

COAL MINES P.F. COMMR. THR. BOARD OF TRUSTEE A

v.

RAMESH CHANDRA JHA  
(Civil Appeal No. 41 of 2012)

JANUARY 4, 2012 B

[ALTAMAS KABIR, SURINDER SINGH NIJJAR AND J.  
CHELAMESWAR, JJ.]

*Code of Civil Procedure, 1908 – ss. 2(17) and 80 and Order XXVII Rule 5A – Appellant is the Coal Mines Provident Fund Commissioner through the Board of Trustees, constituted u/s.3 of the Coal Mines Provident Fund and Miscellaneous Provisions Act, CMPF Organisation – Respondent, an employee in Coal Mines Provident Fund Organisation [CMPFO], removed from service – He filed suit challenging his removal from service – Preliminary issue framed in the suit as to whether in the absence of notice u/ s.80 CPC, the suit was maintainable – Matter brought upto Supreme Court which held that appellant-Coal Mines Provident Fund Commissioner is a “public officer” within meaning of s.2(17) CPC and that notice u/s.80 was required to be given to him before the suit was filed by the Respondent – Respondent withdrew his suit and filed a fresh suit after serving notice upon the appellant u/s.80 CPC – Suit decreed – First Appellate Court held that since the Coal Mines Provident Fund Commissioner was a public officer under the Union of India so as to attract the provisions of Order XXVII Rule 5A and s.79 of CPC, the suit was bad for non-joinder of the Union of India which was a necessary party – Respondent filed Second Appeal which was allowed by the High Court – Held: The judgment of the High Court does not require any interference, particularly when the issue raised has already been decided by Supreme Court, wherein it was categorically held that the Coal Mines Provident Fund Commissioner is a “public servant” within the meaning of s.2(17) CPC – In view*

- A of the aforesaid finding regarding the status of the Coal Mines Provident Fund Commissioner, the First Appellate Court erred in reversing the finding of the Trial Court on this score – It was not open to the First Appellate Court to re-open the question which had been decided by Supreme Court, at least on the
- B same submissions which had been made earlier that though the officer concerned was an employee of the Central Government, he no longer enjoyed the said status when he was discharging the functions of the Chairman of the Board of Trustees of the Coal Mines Provident Fund Scheme – Coal
- C Mines Provident Fund and Miscellaneous Provisions Act – s.3.

The appellant is the Coal Mines Provident Fund Commissioner through the Board of Trustees, constituted under Section 3 of the Coal Mines Provident Fund and

D Miscellaneous Provisions Act, CMPF Organisation. The Respondent, a Lower Division Clerk in the service of the Coal Mines Provident Fund Organisation [CMPFO], was removed from service.

E Challenging his removal from service, the Respondent filed Title Suit No.78 of 1979. A preliminary issue was framed in the suit as to whether in the absence of notice under Section 80 CPC, the suit was maintainable. Aggrieved, Respondent filed Civil Revision

F in the High Court, which held that since the Appellant was not a “public officer” as defined in CPC, no notice under Section 80 was required to be served upon him before the suit was filed and held the suit to be maintainable. The appellant, thereafter, brought the matter to this Court and

G in Civil Appeal No.1932 of 1982 this Court reversed the finding of the Appellate Authority upon holding that the appellant-Coal Mines Provident Fund Commissioner is a “public officer” within the meaning of Section 2(17) of CPC and that notice under Section 80 was required to be

H given to him before the suit was filed by the Respondent.

Subsequently, Respondent withdrew his Title Suit No.78 of 1979 and filed a fresh suit being Title Suit No.102 of 1990 after serving notice upon the Appellant under Section 80 CPC. The suit was decreed in favour of the Respondent. The appellant preferred Title Appeal. The First Appellate Court held that since the Coal Mines Provident Fund Commissioner was a public officer under the Union of India so as to attract the provisions of Order XXVII Rule 5A and Section 79 of CPC, the suit was bad for non-joinder of the Union of India which was a necessary party. Aggrieved, the Respondent filed Second Appeal which was allowed by the High Court. Hence the present appeal.

