Punjab State Power Corp.Ltd.Patiala ... vs Atma Singh Grewal on 17 September, 2013

Equivalent citations: AIRONLINE 2013 SC 18, (2014) 3 MAD LW 97, (2015) 2 SCT 420, (2014) 2 ALL WC 1933, (2014) 1 SCALE 626, 2014 (13) SCC 666

Bench: A.K. Sikri, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 29589 OF 2009

Punjab State Power Corporation Ltd. Patiala & Ors. ….....
Petitioners

Versus

Atma Singh Grewal ….....Respondent

O R D E R

1. Petitioner No. 1 is the Punjab State Electricity Board (PSEB); Petitioner No. 2 is the Chief Engineer, HRD-cum-Inquiry Officer and Petitioner No. 3 is the Senior Executive Engineer working in PSEB. Respondent was the employee of PSEB who retired from service, with effect from 30.4.2004. He had given the notice on 27.2.2004 for voluntary retirement which was accepted. As a result, the respondent stood voluntary retired from 30.4.2004. However, almost 4 years after his retirement i.e. on 7.1.2008, the respondent was served with the charge sheet levelling certain allegations against him, allegedly committed between 15.5.2002 to 3.12.2002. These charges which were for the period May 2002 to December 2002 were obviously of a period much earlier than 4 years before the serving of the charge sheet dated 7.1.2008 and much after his retirement when he had ceased to be the employee of PSEB.

2. The Respondent filed the Writ Petition in the High Court seeking quashing of the said charge sheet on the ground that it was barred in view of Rule 2.2.(B) of the Punjab Civil Service Rules 2 reserves right with the Government to withhold or withdraw a pension or a part of it under certain circumstances viz. when in judicial proceedings or departmental proceedings, such an employee is found to have committed grave misconduct or negligence. It also provides for recovery of peculiar loss, if caused. However, second proviso to the aforesaid provision stipulates the time limit within which the departmental inquiry can be instituted, in respect of an ex-employee if it was not stated while such a Government officer was in service. The precise language of second proviso is as follows:-

> "Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment:-
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> (i) shall not be instituted save with the sanction of the Government;
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> (ii) shall not be in respect of any event which took place more than four years before such institution; and if he has retired, the event should not be more than 4 years old.
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> iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

3. In the present case since the changes were of the year 2002 and charge sheet served in the year 2008, it was manifest that the alleged event took place much more than 4 years before the serving of charge sheet and after his retirement. In this ground the learned Single Judge quashed the said chargesheet dated 7.1.2008. The petitioners chose to file appeal before the Division Bench which has also been dismissed by the Division Bench vide impugned judgment dated 20.8.2009.

4. After hearing the Counsel for the parties we are of the opinion that in view of aforesaid admitted facts, second proviso of Rule 2 states at the face of the petitioner and no fault can be found in the judgment of the High Court.

5. Virtually accepting the aforesaid position the learned Counsel for the petitioner made a fervent plea the cost of Rs. 10,000/- which the Division Bench of the High Court has imposed upon the PSEB, with direction that PSEB shall recover the same from the officer who authorised the filing of the said appeal. He submitted that in any case such a direction for recovery of the amount from the concerned officer should be done away with.

6. The reason given by the High Court while imposing the cost is as under:

> "This is yet another instance of a frivolous appeal filed at the hands of a statutory body. There was absolutely no merit and no cause to file the instant appeal. Despite the same, the Punjab State Electricity Board, chose to prefer the instant appeal

without application of mind. In this case, the Punjab State Electricity Board has not only incurred unnecessary expenses, but also wasted precious Court time.

In view of the above, we are of the view, that the instant appeal deserves to be dismissed with costs. The instant appeal is, accordingly, dismissed with costs quantified at Rs. 10,000/- . the aforesaid costs shall not be borne by the Electricity Board, but shall be recovered from the officer who authorized the filing of the instant appeal. The aforesaid costs shall, in the first instance, be deposited by the appellant with the Legal Services Authority, Punjab, within one month from today. The recovery thereof shall be made from the concerned officer within a further period of two months.

In case, the aforesaid recovery is made from an officer who feels that the actual responsibility for filing the instant appeal rested on the shoulders of some other officer, it would be open to such officer to approach this Court by moving a civil miscellaneous application (in the instant Letters Patent Appeal) so as to require this Court to determine the accountability of the officer concerned".

Since the provisions of the aforesaid statutory rule are crystal clear, we are in agreement with the High Court that the appeal preferred by the petitioners was totally frivolous. Therefore, the High Court has rightly awarded the cost while dismissing such a merit less appeal. The only question is of recovery of this cost from the officer who authorised the filing of the said appeal.

7. Here we may note that the Courts are burdened with unnecessary litigation primarily because of the reason that the Government or PSUs etc. decide to file the appeals even when there is absolutely no merit therein. Commenting on such a tendency to file frivolous appeals, this Court in a recent judgment in a case of Gurgaon Gramin Bank v. Khazani; (2012) 8 SCC 781, speaking through one of us (K.S. Radhakrishnan, J.) expressed its discomfiture in the following words:

"The number of litigations in our country is on the rise, for small and trivial matters, people and sometimes the Central and the State Governments and their instrumentalities like banks, nationalised or private, come to Courts may be due to ego clash or to save the officers skin. The judicial system is overburdened which naturally causes delay in adjudication of disputes. Mediation Centres opened in various parts of our country have, to some extent, eased the burden of the courts but we are still in the tunnel and the light is far away. On more than on occasion, this Court has reminded the Central Government, the State Governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give and take attitude should be adopted or both will sink. Unless serious questions of law of general importance arise for consideration or a question which affects a large number of persons or the stakes are very high, the courts jurisdiction cannot be invoked for resolution of small and trivial matters. We are really disturbed by the manner in which those types of matters

> are being brought to courts even at the level of the Supreme Court of India and this case falls in that category".

