
(1987) 08 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 20 of 1979

Gulab Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-08-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (1988) 1 RLW 173 : (1988) 1 WLN 427

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—This is a Civil First Appeal u/s 96, CPC against the judgment and decree dated 8-12-1977 passed by the learned Addl. District Judge No. 1, Jaipur City.

2. The plaintiff appellant filed a suit for declaration and recovery of arrears amounting to Rs. 12, 474.99p. against the defendant respondents dated 31-10-1972 in the Court of District Judge, Jaipur City. The declaration sought by the appellant was that the defendant's order dated 5-8-1971, where by the two grade increments of the plaintiff have been withheld, with cumulative effect, and the order dated 22-12-1971, where by his departmental appeal against the order dated 5-5-1971 was rejected, and further the payment has also been disallowed to him, be declared null, void, ineffective, illegal and inoperative in law. A sum of Rs. 15474 99p. was also claimed by him for the arrears of salary and the amount of grade increments not allowed to him. Since the plaintiff was not in a position to pay the required court fee, he filed the plaint in the "forma-pauperis". The suit was later on transferred to the court of Additional District Judge No. 1, Jaipur City Jaipur.

3. The plaintiff is a Civil servant. He filed a civil suit for recovery of Rs. 12474.99 p. on 31st October, 1972 in the Court of Additional District Judge, Jaipur. There were a series of enquiries commenced and dropped, recommenced, and order of dismissal passed and quashed against Gulab Singh who did not attend his office

after transfer. Ultimately by order dated 5-5-1971 two grade increments of the plaintiff appellant have been withheld with cumulative effect. The impugned order is dated 22-12-1971. The plaintiff wants that this order dated 22-12-1971 should be declared null and void and a sum of Rs. 12474.99p. be allowed to him as arrears of salary and pay, etc. The defendant's main contention is that for the aforesaid period the plaintiff remained absent from duty, he cannot get the salary etc. After framing all the issues evidence was recorded and the suit has been dismissed. The only question argued by Mr. Bandhu, learned counsel for the plaintiff, is that once apology was accepted by the defendants then there could not have been further enquiry again. He relied upon the judgment of Bombay High Court Shiv Singh v. Marathwada University, Aurangabad 1986 (3) SLR 131 (Bom).

4. It would be necessary to trace-out the history of the involved enquiries and orders. The plaintiff was a blacksmith in Government Press, Jaipur. Due to this situation he was transferred to Jodhpur. Shri Mathura Das was the Minister concerned at that time, stayed the order of transfer up to 15th of February, 1986. But later on an order was passed. The plaintiff applied for leave for two months and he was not aware of what orders were passed on it. A charge-sheet was given for remaining absent and not joining at Jodhpur and an order for removal was passed. The order for transfer was later on cancelled and he continued in the Government Press, Jaipur up to July 25, 1977. Against the order of dismissal an appeal was filed and it succeeded. It must be according to law.

5. The plaintiff was reinstated but again notice was given to show cause as to why he should not be removed from service. Then he was removed from service. Again an appeal was filed due to which two years grade-increment was stopped with cumulative effect. On 22nd January, 1971 the plaintiff was denied salary for this period and, therefore, he filed a suit. A written statement has been filed and it has been pointed out that from 1-2-1966 to 11-1-1966 again from 22nd July, 1967 to 13th March, 1969 and 18th April, 1969 to 5-1-1971 the salary of the plaintiff has been withheld on the ground of his absence.

6. Now before this Court, Mr. Purohit appearing on behalf of the State; has submitted that so far as the period between 22-7-1967 and 12th March, 1969 is concerned, since the plaintiff remained out of employment on account of dismissal order though which was later on quashed he is not entitled to salary. I have carefully examined the rival contentions of learned counsel for the parties and have also perused the record of both courts below as well as departmental enquiry which was held, as certain matters were obscure and wanted further authentic elucidation from the record. From the record I have obtained which were latest and logical and legal effect have become lawful. It is now clear that there were three departmental enquiry orders dated 9-2-1966, 15-2-1966 and 19-3-1966. According to order dated 12-12-1966 that first two enquiries have been dropped and it is obvious that the charges in them were overlapping.