Dismissing the appeal, the Court

HELD: The judgment and order of the High Court does not require any interference, particularly when the issue raised in this appeal has already been decided by this Court in Civil Appeal No.1932 of 1982, wherein it was categorically held that the Coal Mines Provident Fund Commissioner is a "public servant" within the meaning of Section 2(17) of CPC. The First Suit filed by the Respondent, being Title Suit No.78 of 1979, was withdrawn on the ground that it had been held that a notice under Section 80 of the Code was necessary since the Coal Mines Provident Fund Commissioner was a public servant and, thereafter, a second suit, being Title Suit No.102 of 1990, was filed by the Respondent upon due notice to the Coal Mines Provident Fund Commissioner. In view of the aforesaid finding regarding the status of the Coal Mines Provident Fund Commissioner, the First Appellate Court erred in reversing the finding of the Trial Court on this score. It was not open to the First Appellate Court to re-open the question which had been decided by this Court, at least on the same submissions which had been made earlier that though the officer concerned was an employee of the Central

A Government, he no longer enjoyed the said status when he was discharging the functions of the Chairman of the Board of Trustees of the Coal Mines Provident Fund Scheme. [Para 13] [895-E-H; 896-A-B]

B *R.P.F. Commissioner v. Shiv Kumar Joshi* AIR 2000 SC 331: 1999 (5) Suppl. SCR 294 and *Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers and Ors.* 2001 (7) SCC 1: 2001 (2) Suppl. SCR 343 – cited.

Case Law Reference:

C 1999 (5) Suppl. SCR 294 cited Para 10  
 2001 (2) Suppl. SCR 343 cited Para 10

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 41 of 2012.

From the Judgment & Order dated 21.12.2010 of the High Court of Jharkhand at Ranchi in Second Appeal No. 134 of 2005.

E Sunil Kumar, Mona K. Rajvanshi for the Appellant.

Ramesh Chandra Jha Respondent-In-Person.

The Judgment of the Court was delivered by

F **ALTAMAS KABIR, J.** 1. Leave granted.

G 2. The appellant herein is the Coal Mines Provident Fund Commissioner through the Board of Trustees, constituted under Section 3 of the Coal Mines Provident Fund and Miscellaneous Provisions Act, CMPF Organisation, Dhanbad. The Respondent was appointed as a Lower Division Clerk on 16th January, 1967, by the Chief Commissioner in the service of the Coal Mines Provident Fund Organisation, hereinafter referred to as 'CMPFO'. In connection with the forcible occupation of a Type III quarter, a departmental proceeding was commenced H against the Respondent and on 16th March, 1979, on being

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found guilty of the charge framed against him, the Respondent was removed from service. A

3. Challenging his removal from service, the Respondent filed Title Suit No.78 of 1979 in the Court of Munsif at Dhanbad. Simultaneously, the Respondent also filed an appeal before the Appellate Authority under Regulation 37 of the Staff Regulations, which was dismissed on 4th March, 1980. B

4. Meanwhile, in the suit, the learned Munsif, Dhanbad (Jharkhand) framed a preliminary issue in Suit No.78 of 1979 as to whether in the absence of notice under Section 80 of the Code of Civil Procedure, the suit was maintainable? Aggrieved by the said order, the Respondent filed Civil Revision No.341 of 1980(R) in the Ranchi Bench of the Patna High Court, which held that since the Appellant was not a "public officer" as defined in the Code of Civil Procedure, no notice under Section 80 was required to be served upon him before the suit was filed. By its order dated 7th September, 1981, the Ranchi Bench of the Patna High Court set aside the findings of the learned Munsif and held the suit to be maintainable. The Appellant, thereafter, brought the matter to this Court and in Civil Appeal No.1932 of 1982 this Court by its judgment dated 31st January, 1990, reversed the finding of the Appellate Authority upon holding that the Coal Mines Provident Fund Commissioner is a "public officer" within the meaning of Section 2(17) of the aforesaid Code. It was, therefore, settled upto this Court that the Appellant herein was a public officer and that notice under Section 80 was required to be given to him before the suit was filed by the Respondent. C  
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5. On account of the above decision of this Court, on 15th February, 2002, the Respondent withdrew his Title Suit No.78 of 1979 and filed a fresh suit being Title Suit No.102 of 1990 after serving notice upon the Appellant under Section 80 CPC. The Appellant contested the suit which was decreed in favour of the Respondent on 15th February, 2002, by the Second Munsif, Dhanbad, declaring the removal of the Respondent from G  
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- A service to be arbitrary and in violation of the principles of natural justice and the provisions of Article 311 of the Constitution. Holding the same not to be binding on the Respondent/Plaintiff, the Munsif declared that the Respondent would be deemed to be in continuous service in the CMPF Organisation under the
- B Appellant, together with all benefits and privileges.

