A L.I.C. OF INDIA AND ANR.

v.

RAM PAL SINGH BISEN

(Civil Appeal No. 893 of 2007)

MARCH 16, 2010

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[B. SUDERSHAN REDDY AND DEEPAK VERMA, JJ.]

Code of Civil Procedure, 1908: Order 12 r.2 – Mere marking of exhibit on a document does not dispense with its C *proof – On facts, in a suit by employee challenging order of dismissal, employer-appellant did not lead any oral evidence yet some of the documents filed by him were exhibited – Employee was not served with any notice of admission or denial of documents during trial – In the absence of oral* D *evidence tendered by employer and in absence of putting his own defence to the employee during his cross examination in the court, the documents filed by employer and marked as exhibit would not establish the case of employer – Evidence Act, 1872.*

E *Natural justice: Dismissal order – Neither the copy of inquiry report was made available to dismissed employee nor the reason for dismissal disclosed in show cause notice – Held: There was violation of principles of natural justice – Service law – Dismissal.*

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Evidence Act, 1872: Contents of documents are required to be proved either by primary or by secondary evidence – Admission of documents may amount to admission of contents but not its truth – Documents when not produced and G *marked as required under the Evidence Act cannot be relied upon by the Court – Contents of the document are not proved by merely filing in a court – Code of Civil Procedure, 1908.*

Respondent was dismissed from service. His representation to the employer-appellant that reasonable

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and sufficient opportunity of hearing during the domestic inquiry was not given, was rejected. The departmental appeal was also rejected. Respondent filed a suit challenging his dismissal. Appellant did not lead any oral evidence yet some of the documents filed by it were exhibited. Appellant also did not serve any notice of admission or denial of documents on the respondent during trial as contemplated under Order 12 r.2 CPC. Trial Court held that there was complete violation of principles of natural justice as neither the copy of inquiry report was made available to respondent nor it was disclosed in show cause notice as to on what premise finding of guilt was recorded by inquiry officer or by Departmental authority while passing order of dismissal. Trial Court accordingly decreed the suit and directed reinstatement alongwith the consequential benefits. High Court upheld the decision of trial Court. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1.1. The defence that was pleaded and set up by the appellants in their written statement was not put forth to the respondent, while he was in the witness box. The records also did not reveal that procedure as contemplated in Rule 2A of Order XII , CPC was adopted either by the appellants or by the trial Court to prove the documents filed by the appellants and mark them as Exhibits. Thus, no advantage thereof could be accrued to the appellants, even if it is assumed that said documents were admitted by respondent and were then exhibited and marked. It is true that failure to prove the defence did not amount to an admission, nor did it reverse or discharge the burden of proof of the plaintiff but still the duty cast on the defendants had to be discharged by adducing oral evidence, which the appellants miserably failed to do. Thus looking to the matter from any angle, it is fully established that

A **appellants had miserably failed to prove and establish their defence in the case. [Paras 19, 24-25] [445-G-H; 447-B-E]**

1.2. Mere admission of document in evidence does not amount to its proof. In other words, mere marking of
B **exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. Admission by respondent of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent. It was the duty of the**
C **appellants to prove documents Exh. A-1 to Exh. A-10 in accordance with law. Filing of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. The documentary evidence was also required to**
D **be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do. The courts have committed no error in coming to the conclusion that respondent was denied opportunity of hearing, that being so, whole proceedings stand vitiated**
E **by non-adherence to the principles of natural justice. [Paras 26-27, 30] [447-F; 448-A-B, E-F]**

2. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most,
F **admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court.**
G **Looking to the manner in which the case was conducted in the trial Court, nothing can be done to grant any relief to the appellants. Respondent was able to successfully prove that there was denial of opportunity to him in the Departmental Enquiry. In this view of the matter, all**
H **subsequent actions taken thereto, would automatically**

fail. The courts below committed no error in decreeing the suit of the respondent. However the question of his re-instatement would not arise as respondent already retired in the year 2000, after having attained age of superannuation. It could only be a case of some monetary benefit to him. In view of his superannuation, it would neither be fit nor proper to direct a fresh inquiry to be conducted against him. [Paras 31 and 34] [448-F-H; 449-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 893 of 2007.