8. It is not the first time that the Court had to express its anguish. We would like to observe that the mind set of the Government agencies/ undertakings in filing unnecessarily appeals was taken note of by the Law Commission of India way back in 1973, in its 54th report. Taking cognizance of the aforesaid report of the Law Commission as well as National Litigation Policy for the States which was evolved at an All India Law Ministers Conference in the year 1972, this Court had to emphasize that there should not be unnecessary litigation or appeals. It was so done in the case of Mundrika Prasad Singh v. State of Bihar; 1979 (4) SCC 701. We would also like to reproduce the following words of wisdom expressed by Justice V.R. Krishna Iyer, who spoke for the Bench, in Dilbagh Rai Jarry v. Union of India and Ors.; 1974 (3) SCC

554. "But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf".

9. In its 126th Report (1988), the Law Commission of India adversely commented upon the reckless manner in which appeals are filed routinely. We quote hereunder the relevant passage therefrom:

> "2.5. The litigation is thus sometimes engendered by failing to perform duty as if discharging a trust. Power inheres a kind of trust. The State enjoys the power to deal with public property. That power has to be discharged like a trust keeping in view the interests of the cesti que trust. Failure on this front has been more often commented upon by the court which, if it was taken in the spirit in which it was made, would have long back energised the Government and the public sector to draw up its litigation policy. When entirely frivolous litigation reaches the doorsteps of the Supreme Court, one feels exasperated by the inaction and the policy to do nothingness evidenced by blindly following litigation from court to court. Dismissing a Special Leave Petition by the State of Punjab, the Court observed that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. The court then suggested effective remedial measures. It may be extracted:

> We would like to emphasize that Government must be made accountable by parliamentary Social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under section 80CPC is intended to alert the state to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the parliament's expectation in continuing section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for setting the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to.
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> Nearly a decade has passed since the observations but not a leaf has turned, not a step has been taken, and the Law Commission is asked to deal with the problem.
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> 2.6. A little care, a touch of humanism, a dossier of constitutional philosophy and awareness of futility of public litigation would considerably improve the situation which today is distressing. More often it is found that utterly unsustainable contentions are taken on behalf of Government and public sector undertakings."

10. Even when Courts have, time and again, lamented about the frivolous appeals filed by the Government authorities, it has no effect on the bureaucratic psyche. It is not that there is no realisation at the level of policy makers to curtail unwanted Government litigation and there are deliberations in this behalf from time to time. Few years ago only, the Central Government formulated National Litigation Policy, 2010 with the "vision/ mission" to transform the Government into an efficient and responsible litigant. This policy formulated by the Central Government is based on the recognition that it was its primary responsibility to protect the rights of citizens, and to respect their fundamental rights and in the process it should become "responsible litigant". The policy even defines the expression 'responsible litigant' as under:-

> "Responsible litigant" means • That litigation will not be resorted to for the sake of litigating.
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> • That false pleas and technical points will not be taken and shall be discouraged.
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> • Ensuring that the correct facts and all relevant documents will be placed before the Court.

> • That nothing will be suppressed from the Court and there will not attempt to mislead any court or tribunal.
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> That Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the Court decide", must be eschewed and condemned.
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> The purpose underlying this policy is also to reduce government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the national legal mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated int eh national mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary government cases.

Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority".

11. This policy recognises the fact that its success will depend upon its strict implementation. Pertinently there is even a provision of accountability on the part of the officers who have to take requisite steps in this behalf.

12. The policy also contains the provision for filing of appeals indicating as to under what circumstances appeal should be filed. In so far as service matters are concerned, this provision lays down that further proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Also, appeals will not be filed to espouse the cause of one section of employees against another.

13. The aforesaid litigation policy was seen as a silver living to club unnecessary and uncalled for litigation by this Court in the matter of Urban Improvement Trust, Bikaner v. Mohan Lal; 2010 (1) SCC 512 in the following manner:-

> "The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the Government and for filing appeals and revisions against adverse decisions, thereby eliminating unnecessary litigation. But it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and th4e statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigations. Vexatious and unnecessary litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants".

14. Alas, inspite of the Government's own policy and reprimand from this Court, on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file frivolous and vexatious appeals. It imposes unnecessary burden on the Courts. The opposite party which has succeeded in the Court below is also made to incur avoidable expenditure. Further, it causes delay in allowing the successful litigant to reap the fruits of the judgment rendered by the Court below.

15. No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour. It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic. There can be exemplary costs as well when the appeal is completely devoid of any merit. [See Rameshwari Devi and Ors. v. Nirmala Devi and Ors.; (2011) 8 SCC 249]. However, the moot question is as to whether imposition of costs alone will prove deterrent? We don't think so. We are of the firm opinion that imposition of cost on the State/ PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers. Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of cost from the concerned officer be passed only in those cases where appeal is found to be ex-facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for.

16. In a case like the present, where the concerned officer took the decision to file the appeal, direction of the High Court to recover the cost from him cannot be faulted with. Sense of responsibility would drawn on such officers only when they are made to pay the costs from their pockets, instead of burdening the exchequer.

17. We are, therefore, not inclined to recall the aforesaid direction of the High Court to recover the cost from the officer concerned.

18. Dismissed with further cost of Rs. 10,000/-.

.....J. [K.S. RADHAKRISHNAN] .....J. [A.K. SIKRI]
New Delhi September 17, 2013