

(2011) 05 DEL CK 0500

Delhi High Court

Case No: Regular Second Appeal No. 155 of 2007

BSES Rajdhani Power Ltd.

APPELLANT

Vs

Sh. S.S. Gupta

RESPONDENT

Date of Decision: May 9, 2011

Acts Referred:

- Central Civil Services (Pension) Rules, 1972 - Rule 9

Citation: (2011) 180 DLT 51

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Nikhil Singla, for the Appellant; Prem Chand, for the Respondent

Final Decision: Allowed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 20.03.2007 which had reversed the finding of the trial judge. The trial judge vide judgment and decree dated 03.08.2001 had dismissed the suit filed by the Plaintiff Sh. S.S. Gupta which had sought declaration and mandatory injunction to the effect that the enquiry report filed against him is illegal and violative of the rules of natural justice; further the penalty of 10% reduction in his pension for a period of three years also be declared as illegal and arbitrary. The impugned judgment had reversed this finding. The suit of the Plaintiff stood decreed.

2. The Plaintiff had joined the service of the Defendant i.e. Delhi Vidyut Board as an Inspector in 1962. After 31 years of service, he retired as an Assistant Engineer (Electrical) on 29.02.1992. His service record was unblemished. Contention is that 15 days before his retirement, he was charge sheeted on the allegation that he had sanctioned four electricity connections without verifying the proof of lawful occupancy as was required under the provisions of DECO 1959. Two other charges were framed against him. After the enquiry, the Enquiry Officer exonerated him

from the other charges but held him guilty for sanctioning of four electricity connections without verifying the proofs of lawful occupancy. The Disciplinary Authority thereupon imposed the penalty of 10% cut in the pension of the Plaintiff for five years. In appeal, the period of penalty was reduced from 5 years to three years. The acts of the Defendant were unreasonable; no financial loss had accrued to the Defendant; there was no charge of mala fide; pension rules had also been violated. Suit was accordingly filed seeking a declaration to this effect that the enquiry conducted against him was illegal and the consequential punishment imposed was also illegal.

3. In the written statement, the allegations were denied. It was stated that the enquiry was not conducted in accordance with the rules of natural justice; all opportunities to defend were granted to the Plaintiff. It was stated that the Plaintiff was involved in a vigilance case of 1992 where the major penalty had been imposed upon him on 08.12.1997. The Plaintiff was guilty of the charge for which he had been charge sheeted in the present case as well; without verification of the lawful occupancy of the person which was mandatory in terms of the rules of the DECO 1959, the electricity connections had been granted to four persons. The enquiry report had been confirmed by the Disciplinary Authority and the Appellate Court had reduced the penalty imposed upon the delinquent.

4. On the pleading of the parties, the following five issues were framed:

(1) Whether the findings of enquiry conducted by DVB against the Plaintiff unfair, improper and illegal and against laws?

(2) Whether the findings of enquiry are not based upon the evidence recorded by the enquiry officer? OPP

(3) Whether the decision of stoppage of pension passed in accordance with the rules of DVB? OPP

(4) Whether the Plaintiff is entitled to a decree of declaration and mandatory injunction as prayed in the plaint? OPP

(5) Relief.

5. Oral and documentary evidence was led. The suit of the Plaintiff was dismissed by the trial judge.

6. In appeal, the impugned judgment had reversed this finding. Suit of the Plaintiff stood decreed. The court was of the considered view that Rule 9 of CCS (Pension) Rules 1972 have been violated; the Plaintiff had not been held guilty of any corrupt practice; the term "grave misconduct" had been expounded.

7. This is a second appeal. It had been admitted and on 28.05.2007, the following substantial question of law was formulated:

1. Whether the conduct of the Respondent does not tantamount to grave misconduct or negligence as envisaged in Rule 9 of CCS (Pension) Rules, 1972?

8. On behalf of the Appellant, it has been urged that the impugned judgment had wrongly interpreted the provisions of Rule 9 of the CCS Rules; even presuming that the act of the Appellant was not a gross misconduct, the fact that he had without verification given four electric connection is clearly a case of negligence; Rule 9 permits the department in such cases of negligence to deduct pension which had rightly been done. Impugned judgment holding otherwise is an illegality.

9. Arguments have been countered. It is pointed out that the impugned judgment had correctly noted that no pecuniary loss had been suffered by the department; it cannot be a case of either grave misconduct or negligence.

10. Rule 9 of the CCS Rules reads as under:

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon reemployment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

11. It is not the case of the Appellant that any pecuniary loss has been caused to the government. It is, however, not in dispute that the Petitioner has been held guilty of sanctioning four electricity connections without verifying and taking proof of lawful occupancy. It is also not in dispute that this was a part of his duty and without verification of the lawful occupancy the electricity connections could not have been granted.

12. Negligence has been defined in the Oxford English Dictionary as follows: 1

Lack of attention to what to be done; failure to take proper or necessary care of a thing or person; lack of necessary or reasonable care in doing something; carelessness; disregard of a thing or person; failure to take notice.

13. This definition in the context of the present case clearly presupposes a negligence. The act of the Petitioner in granting electricity connection in favour of four persons without verifying as to whether they were lawfully living in that premises or not was more than a mere carelessness; it was a definite shortfall of his duty; Plaintiff was required to verify and check the lawful occupancy of the occupants before granting electricity connections to which he had never failed to do. His act in not doing so was a negligent act. The department had correctly

imposed the penalty of a deduction of 10% from his pension for a period of three years. The trial judge had correctly endorsed this finding. Impugned judgment holding otherwise is perverse; it is liable to be set aside. Substantial question of law is answered in favour of the Appellant and against the Respondent. Appeal is allowed. Suit of the Plaintiff is dismissed.