From the Judgment & Order dated 30.9.2005 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Special Appeal No. 42 of 1996.

P.S. Patwalia, Ramamoorthy, Indra Sawheny for the Appellants.

Chandan Ramamurthi for the Respondent.

The Judgment of the Court was delivered by

DEEPAK VERMA, J. 1. Ignorance is a bliss, especially in the vast field of law, stands established from the narration of facts of this appeal as would fully expose it. Against findings of fact vide judgment and decree recorded by Additional District Judge No.2, Ajmer in Civil Suit No. 93 of 1982 (10/80), decided on 28.5.1993, confirmed in S.B. First appeal No. 178 of 1993 by learned Single Judge of the High Court of Judicature of Rajasthan at Jaipur and further affirmed in Special Appeal (Civil) No. 42 of 1996 by Division Bench of the said Court, decided on 30.9.2005, unsuccessful appellants/ defendants are before us, challenging the same on variety of grounds.

2. Needless to say the facts unfolded before us from the record as well as during the course of hearing reveal a sorry state of affairs as to the manner in which suit had been

A contested in the trial court by the appellants herein, abutting gross negligence and callous manner, not even adhering to the provisions of the Code of Civil Procedure and the Indian Evidence Act, yet challenging the same before this Court, even after having lost from all courts.

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3. Thumb-nail sketch of the facts of the case are as under:

4. Respondent herein original plaintiff was appointed by the appellants/defendants on probation as a Development officer on 5.4.1964. He was confirmed on the said post on C 1.4.1966. It is not in dispute that his service conditions were regulated by Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter shall be referred to as "Staff Regulations") framed in exercise of powers conferred under clause (b) of sub-section (2) of Section 49 of Life Insurance D Corporation Act, 1956 (hereinafter referred to as the "Act").

5. Charge sheet dated 16.4.1974 imputing six charges was served on him. He was also placed under suspension. Supplementary charge sheet was also served on him on E 21.10.1974. Mr. R.S. Maheshwari was appointed as Inquiry Officer, who after completion of inquiry proceedings furnished his report to Disciplinary Authority on 29.01.1976. On the basis of this, respondent was served with show-cause notice on 23.2.1976 stating inter-alia that in view of the fact that some of the serious charges stood proved against him, why order of F dismissal from service be not passed against him.

6. Respondent submitted his reply to the show cause notice on 02.04.1976, pointing out irregularities committed during the course of inquiry by the Inquiry Officer. His G categorical case in reply was that he has not been given adequate, proper, reasonable and sufficient opportunity of hearing during the domestic inquiry. Therefore, the whole inquiry stood vitiated on the principles of natural justice. It deserves to be quashed and no action on such an inquiry report H can be taken against him.

7. However, without taking note of the submissions of the respondent, appellants by non speaking order and further without disclosing any opinion, on the basis of which respondent was held guilty of charges levelled against him, arrived at a conclusion for his dismissal from service vide order dated 11.5.1976. A B

8. Feeling aggrieved and dissatisfied, the respondent was constrained to prefer a departmental appeal under Regulation 40 of Staff Regulations but that too met the fate of dismissal vide order dated 20.12.1976. C

9. He then submitted further mercy appeal before the Chairman of LIC but without any favourable result as the same came to be dismissed on 12.10.1977.