7. The charge for the first enquiry dated 19th March, 1966 related firstly for not

joining at Jodhpur in pursuance of the order dated 2-2-1966 and remained absent. Secondly unsatisfactory service for which earlier charge-sheet was given on 9th February, 1966 and 16th February, 1966 and thirdly deliberate absence from duties relating to the disobedience of the Govt. orders The charge-sheet for creating indiscipline, was given on 19th March, 1966 and before that for two enquiries of dt. 9th February, 1966 and 15th February, 1966 the proceedings were going on

8. However, on 11-12-1966 the first two enquiries concerned on 9th February, 1966 to 15th February, 1966 were withdrawn.

9. Now an important event which happened was the acceptance of apology and reinstatement in service by order dated 11th October, 1966 vide Ex. 4. This order of course mentioned enquiries about 19-3-1966 and 15-2-1966 only and the enquiry initiated on 9th February, 1966 was not mentioned. The letter dated 11-10-1966 mentioned that enquiries which were concerned on 9-12-1966 and 16-3-1966 are dropped because Gulab Singh tendered apology and assured that he will behave properly. Obviously, the charges for which was called third enquiry conducted, are baised, no carrying out order dated 2-2-1966 which was kept upto 15-2-1966. The second charge in this third enquiry is about earlier 2 enquiries which was respectively dropped The third charge is shown indiscipline and disobedience.

10. There is confusion account of which it has become difficult even for the learned Dy. Government Advocate as to why were passed orders one after other basically on the same order of transfer dated 2-2-1966 Obviously when he was allowed to stay upto 15-2-1966 by the Minister concerned then no enquiry could have been ordered to be conducted on 9-2-1966 or 15-2-1966 on that count. It is also a very confusing fact that why when on 11-10-1966 apology was accepted and the employee was allowed to join and no observation was made in the order dated 11-2-1966 and thereafter on 25-10-1966 the 3rd enquiry was allowed to proceed. In such circumstances, latter developments which took place were all available. However, in the third enquiry he was dismissed on 22nd July, 1967, reinstated on 5th March, 1969 and again dismissed on 18th April, 1969 and then the dismissal order was set aside on 28th 1971 with stopage of two grade increments and denial of salary during the period of his absence from duty.

11. In my opinion, without deciding each issues separately as they are overlapped and since there is confusion and confrontation in this case, the development which took place I must classify the period for the purpose of deciding whether the employee is entitled to salary and other benefits. Before that I must state that the third charge-sheet and the punishment given there under cannot be upheld because the third charge-sheet is nothing out rebirth of the first and second enquired together which were dropped on acceptance of apology and withdrawn.

12. In Shiv Singh v. Marathawada University, Aurangabad (supra) his Lordship of

Bombay High Court observed that where an employee is reinstated after acceptance of apology, the second enquiry is barred. In the instant case, the original order dated 11-10-1966 which was passed but nowhere mentioned inspire of acceptance of apology the enquiry would continue and all that at the most the relief which is given in his reinstatement from pending enquiry. Contrary to it was mentioned that the earlier two charge-sheets are withdrawn and dropped. As mentioned above the third charge-sheet is nothing but rebirth of charge mentioned in enquiry No. 1 and enquiry No. 2 because by disobedience of transfer after 15-2-1966 and not joining at Jodhpur and remaining absent. The other charge infers from it of insubordination or disobedience so on and so forth.

13. In view the above it is very difficult to accept the Proposition that after the acceptance of apology when the enquiry was withdrawn the very charge can be recommended. Of course, there is no technical ground if found that the stoppage of increment any favouritism or misrepresentation or fraud or error of law. All that I have emphasised is that once the proceedings are dropped that there is no legal technical bar, yet in order to provide security of service to a Government employee and further to provide finality and sat ctity to the order passed by the superior officers, an enquiry should not be recommended by the same officer or an officer of equal status. A superior officer to the nominating officer may exercise all powers suomoto in revision if any, or successor finding it a case fraud or mis-representation or error of law may reconsider it. But then reasons must have been given in writing in the order on the file so that objectivity and bonafides can be assured and victimisation, malifides, arbitrariness can be ruled out. In the present case in fact it appears that the officers were working either under confusion or they have not again to have consistence as they framed one charge-sheet and second charge-sheet and third charge-sheet without giving any material distinction between them.

