

BHARAT COKING COAL LTD. AND ORS.

A

v.

BABULAL AND ANR. ETC.

AUGUST 5, 1996

[K. RAMASWAMY AND G.B. PATTANAIAK, JJ.]

B

*Service Law :*

*Common Coal Cadre, 1974 :*

*Rule 12.4(1)(c)—Termination—Accident in coal mine—Serious injuries to and loss of lives of minors—Report of fact finding committee indicating that there was dereliction of duty on the part of Senior Mining Engineer and Manager. On charge of dereliction of duty their services were terminated by the Company exercising power under the Rule—Held, the Rule having been struck down as violative of Article 14 of the Constitution, was never in vogue to invoke the exercise of power by the Company—When charge of dereliction of duty was imputed to the respondents, it was necessary to hold an inquiry giving an opportunity to them—Appellant should hold an inquiry giving reasonable opportunity to the respondents in accordance with law—Delinquent would be deemed to be under suspension and entitled to the subsistence allowance pending inquiry.*

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*G.P. Lal v. Coal India Ltd., C.A. No. 3673 of 1988 decided by Supreme Court on 24.11.1994; relied on.*

*Managing Director, ECIL, Hyderabad and Ors. v. B. Kamukar and Ors., [1993] 4 SCC 727, followed.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10866 of 1996 Etc.

From the Judgment and Order dated 21.11.95 of the Calcutta High Court in F.M.A.T. No. 1548 of 1990.

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Anip Sachthey, C.D. Singh and H. Munshi for the Appellants.

H.L. Agarwal and K.K. Gupta for the Respondents.

The following Order of the Court was delivered :

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A Leave granted.

We have heard learned counsel on both sides.

B These appeals arise from the order made on November 21, 1995 by the Division Bench of the Calcutta High Court in FMAT No. 1548/90 and 250/92. Admitted position is that the respondent Babulal was Senior Mining Engineer and the other first respondent Maheshwari Sharma was a Manager working in the South Govindpur Colliery, Govindpur area. On June 30, 1989, an accident had occurred at 2.00 p.m. due to fall of the roof in XI Seam (of coal) due to which five miners died and two miners were seriously injured. It is the case of the appellant that both the first respondents were not present at the site nor had they taken necessary safety precautions to aver accident to the miners. A fact finding Committee came to be appointed to find out the cause for the death of the five and injury to two miners. The report dated July 1, 1989 appears to have put it pointedly that there was dereliction of the duty on the part of the respondents resulting in the mine accident. Consequently, the appellant exercised the power under Rule 12.4(1)(c) of the Common Coal Cadre, 1974 which reads as under :

"12.4. *Termination*

E (i) Unless otherwise specifically provided, the contract of appointment of the executive Cadre employee may be terminated otherwise than on disciplinary grounds :

(a) .....

F (b) .....

(c) With three months' notice or pay in lieu thereof on confirmation in the service, on either side."

G On the basis thereof, the service of both the first respondents came to be terminated. It is not in dispute that this Court in C.A. No. 3673 of 1988 titled *G.P. Lal v. Coal India Ltd.* had struck down the rule as violative of Article 14 of the Constitution. Consequently, the rule was never in vogue to invoke the exercise of the power by the appellants.

H The question then is : what would be the position of the respondents?

It is not far to seek that when charge of dereliction of duty was imputed to both the first respondents, it was necessary to hold an enquiry to give an opportunity to them before taking any disciplinary action for the alleged dereliction of the duty. It is, therefore, necessary that the appellant should hold an enquiry against both the first respondents giving reasonable opportunity to them according to the rule. Constitution Bench rendered the decision in *Managing Director, ECIL, Hyderabad and Ors. v. B. Kamukar and Ors.*, [1993] 4 SCC 727 had held that the delinquent must be deemed to be under suspension pending enquiry. A B

In view of the above, we hold that the respondents are entitled to the subsistence allowance during the pending enquiry. Enquiry should be completed within six month from the date of the receipt of the order. Subsistence allowance shall be paid within six weeks from the date of receipt of the copy of the order. C

The appeals are accordingly disposed of. No costs.

R.P.

Appeals disposed of. D