10. Feeling aggrieved by the aforesaid orders passed by appellants herein, respondent as plaintiff was constrained to file a suit, as an indigent person before Additional District Judge No.2, Ajmer, for declaration that the departmental inquiry proceedings culminating in order of dismissal from service, the appellate order, and further order passed by the Chairman of the appellant-Corporation as null and void. Consequently, he be held entitled for reinstatement in service with all consequential benefits. The learned trial Judge was pleased to grant permission to respondent-plaintiff to contest the suit as an indigent person. D E F

11. Appellants herein as defendants, filed written statement, inter alia, denying that no proper or sufficient opportunity was afforded to the respondent. They further contended that despite grant of sufficient opportunity, respondent took undue adjournments on various earlier dates or had remained absent, and thereafter deliberately remained absent from the inquiry on 5.1.1976, thereby compelling the Inquiry Officer to proceed ex-parte against him. Thus, even after grant of several opportunities, he cannot legitimately contend that inquiry was hit by the principles of natural justice. G H

A 12. Thus, in general, they have denied averments of the plaint in toto and submitted that the suit being mis-conceived deserves to be dismissed with costs.

13. On the strength of the pleadings of the parties, trial B court was pleased to frame six issues. The main and pertinent issue was with regard to the fact whether action of the appellants resulting in respondent's dismissal from service, rejection of appeal and further representation, was in violation of the principles of natural justice, if so, then to what reliefs respondent C was entitled to.

14. Before proceeding further, it is pertinent to mention here that neither copy of Inquiry Report was made available to respondent nor it was disclosed in the show cause notice as to on what premise finding of guilt was recorded by Inquiry D Officer or by the Disciplinary Authority while order of dismissal came to be passed against him.

15. To prove his averments in the suit, respondent-plaintiff tendered himself in the witness box and proved his case as also E documents filed in support thereof. Surprisingly enough, appellants herein did not lead any oral evidence, yet some of the documents filed by appellants were exhibited, probably under misconception of law that they were not disputed in Court by respondent. It is also necessary to mention here that F appellants had also not served any notice of admission or denial of documents on the respondent during trial as contemplated under Order XII Rule 2 of the Code of Civil Procedure (for short,'CPC').

16. After appreciating the evidence available on record, G trial court was pleased to decide the issues in favour of the respondent-plaintiff, holding therein that there was complete violation of principles of natural justice inasmuch as no reasonable, proper and sufficient opportunity was afforded to him to defend himself in the departmental enquiry. Similarly, the H appellate order was passed in a mechanical manner as also

the order on representation of the respondent by Chairman. In the result, the Trial Court passed a decree in favour of respondent, quashing and setting aside order of dismissal from service with further direction to reinstate him alongwith all consequential benefits including payment of salary for the intervening period.

17. Against this judgment and decree pronounced by trial court, appellants were constrained to file regular first appeal before learned single judge of the High Court which also came to be dismissed by him on 28.5.1993. Not being satisfied with the same, appellants carried Special Appeal before the Division Bench of the said High Court which also came to be dismissed on 30.9.2005. Hence, this appeal after grant of leave, by the defendants, having lost from all the three courts.

18. We have accordingly heard Mr. P.S. Patwalia, Mr. K. Ramamoorthy, learned Senior Counsel with Mrs. Indra Sawhney, learned counsel for the appellants and Ms. Chandan Ramamurthi, learned counsel for respondent and have critically examined the records.

19. It is pertinent to mention here that even though oral evidence lead by respondent plaintiff is not on record, but on certified copy thereof, being supplied to us by learned counsel for appellants, we have categorically gone through the same. It may be mentioned herein that in the same, there was not even a whisper of suggestion made to the plaintiff that he had appeared in the office on 5.1.1976 to collect his suspension allowance yet on being informed by the inquiry officer, that his inquiry too was fixed for the said date, therefore, he should come to attend it, on which respondent had informed the Inquiry Officer that he would appear, after some time along with his witnesses. In other words, even the defence that has been pleaded and set up by the appellants in their written statement was not put forth to the respondent, while he was in the witness box.

A 20. Thus, the question that arises for consideration is whether in absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross examination in the Court, what is the effect of documents filed by appellants and
B marked as Exhibits.

21. Despite our persistent requests made to the learned counsel appearing for the appellants they have not been able to show compliance of Order XII Rule 1 and 2 of the CPC, meaning thereby that there has not been any compliance
C thereof.

