

MANAGING DIRECTOR, ECIL v B. KARUNAKAR (II)

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**1994 Supp (2) Supreme Court Cases 391**

(BEFORE B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ.)

a MANAGING DIRECTOR, E.C.I.L., HYDERABAD .. Appellants;

*Versus*

B. KARUNAKAR (II) .. Respondent.

Civil Appeal No. 3056 of 1991, decided on January 12, 1994

b **A. Service Law — Departmental enquiry — Not affording of opportunity to cross-examine the complainant — Effect — Where the delinquent had already obtained an affidavit from the complainant retracting his earlier statement, such omission was rightly held by the Single Judge of the High Court to be not prejudicial to the delinquent and not vitiative of the consequent order of dismissal from service — Dismissal**

c **B. Service Law — Dismissal — Dismissal without supplying enquiry report — Validity — Such order of dismissal where passed prior to 20-11-1990 (the date of decision in Ramzan Khan case), held, valid — Departmental enquiry — Non-supply of enquiry report — Effect**

*Union of India v. Mohd. Ramzan Khan*, (1991) 1 SCC 588; 1991 SCC (L&S) 612; (1991) 16 ATC 505; 1990 Supp (3) SCR 248; *Managing Director, ECIL, Hyderabad v. B. Karunakar*, (1993) 4 SCC 727; 1993 SCC (L&S) 1184; (1993) 25 ATC 704; JT (1993) 6 SC 1, explained

d Appeal allowed

H-M/13176/SLA

ORDER

1. This appeal is posted before us pursuant to the opinion rendered by the Constitution Bench in *Managing Director, ECIL, Hyderabad v. B. Karunakar*<sup>1</sup>. In this case, the respondent was an Engineer working in the ECIL. He was charged with passing of a spurious EC. T.V. as one made by the Electronics Corporation (employer) under the brand name 'Ajanta'. On the basis of the complaint made by the purchaser, an inquiry was instituted against the respondent. At the conclusion of the inquiry, he was dismissed from service by the Corporation by its order dated 27-4-1987. The respondent challenged the same by way of a writ petition in the High Court. The ground taken by him in the writ petition was that the complainant, Shri Raj Kumar was not tendered for cross-examination though his testimony was relied upon by the Corporation and the Enquiry Officer against him. The learned Single Judge negatived the same by holding that while it is true that the said witness was not tendered for cross-examination by the respondent, it cannot be said to have prejudiced him inasmuch as he has obtained an affidavit from the said person retracting his earlier statement. The learned Single Judge remarked that even if the witness had been tendered for cross-examination, he could not have made more beneficial statements than those contained in the said affidavit in favour of the respondent. The learned Single Judge, evidently with a view to satisfy himself as to the truth of the charges, noted the essential features of the case against the respondent and held that the defence put forward by the respondent was rightly rejected. Accordingly, he dismissed the writ petition. The respondent thereupon filed a writ appeal wherein he urged, for the first time that the enquiry report not having been supplied to him, the enquiry is vitiated. Indeed, this appears to be

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the only point urged in the appeal. The Division Bench purporting to follow the decision of this Court in *Union of India v. Mohd. Ramzan Khan*<sup>2</sup>, allowed the appeal and made the following observation: “We make it clear that the respondent is at liberty to continue the inquiry against the appellant from the stage not held to be vitiated.” A further observation was made that the Corporation may consider whether it is just, expedient and worthwhile to proceed with the inquiry at this distance of time. It is against the said judgment that the present appeal was preferred and actually this was the leading case in which the opinion of the Constitution Bench was rendered. It has been held by the Constitution Bench that the principles of natural justice do require that a copy of the enquiry report is supplied to the charged officer though it is not necessary to give him a notice indicating the proposed penalty. But, it has been held, this requirement will be held obligatory only from the date of the judgment in *Ramzan Khan case*<sup>2</sup>, viz., 20-11-1990. In this case, it may be noted, the order of dismissal of the respondent is far earlier to the said date. In the circumstances, the dismissal order cannot be said to be vitiated by non-furnishing of the Enquiry Officer’s report. So far as the merits are concerned, the only contention urged before the Single Judge was in our opinion, rightly repelled and, therefore, there is no ground for interference with the order of dismissal.

2. In the circumstances, the appeal is allowed. The order of the Division Bench of the High Court is set aside and the order of learned Single Judge is restored.

3. It is brought to our notice that pursuant to the judgment of the Division Bench, the respondent was restored to service and that he was also paid 50% of the back wages. Shri H.N. Salve, learned counsel for the Corporation fairly stated that the Corporation is not interested in recovering the back wages already paid nor is it going to make a claim with respect to emoluments paid for the period the respondent served subsequent to the order of the Division Bench of the High Court.

4. There shall be no order as to costs.

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(BEFORE P.B. SAWANT AND S. MOHAN, JJ.)

SWARAJ ASHRAM KARAMCHARI SANGH . . . Appellant;

*Versus*

SWARAJYA ASHRAM, SARVODAYA NAGAR, KANPUR . . . Respondent.

Civil Appeal No. 1865 of 1985, decided on October 14, 1993

**Labour Law — Payment of Bonus Act, 1965 — S. 32(v)(c) — Exempted establishment — Criteria for — Non-profit establishment — Swarajya Ashram Sarvodaya Nagar, Kanpur established inter alia for production of hand-spun and hand-woven cloth and for its popularisation by sale — The sale was only an incidental but not the main object — During 50 years from 1921-70, its turnover was Rs 40 crores whereas surplus was only Rs 7 lakhs — There was no**