

DAKSHIN HARYANA BIJLI VITRANNIGAM LTD. THROUGH ITS
MANAGING DIRECTOR AND ORS.

v.

MOHINDER SINGH (D) THROUGH LRS.

NOVEMBER 29, 2006

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Service Law:

Haryana State Electricity Board Employees (Punishment & Appeal) Regulations, 1990; Regulation 7:

Dismissal of incumbent from service by employer on ground of malpractice of stealing energy—Appeal filed against the order dismissed by Appellate Authority—Challenge to—High Court remanding the matter to authority concerned for adjudication afresh in terms of Regulation 7 of the Regulations—On appeal, Held: No material placed on record to show that appellant/employer had any knowledge about the proceeding—Hence order passed by High Court set aside and the matter remitted to High Court for consideration afresh—Directions issued.

Respondent was appointed as a T. Mate and later promoted as a regular Line man in the Haryana State Electricity Board. His services were transferred to the appellant No. 1- a company. On 23.4.2002 a show cause notice was issued to him indicating that meter site was found with direct supply and, therefore, he was guilty of malpractice of stealing energy. He was placed under suspension. Statutory appeal filed by him was dismissed by the authority. Aggrieved, the employee filed a writ petition. When the matter was posted for admission, the Additional Advocate General accepted notice. According to the appellants the Additional Advocate General had accepted the notice purportedly on behalf of the State and the appellants. But he did not bring to the notice of the appellant receipt of the notice. The High Court disposed of the petition by remanding the matter to authority for fresh decision in accordance with Regulation 7 of Haryana State Electricity Board Employees (Punishment & Appeal) Regulation, 1990. Review petition was dismissed by the High Court. Hence the present appeal.

A Appellants contended that without even proper service of notice the matter has been disposed of by the High Court; that the Additional Advocate General accepted notice although he did not have authority to do so because he was one of the panel lawyers and only after the case is allocated to him he can handle the same.

B Partly allowing the appeal, the Court

HELD: No material has been brought on record by the respondents to show that in fact the appellants had any knowledge about the proceedings. That being so, the basic order in the writ petition and the order passed in the review application are set aside. The matter is remitted to the High Court for fresh consideration. [784-A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5271 of 2006.

D From the Judgment and Orders dated 28.7.2005 and 3.2.2006 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 866/2004 and C.M. No. 21131/2005 in C.W.P. No. 866/2004.

Neeraj Kumar Jain, Bharat Singh, Sanjay Singh, Vikrant Hooda, Umang Shankar and Ugra Shankar Prasad for the Appellants.

E Varinder Kumar Sharma for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

F Challenge in this appeal is to the order passed by the Division Bench of the Punjab and Haryana High Court allowing the Writ Petition filed by one Mohinder Singh. During the pendency of the writ petition before the High Court the said Mohinder Singh expired and was substituted by his legal heirs. Background facts in a nutshell are as follows:

G Mohinder Singh was appointed as a T. Mate in the Haryana State Electricity Board on 23.4.1972. Thereafter he was promoted as a regular line man. His services were transferred to the appellant No. 1 (hereinafter referred to as the 'Employer'). On 23.4.2002 a show cause notice was issued to him indicating therein that meter site was found with direct supply and, therefore, he was guilty of malpractice of stealing energy. Compensation was accordingly assessed. The amount was paid subsequently. He was placed under

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suspension and charge sheet was served upon him. On 18.6.2002 he submitted a reply. On 13.9.2002 he was dismissed from service. His statutory appeal before the Chief Engineer (O.P.) Zone was dismissed. He thereafter filed a revision petition on 26.10.2003. The same was returned to him on the ground that the order of dismissal was passed by the officer who was the revisional authority and no other officer was available. Thereafter the writ petition was filed. It appears that on the date when the matter was posted for admission, the learned Additional Advocate General accepted notice. According to the appellants the Additional Advocate General had accepted the notice purportedly on behalf of the State and the appellants. But he did not bring to the notice of the appellant about the receipt of the notice. He was not authorized to receive any notice on behalf of the appellant. The High Court noted that none was present to represent the respondents and, therefore, the writ petition was disposed of in the absence of the respondents before it. The order of dismissal was set aside and the matter was remanded to authority for fresh decision in accordance with Regulation 7 of Haryana State Electricity Board Employees (Punishment & Appeal) Regulation, 1990 (hereinafter referred to as the 'Regulation'). The High Court held that the procedure for imposing major penalty as delineated in the regulation 7 had not been followed.

Though as noted above several grounds have been taken in support of the appeal learned counsel for the appellants submitted that without even proper service of notice the matter has been disposed of. Learned Additional Advocate General accepted notice although he did not have authority to do so because he was one of the panel lawyers and only after the case is allocated to him he can handle the same.

The review application filed by the appellants on the aforesaid ground of non-service of notice was rejected on the ground that the order of dismissal was passed without observance of the principles of natural justice. The High Court set aside the same and had remanded the matter to the authority for fresh consideration.

There is no dispute to the stand that the learned Additional Advocate General who accepted the notice was not authorized to receive the notice on behalf of the appellants.

It is not the case of the respondents that there was any general authority to receive notice and only after notice is issued the particular case is allocated to one of the lawyers in the panel. Therefore, it is stated that the appellants

- A had no knowledge about the proceedings. No material has been brought on record by the respondents to show that in fact the appellants had any knowledge about the proceedings. That being so, the basic order in the writ petition and the order passed in the review application are set aside. The matter is remitted to the High Court for fresh consideration. The appellants are aware of the grievances raised in the writ petition by the respondents. Let them file counter affidavit, if any, within six weeks from today. Thereafter the High Court shall proceed in the matter in accordance with law.
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The appeal is allowed to the aforesaid extent without any order as to costs.

C
S.K.S.

Appeal Partly allowed.