22. Order XII, Rules 1 and 2 appearing in the Code of Civil Procedure reads as thus:

D "ORDER XII

ADMISSIONS

1. Notice of admission of case. - Any party to a suit may give notice, by his pleading, or othewise in writing, that he
E admits the truth of the whole or any part of the case of any other party.

2. Notice to admit documents. - Either party may call upon the other party to admit, within seven days from the date
F of service of the notice any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be
G allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense."

23. It is also necessary to mention here that Rule 2A of
H Order XII of the CPC deals with the situation where notice of

admission as contemplated in Order XII Rule 2 of the CPC has been served but is not denied then the same shall be deemed to have been admitted. Similarly, Rule 3A of the aforesaid Order grants power to the Court to admit any document in evidence, even if no notice has been served. The aforesaid provisions of law have been brought in the Code vide Amendment by Act No. 104 of 1976, w.e.f. 1.2.1977. A B

24. Records do not reveal that any such procedure was adopted either by the appellants or by the Trial Court to prove the documents filed by the appellants and mark them as Exhibits. Thus, no advantage thereof could be accrued to the appellants, even if it is assumed that said documents have been admitted by respondent and were then exhibited and marked. C

25. No doubt, it is true that failure to prove the defence does not amount to an admission, nor does it reverse or discharge the burden of proof of the plaintiff but still the duty cast on the defendants has to be discharged by adducing oral evidence, which the appellants have miserably failed to do. Appellants, even though a defaulting party, committed breach and failed to carry out a legislative imposition, then had still to convince this Court as to what was the just cause for doing the same. Thus looking to the matter from any angle, it is fully established that appellants had miserably failed to prove and establish their defence in the case. D E

26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent. F G H

A 27. It was the duty of the appellants to have proved documents Exh. A-1 to Exh. A-10 in accordance with law. Filing of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also B required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do.

28. It is also worthwhile to mention here that one of the complainant Rattan Lal who was examined as witness during the departmental Inquiry was not cross-examined by respondent C as he was not afforded proper opportunity in this regard.

29. Learned counsel for the appellants has strenuously submitted before us that on 5.1.1976, respondent deliberately, intentionally and with oblique motives remained absent from the D Departmental Inquiry proceedings as on the same very day he had come to the office to collect his dues, was then informed about the proceedings fixed for the same day but he still remained absent. The said order sheet is neither signed by the respondent nor was this defence put up to him when he was in E the witness box in cross-examination.

30. From the narration of aforesaid facts and law, we are of the considered opinion that the courts have committed no error in coming to the conclusion that respondent was denied opportunity of hearing, that being so, whole proceedings stand F vitiated by non-adherence to the principles of natural justice.

31. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of G documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court.

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32. Learned counsel for the appellants Mr. P.S. Patwalia in his usual, polite yet firm vehemence contended that looking to the serious allegations levelled against him, the order of the Trial Court directing reinstatement with full back wages, which stood confirmed by Appellate Courts, would amount to rewarding a dishonest officer. But looking to the manner in which the case was conducted in the Trial Court, nothing can be done to grant any relief to the appellants. Respondent has been able to successfully prove that there was denial of opportunity to him in the Departmental Enquiry. In this view of the matter, all subsequent actions taken thereto, would automatically fail.

33. In this view of the matter, we are of the opinion that the courts below committed no error in decreeing the suit of the respondent.

34. It may further be noted that respondent has now retired in the year 2000, after having attained age of superannuation. Thus, the question of his re-instatement does not arise. It could only be a case of some monetary benefit to him. In view of his superannuation, it will neither be fit nor proper to direct a fresh inquiry to be conducted against him.

35. Thus, the appeal being devoid of any merit and substance is dismissed. Appellants to bear the cost of the litigation throughout.

36. Counsel's fee Rs.10,000/-.

D.G. Appeal dismissed.