Bench

Advocate: R.K. Kapoor and Govind Kaushik, for the Appellant; J.C. Seth and Mohd. Rashid, for the Respondent

Final Decision: Dismissed

Judgement

J.M. Malik, J.

Petitioner and one D.R. Verma are facing the criminal proceedings lodged by CBI. This is an indisputable fact that they are facing the identical charges. Both of them are employees under Bharat Heavy Electricals Limited, the respondent in this case. The petitioner has prayed that he is also entitled to the same relief which was subsequently granted to his co-accused, D.R. Verma.

2. Brief facts of the writ petition are as follows. The petitioner was recruited as a Stenographer with the respondent on 11.12.1976. He was promoted to the post of Senior Stenographer and again to the post of Private Secretary. The petitioner was suspended on 11.01.1994, on account of pendency of one criminal case pertaining to CBI, which had nothing to do with the respondent. The petitioner was released on bail on 25.01.1994. The petitioner was paid the subsistence allowance up to 50% for a period of six months and same was revised to 75% w.e.f. 12.07.1994. Despite

representation made by the petitioner the suspension against him was not revoked. The petitioner filed a civil writ petition before this Court on 17.12.1997. The single Judge dismissed the writ petition on 26.05.2000. The petitioner filed Letters Patent Appeal before the Division Bench of this Court which was allowed vide order dated 07.08.2003 and a Writ of Mandamus was issued for revocation of suspension order passed against the petitioner.

3. Subsequently, D.R. Verma filed a civil writ petition No. 5319/2003 before a Single Judge of this Court which was disposed of vide judgment dated 13.10.2004. The respondent filed an application for clarification which was finally disposed of vide orders dated 08.04.2005. The relevant portion of order dated 08.04.2005 is reproduced as follows:

It may be noted that the petitioner at the time of arguments in the writ petition confined the prayer in following terms:

Learned Counsel for the petitioner states that as for now the petitioner is confining his prayer to the quashing of the suspension order and prays for back wages at a subsequent date after reinstatement.

Mr. Birbal submits that above indicates that suspension order was to be quashed prospectively. After some arguments, it is agreed between the parties that the suspension order be quashed from the date the petitioner filed the writ petition i.e. 25th August, 2003. Ordered accordingly. The Petitioner would not be entitled to the additional benefits flowing from the revocation of the suspension order w.e.f. 25th August, 2003. Respondents shall duly pay the same to the petitioner after taking into account the subsistence allowance already paid. The above is without prejudice to the rights and contentions of the parties and would not be treated as a precedent.

4. The petitioner also came to know about these facts. He submitted the representation dated 10.06.2005 to the respondent. However, respondent declined the request of the petitioner vide orders dated 10.08.2005. Consequently, the present writ petition was filed in the court on 18.08.2005. The respondent has hotly contested this writ petition.

5. I have heard the learned Counsel for the parties. Learned Counsel for the petitioner vehemently argued that the petitioner has not asked for amendment, modification or review of the order passed by the Division Bench. He contended that as a matter of fact, he has asked for "more relief" which his co-accused has been granted subsequently. He submitted that cause of action qua this writ petition arose on 08.04.2005, when the order was passed in favor of his co-accused. Thereafter, he filed representation before the Chairman and Managing Director, Bharat Heavy Electricals Limited. The request made by the respondent was declined by Senior Manager. Consequently, the present writ petition was filed on 18.08.2005. Learned Counsel for the petitioner contended that under these circumstances this much

delay cannot be regarded as unreasonable. He also argued that the order dated 08.04.2005, to the extent that it should not be treated as a precedent, is not applicable to the petitioner, who is the co-accused of D.R. Verma. He contended that order is to be treated as precedent for other cases but their lies no rub for his co-accused to claim the same right. He argued that there should be no discrimination. What is enjoined by Article 14 is that the State shall not by its act discriminate as between two individuals who are similarly circumstanced. He pointed out that it is settled law that a judicial or quasi judicial decision cannot offend Article 14 and the Court is bound to treat both the petitioners equally.

6. Instead of touching the heart of the problem, learned Counsel for the petitioner laid emphasis on peripheral issues. It is pertinent to note that in his earlier Writ Petition No. 5551/1997, the petitioner had prayed that Court may be pleased to: -

(a) issue a writ, order or direction including a writ of mandamus or any other appropriate writ quashing and setting aside the impugned order (Annexure P-10) dated 14.01.1994 which is the order of suspension against the petitioner;

(b) issue a writ, order or direction including a writ of mandamus or any other appropriate writ directing the respondent authorities to reinstate the petitioner with revocation of his suspension and grant the consequential benefits which he would have got had he not been suspended vide order dated 14.01.1994 including the payment of full salary on the basis of pay scales, increments, seniority, promotions, bonus, LTC and all other incidental benefits.

7. The Division Bench vide its order dated 07.08.2003 held:

Appellant is being paid subsistence allowance for sitting idle. On reinstatement he can be posted to any division of BHEL in India. We accordingly allow the appeal. A writ of mandamus is issued to the respondent directing the respondent to revoke the suspension of the appellant. We make it clear that the consequential reinstatement of the appellant would be pending criminal proceedings against him. No costs.

8. There can be no conflixtions on the point that the remaining request/prayer made by the petitioner was not granted. There is a difference between the order passed in the case of D.R. Verma by a Single Judge and the petitioner by a Division Bench. As a matter of fact, the requisite jurisdiction does not vest with the Single Judge so far as case of the petitioner is concerned. It will be against the propriety to pass any order reversing, reviewing or even granting more relief than the one granted by the Division Bench. This Court cannot sit over as a Court of appeal over the order passed by the Division Bench. If the petitioner is entitled to any relief, it can be granted by the Division Bench and not by a Single Bench. Consequently, the writ petition is dismissed. No order as to costs.