

CASE NO.:
Appeal (civil) 7055 of 2002

PETITIONER:
K.C. Sharma

RESPONDENT:
Delhi Stock Exchange & Ors.

DATE OF JUDGMENT: 01/04/2005

BENCH:
K.G. BALAKRISHNAN & B.N. SRIKRISHNA

JUDGMENT:
J U D G M E N T

Srikrishna, J.

This appeal by special leave impugns the judgment of the Delhi High Court in Letters Patent Appeal No.331/1999.

The appellant joined the service in Delhi Stock Exchange as the First Respondent in this appeal - as General Manager with effect from 5.5.1992. Initially, he was in-charge of the Market Division and later on made in-charge of Investor Grievances Cell. He is highly qualified academically, holding two first class Masters Degrees in Commerce and Arts, and three core professional Degrees of Chartered Accountant, Company Secretary and Cost Accountant. In the initial stages, the appellant's service was very much appreciated by the First Respondent as a result of which he was granted accelerated increments. While he was in charge of the Investors Grievances Cell, he took strict action against certain members of the Respondent Stock Exchange. This caused some dissatisfaction in the minds of some of the brokers. On 9th June 1995 there was a murderous assault on the appellant and an FIR was lodged with the police. It is the case of the appellant that till about October 1995 the Executive Director, in-charge of the First Respondent appreciated the appellant's merits and was supportive. Thereafter, there was a period of time when there was no Executive Director between 25th October, 1995 and 13th December 1995. During this Period the First Respondent's affairs were managed by elected member-directors. The appellant contends that, because of strict action taken by him against some of the member-Directors, the member-Directors were waiting for an opportunity to get rid of him. The appellant claims that during the period 26th October 1995 to 12th December 1995 he was subjected to continuous humiliation and victimization. In the meanwhile, the Delhi Police after investigation gave out a press release on 7th March, 1996 naming one of the brokers, Shiv Charandass Aggarwal, as having engineered the assault on the appellant by paying money to some hooligans. The said Shiv Charandass Aggarwal was arrested by the Delhi Police and during interrogation he admitted that he was involved in the incident, as the appellant had been harsh against him and imposed a penalty of Rs. 2 lakhs in a public grievance appeal filed against him. On 7.3.1996 the office of the Deputy Commissioner of Police issued a press release stating these facts. According to the appellant, despite periodic notes put up by him indicating how some of the brokers were acting contrary to the rules of the Exchange and of legal provisions, no action was either proposed or taken against such erring brokers by the First Respondent. After the press release was published, the member-Directors felt that the appellant was responsible for maligning one of the members. In the meanwhile, on 22.5.1996, the appellant, in accordance with the guidelines of the Ministry of Finance, issued notices to various brokers including the President, Vice-President and senior Directors of the Stock Exchange. This, perhaps, was the last straw on the camel's back. On 23.5.1996 the First Respondent issued a notice to the appellant

terminating his service with immediate effect on payment of three months salary. The termination was purportedly in exercise of the power vested in the Board of Directors, vide Para 4 of the appointment letter of the appellant dated 12.11.1993.

The appellant challenged the termination of his service by a writ petition under Article 226 of the Constitution before the Delhi High Court. The learned single Judge allowed the writ petition on 7.7.1999 holding that the First Respondent is 'State' within the meaning of Article 12 of the Constitution; and that the termination of the services of the appellant was mala fide and illegal. In this view of the matter, the learned single Judge quashed and set aside the order of termination of the appellant's service and declared that the appellant shall be continued in the service of the First Respondent with all consequential benefits. The First Respondent challenged this order of the learned single judge by a Letters Patent Appeal. It was argued before the Division Bench in appeal that the termination of the contract of employment of the appellant was on account of loss of confidence and that the learned single Judge had failed to address himself to this issue despite the material on record being pointed out. The Division Bench remitted the matter to the learned single Judge to give his finding on the following two issues:

i) Whether the termination of the contract of employment of the General Manager of Delhi Stock Exchange by the Board of Directors after taking into account the material on record which leads to loss of confidence is not valid in law ?

ii) Whether in a case where the Stock Exchange has lost confidence in its General Manager who was holding the post of trust should be reimposed on the Stock Exchange or is it not appropriate to grant him compensation in lieu of reinstatement as per the ratio of judgment of Supreme Court in the case of O.P. Bhandari v. ITDC, AIR 1987 SC 111."

By judgment dated 1.3.01 the learned single Judge held that the two issues had not been argued before him at all. Referring in detail to what transpired before him, he held :

"When the point had not been taken in the counter-affidavit and when leave was sought to file an additional-affidavit and the point is mentioned only in the written arguments, which are submitted after the judgment was reserved, it is too much for the litigant to say, especially before any court, that the point argued was not considered. It is in the above backdrop that I am driven to the conclusion that the two questions would not arise for consideration."

The Division Bench finally heard the Letters Patent Appeal and raised the following questions which arose for its consideration in the appeal:

1. Whether the Delhi Stock Exchange is State under Article 12 of the Constitution of India and is amenable to writ jurisdiction ?

2. Whether the issue relating to the termination of service of the General Manager is purely in the realm of contract and, therefore, not amenable to writ jurisdiction ?

3. Whether the termination of contract of employment of the General Manager of Delhi Stock Exchange by the Board of Directors after taking into account the material on record which leads to loss of confidence is not valid in law ?