14. In the present case the last order dated 28-4-1971 stopping of two grade increments is the best proof of the same charge i.e. not implementing the transfer order dated 2-2-1966 after 15-2-1966.

15. Once the officer concerned on this point has accepted the apology and directed to drop the proceedings of 2-2-1966 and 15-2-1966. then nothing remained to be enquired into for the same omission or commission. More over on 11-10-1966 while accepting the apology it was not made clear that the third enquiry would continue although only the earlier two enquiries were dropped. However, since I have mentioned and come to the conclusion, that all the three charge-sheets are more or less, relating to transfer order from Jaipur to Jodhpur dated 15-2-1966, therefore, dropping of the one could reject making the other objective enquiry unless there is express order, therefore, consequently, I have no hesitation in quashing the order dated 28th April, 1971 imposing penalty of stoppage of two grade increments of the plaintiff and directing the period would be treated as not on duty.

16. Now coming to the crucial question as to what relief should be granted in the

present case. For considering this question I want to deal with the prayer. The first prayer is for salary from 1-2-1966 to 11-12-1966. The second prayer is for salary from 22-2-1967 to 12-3-1969 and the third prayer is for salary from 18-4-1969 to 8-5-1971.

17. As it would be clear from the above discussion on 11th October, 1966, the charges were dropped and the order of dismissal dated 22-2-1967 has been set-aside in appeal. On account of the order of dismissal the employee could not work from 22-2-1967 to 12-3-1969 when he was allowed to join on account of the order dated 5-2-1969. Since ultimately the charges have been dropped by this court, the plaintiff would get salary and allowance from 22-2-1967 to 12-3-1969.

18. Again he was dismissed on 18th April, 1969 and then that dismissal has been set-aside vide order dated 28-4-1971 and the appellant was reinstated on 5-8-1971. He would therefore, be entitled to salary from 18th April, 1969 to 6th May, 1971 also.

19. Now remains the question of the earlier period from 1-2-1966 to 11-10-1966. During this period he was allowed not to carry out transfer upto 15-2-66. Therefore, he is entitled to salary upto 15-2-66. However, from 15th February, 1966 to 11th Oct, 1966 he was not on duty and that was his voluntary creation. I am giving this finding because I am in agreement with the finding of the lower court on these points. Merely moving an application for leave is not enough for a Government Servant has sought, no escape unless leave was sanctioned. I am in agreement with the finding of the Lower Court since other person joined in the department was justified in asking order.

20. Consequently, no salary and allowance be granted for the period commencing from 15-2-66 to 11-10-66 as admittedly the plaintiff was absent from duty and without acceptance of the leave application and without just and reasonable cause.

21. The result of the discussion is that the suit of the plaintiff succeeds and the decree is granted quashing the impugned order dated 23-4-1971 to the extent that it directed stoppage of two grade increments and further directed to be treated the period as not on duty. The plaintiff is granted a decree for the salary and permissible allowance with salary for the period from 22nd July, 1967 to 12th March, 1969 and again from 18th April, 1969 to 6th May, 1971.

22. So far as the question of any increment or promotions are concerned, the department would consider them on the basis of finding of this court and then decide it objectively as if it is dependent upon efficiency bar the case will have to be considered on performance if any and if it is without that then it will have to be given on the basis of the period which has been treated as on duty.

23. Thus in all, the plaintiff would get the amount of Rs. 11239.83p. within a period of 6 months from today. The plaintiff would get interest @ 6% per annum

from the date of the suit till the date of realisation. In view of the peculiar facts and circumstances of the case the parties are left to bear their own costs.