6. Aggrieved by the order of the learned Munsif decreeing the Respondent's Title Suit No.102 of 1990, the Appellant preferred Title Appeal No.29 of 2002 before the Court of XIIIth Additional District Judge, Dhanbad. In the said Appeal, the

C Respondent herein raised the question as to whether the suit of the Respondent was bad for non-joinder of the Union of India which was a necessary party in the suit? Accepting the contention of the Appellant, the First Appellate Court held that

D since the Coal Mines Provident Fund Commissioner was a public officer under the Union of India so as to attract the provisions of Order XXVII Rule 5A and Section 79 of the Code of Civil Procedure, the suit was bad for non-joinder of the Union of India which was a necessary party. The XIIIth Additional District Judge, Dhanbad, accordingly, set aside the order of the

E learned Munsif, Second Court, Dhanbad, in Title Suit No.102 of 1990 by its judgment and order dated 16th February, 2005.

7. Aggrieved by the order of the First Appellate Authority, the Respondent filed Second Appeal No.134 of 2005 before

F the Jharkhand High Court at Ranchi. Four years later, on 15th June, 2009, since the Respondent had not delivered vacant possession of the quarters in his possession, the Estate Officer, by his order dated 15th June, 2009, gave the Respondent 15 days' time to vacate the suit premises along with other

G members of his family. The Respondent, however, did not vacate the quarters as directed, whereupon the Appellant filed I.A. No.1871 of 2009 in the Second Appeal No.134 of 2005 pending before the High Court, for a direction upon the Respondent to vacate the quarters occupied by him. On 24th

H August, 2009, the Respondent, through his counsel, gave an

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undertaking to vacate the quarters by 30th November, 2009. In addition, the Estate Officer passed an order in the execution proceedings on 28th August, 2009, for eviction of the Respondent from the quarters in question. On his failure to honour the undertaking given by him to vacate the suit premises, the High Court took strong exception to the violation of the undertaking given by the Respondent and initiated fresh contempt proceedings against him and ordered the Superintendent of Police, Dhanbad, to get the quarters vacated and to hand over vacant possession of the same to the competent authority of the CMPFO, Dhanbad within 48 hours of the receipt of the order. On 19th February, 2010, the High Court heard the contempt case when it was informed that the Respondent had vacated the quarters and had handed over the keys to the concerned authorities on 17th February, 2010.

8. It is necessary to indicate at this stage that Second Appeal No.134 of 2006, which had been filed by the Respondent, was admitted on the substantial question of law as to whether the Lower Appellate Court had committed a serious error in dismissing the Respondent/Plaintiff's suit on the ground of non-joinder of the Union of India thereby upsetting the judgment and decree of the Trial Court without deciding the question as to whether the Coal Mines Provident Fund Commissioner is a public officer under the Union of India so as to attract the provisions of Order XXVII Rule 5A of the Code of Civil Procedure.