4. Whether in case where the Stock Exchange has lost confidence in its General Manager who was holding the post of trust should be reinstated on the Stock Exchange or is it not appropriate to grant him compensation in lieu of reinstatement as per the ratio of judgment of Supreme Court in the case of O.P. Bhandari v. ITDC, AIR 1987

SC 111 ?

5. Whether the Writ Court committed an error of jurisdiction in not considering one of the fundamental contentions as was pressed that being a case of loss of confidence and the employee having the post of trust ?

Answering question no.1, the Division Bench held that the Delhi Stock Exchange satisfied the conditions laid down by this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* (AIR 1979 SC 1628), and therefore, the First Respondent was 'State' within the meaning of Article 12 and amenable to the writ jurisdiction of the High Court. On the second question, the Division Bench came to the conclusion that the appellant was a permanent employee. Having regard to the fact that the provision corresponding to clause (4) of his letter of appointment has been held ultra vires in a series of judgments of this Court, the Division Bench was of the opinion that the appellant's service could not have been dispensed with by relying on or on the basis of the provisions contained in paragraph 4 of the letter of appointment.

Question Nos. 3 to 5 were considered together by the Division Bench, which did not disagree with the findings of the learned single Judge that the termination of the services of the appellant was illegal and arbitrary. In fact, the Division Bench observed: "the fact, however, remains that loss of confidence was not a ground for termination of service. The order terminating the service, ex facie, was not stigmatic. From a statement made in the counter-affidavit, as also the additional affidavit, it is evident that there were serious charges against the writ petitioner".

The Division Bench was of the view that, on the one hand the appellant had made serious allegations on the member-Directors of the Stock Exchange including its President, Vice-President and other senior members, while on the other there were serious allegations made against him of using his office for unauthorisedly making correspondence with the authorities. The Division Bench concluded that such allegations and counter allegations of serious nature were themselves a pointer to the fact that there was bad blood between the parties and hence it would not be advisable to direct reinstatement irrespective of the fact that loss of confidence had not been pleaded or proved. The Division Bench placed heavy reliance on the judgment of this Court in *O.P. Bhandari v. ITDC* (supra).

The Division Bench partly allowed the appeal of the First Respondent \026 Delhi Stock Exchange and directed as under :

"In that view of the matter, we are of the opinion that payment of compensation for a sum of Rs.12 lakhs shall meet the ends of justice. Out of the aforementioned amount of Rs.12 lakhs, the amount which has already been paid to the respondent by the appellant shall be adjusted. Such balance amount should be paid to the appellant within a period of three months from date.

Mr. Shanti Bhushan admitted that the writ petitioner had tried to obtain employment but did not succeed so far. It is, therefore, not ruled out that he has a chance of getting re-employment. As agreed to by the learned counsel for the parties, the writ petitioner may be technically reinstated in service for a period of three months. However, as the writ petitioner would neither join in his service, nor he shall be assigned with the duties and the functions as agreed to by the learned counsel for the writ petitioner. He would not claim any salary for the said period but he would during the afore-mentioned period, try to obtain an alternative job. The appellant, however, shall issue a formal letter of reinstatement on the aforementioned terms which Dr. Singhvi, learned counsel for the appellant agreed."

(italics ours)

Mr. Shanti Bhushan, learned counsel for the appellant strenuously urged that the High Court's judgment was self contradictory. He contended that having come to the conclusion that paragraph (4) of the letter of appointment gave no authority to the First Respondent to terminate the service of the appellant, and further having found that the action of the First Respondent was illegal and malafide there was no justification whatsoever for the High Court to have refused the normal relief of reinstatement with full back wages and consequential benefits. He relied on the same authorities that were cited before the Division Bench of the High Court and referred to in the judgment under appeal.

Mr. Mukul Rohtagi, learned counsel appearing for the respondent, reiterated the arguments which were made before the High Court and supported the judgment of the High Court.

We are in agreement with the conclusions of the Division Bench that the respondent no.1 is amenable to the writ jurisdiction, that the termination of services of the appellant in purported exercise of powers vested under paragraph (4) of letter of appointment dated 12.11.1993 is illegal and that, in the facts and circumstances of the case, the removal of the appellant from the service was both malafide and unjustified.

This takes us to the question of relief to be granted to the appellant.

From a reading of the judgment it appears to us that the Division Bench of the High Court decided that compensation in lieu of reinstatement was the better option and moulded the relief according to what the parties had agreed. It is not possible for us, therefore, to accept that the judgment of the High Court is wholly erroneous, as urged by the learned counsel for the appellant.

Taking into consideration all circumstances, we are of the view that, although the termination of the appellant's service was illegal and unjustified, the totality of the circumstances of the case render it improper and unjust to direct the relief of reinstatement with full back wages. The High Court, even while moulding the relief on agreement of the parties, directed a sum of Rs. 12 lakhs to be paid to the appellant as compensation from which the amounts already paid from time to time under orders of the High Court were to be adjusted.

In our view, the impugned judgment needs to be upheld with a slight modification on the issue of compensation. The compensation payable in lieu of reinstatement and back wages shall be increased to Rupees Fifteen lakhs (Rs. 15,00,000/-).

We partly allow the appeal and modify the impugned judgment as under:-

The compensation payable in lieu of reinstatement and back wages shall be Rupees Fifteen lakhs. The amount, if any, already paid under the directions of the High Court shall be liable to be set off therefrom.

The appellant shall be given terminal benefits, if any, admissible under the terms of service.

The appellant shall be paid Rupees One lakh towards costs in the High Court and in this Court.