9. Appearing in support of the Appeal, Mr. J.P. Singh, learned Senior Advocate, urged that the High Court had not properly answered the aforesaid question ignoring the fact that earlier this Court had in Civil Appeal No.1932 of 1982 between the same parties, categorically decided that the Coal Mines Provident Fund Commissioner, though functioning as the Chairman of the Board of Trustees constituted under paragraph 3 of the Coal Mines Provident Fund Act, is a public officer and was, therefore, required to be made a party in the proceedings

A under Order XXVII Rule 5A of the Code of Civil Procedure, which, *inter alia*, provides as follows :-

B **“Order 27 Rule 5A – To be joined as a party in suit against a public officer. - Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.”**

C Mr. J.P. Singh urged that since this Court had already decided the issue, there was no further need for the High Court to go into the question once again and decide the same in a manner which was contrary to the law declared by this Court. Mr. Singh submitted that this was in blatant violation of the principles of hierarchy of Courts and also the binding nature of the judgments of the Supreme Court in terms of Article 141 of the Constitution of India. Learned counsel submitted that this was a fit case where the order of the High Court was liable to be set aside since the provisions of Order XXVII Rule 5A of the Code of Civil Procedure were squarely attracted to the facts of the case.

F 10. The Respondent, who appeared in-person, urged that notwithstanding the earlier decision of this Court in which the Coal Mines Provident Fund Commissioner had been held to be a public officer, such a stand was contrary to the other decisions of this Court in (1) *R.P.F. Commissioner Vs. Shiv Kumar Joshi* [AIR 2000 SC 331] and (2) *Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers and Ors.* [2001 (7) SCC 1], wherein it had been held that the Regional Provident Fund Commissioner under the Employees Provident Fund Act and the Employees Provident Fund Scheme, 1952, is not a public officer, though it discharges statutory functions for running the Scheme. It was also observed that the Board of Trustees had not in any way been delegated with the sovereign powers of the State even if it is held that H administrative charges were payable by the Central

Government. The Respondent urged that the finding of the lower Appellate Court holding the suit to be bad for non-joinder of the Union of India as a party in the Appeal, was patently erroneous, contrary to law and unsustainable. Consequently, the order of the learned lower Appellate Court was set aside and the judgment and decree of the Trial Court in Title Suit No.102 of 1990 was restored.

11. Challenging the order of the learned Single Judge of the Jharkhand High Court, the Appellant herein filed Second Appeal No.134 of 2005, which was ultimately allowed and the finding of the lower Appellate Court that the suit was bad for non-joinder of the Union of India as a party was held to be erroneous and was liable to be set aside.

12. As indicated hereinbefore, it is the said judgment and order of the High Court of Jharkhand which is the subject matter of the present Civil Appeal.

13. Having considered the submissions made on behalf of the Appellant and the Respondent appearing in-person, we are of the view that the judgment and order of the High Court does not require any interference, particularly when the issue raised in this Appeal has already been decided by this Court in Civil Appeal No.1932 of 1982, wherein it was categorically held that the Coal Mines Provident Fund Commissioner is a "public servant" within the meaning of Section 2(17) of the Code of Civil Procedure. It cannot be forgotten that the First Suit filed by the Respondent, being Title Suit No.78 of 1979, was withdrawn on the ground that it had been held that a notice under Section 80 of the Code was necessary since the Coal Mines Provident Fund Commissioner was a public servant and, thereafter, a second suit, being Title Suit No.102 of 1990, was filed by the Respondent upon due notice to the Coal Mines Provident Fund Commissioner. In view of the aforesaid finding regarding the status of the Coal Mines Provident Fund Commissioner, the First Appellate Court erred in reversing the finding of the Trial Court on this score. It was not open to the

- A First Appellate Court to re-open the question which had been decided by this Court, at least on the same submissions which had been made earlier that though the officer concerned was an employee of the Central Government, he no longer enjoyed the said status when he was discharging the functions of the
- B Chairman of the Board of Trustees of the Coal Mines Provident Fund Scheme.

14. We, therefore, have no hesitation in holding that in view of the fact that the Coal Mines Provident Fund Commissioner has been held by this Court to be a public officer, it was necessary to join the Union of India as a party in the suit in view of the provisions of Order XXVII Rule 5A of the Code of Civil Procedure. We, accordingly, see no reason to interfere with the judgment and order appealed against and the Appeal filed by the Coal Mines Provident Fund Commissioner is dismissed, though without any order as to costs.
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B.B.B.

Appeal dismissed.