

(2001) 07 AHC CK 0055

In the Allahabad High Court

Case No : C.M. Review Application No. 23975 of 2000 in Second Appeal No. 2420 of 1976

Munni Lal Srivastava

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 80
Penal Code, 1860 (IPC) — Section 409, 467

Citation : (2001) 3 AWC 2253 : (2001) 3 UPLBEC 2421

Hon'ble Judges : U.S. Tripathi, J

Bench : Single Bench

Advocate : S.K. Varma and Siddhartha Varma, for the Appellant;

Final Decision : Dismissed

Judgement

U. S. Tripathi, J.—This review application under Order XLVII, Rule 1, C.P.C. has been filed by the appellant/applicant in Second Appeal No. 2420 of 1976, decided by this Court on 24.3.1998 for review of the order dated 24.3.1998 and to allow the appeal after setting aside the judgment and decree of the lower court dated 1.6.8.1976.

2. The applicant (hereinafter called the plaintiff) filed original suit No. 20 of 1967 in the Court of Munsif, Ghazipur for declaration that he had been in service of the respondent/ opposite party [hereinafter called the defendant) on the post of Postal Clerk till the date of his retirement. The case of the plaintiff, in brief, was that he was initially appointed by the Inspector of Post Office, Varanasi as Mail Peon in the year 1937. He was confirmed on the said post in the year 1946. Thereafter, he was promoted to the post of Postal Clerk in the year 1952 and worked in that capacity on different places till 1954. Since he was an active worker of the Union of the department, he incurred displeasure of Inspector of Post Offices who lodged a police report against him for the offence punishable under Sections 467 and 409, I.P.C. A departmental enquiry was initiated against

the plaintiff and he was charge-sheeted on 13.9.1960. He was also tried by the criminal court for the offences punishable under Sections 467 and 409, I.P.C. However, he was convicted by the trial court, but was acquitted in appeal. The plaintiff was not afforded proper opportunity of being heard in the departmental enquiry and ultimately in the departmental enquiry, he was dismissed from service on 18.1.1963. He preferred departmental appeal and the appellate authority set aside the dismissal of the plaintiff but passed order of his reversion to the post of Mail Peon for a period of 5 years, vide order dated 19.1.1964. The plaintiff, however, retired from service in the month of July, 1968.

3. The Union of India contested the suit mainly on the ground that no valid and proper notice u/s 80, C.P.C. was served. Full opportunity of hearing was afforded to the plaintiff during departmental enquiry and he also submitted representation to substantiate his defence.

4. The trial court dismissed the suit on 12.3.1969 on the ground that during pendency of the suit, the plaintiff has retired with effect from July, 1968 and he was drawing pension also and, therefore, the suit became infructuous. The plaintiff preferred an appeal against the said order. The lower appellate court allowed the appeal and remanded the suit for fresh decision on the ground that the trial court overlooked the fact that the appellant claimed declaration not only that he is in service, but also that he had been in service of the defendant in the cadre of Postal Clerk till the date of his retirement, which was likely to affect the pensionary benefits.

5. After remand of the case, trial court again dismissed the suit on 1.6.1974. The plaintiff filed Civil Appeal No. 76 of 1974. The lower appellate court by order dated 16.8.1976 dismissed the appeal holding that full opportunity was afforded to the plaintiff during departmental enquiry and there was no denial of principle of natural Justice.

6. Against the judgment and decree of lower appellate court, the plaintiff has preferred the second appeal. The learned counsel for the appellant was heard and the appeal was decided by this Court on 24.3.1998 by the following orders :

"Both the courts below upon materials on record held that charge No. 3 of the departmental proceeding was made out and the punishment of reversion to the post of Peon was inflicted. His punishment of reversion is allowed to stand and the appellant be given retirement benefit as if he was a postal peon on the date of his retirement and he should be given pensionary benefits including the arrears of pension accordingly. I do not pass any order regarding his arrear dues on the footing of postal peon from the date of reversion to the date of retirement.

Since the appeal is allowed in part, I do not order as to costs."

The above order of this Court has been sought to be reviewed in this review application,

7. Heard Sri S. K. Verma learned counsel for the applicant and the learned

standing counsel and perused the record.

8. The following grounds were taken in the review application :

(1) In view of decision reported in Ram Chander Vs. Union of India (UOI) and Others, , it was incumbent upon the appellate authority in the departmental proceeding to have heard the applicant also before reverting him to the post of Mail Peon from the post of Postal Clerk.

(2) In the absence of hearing before inflicting the major penalty of reversion, the appellate order passed in the departmental proceeding was a void order.

(3) Out of several punishments, the appellate authority in the departmental proceeding had to take a decision as to which punishment would be inflicted and before taking the decision for inflicting the punishment, it was incumbent upon the appellate authority to have heard the appellant.

9. This Court while deciding the second appeal has observed that the moot question in the case comes to a very narrow campus and it is to be seen whether appellant was properly heard relating to the proceedings and whether the judgment of the appellate authority of departmental proceeding which inflicted the major punishment of reversion to a lower rank for a considerable minor offence was proper, that is to say, it is to be seen whether that punishment order was void for violating natural Justice and to see whether the Judgment of the departmental appellate authority inflicting major punishment of order was a speaking order?

10. On perusal of the record and scrutiny of evidence of the applicant, this Court observed that both the courts below upon materials on record held that charge No. 3 of the departmental proceeding was made out and the punishment of reversion to the post of Peon was inflicted. His punishment of reversion is allowed to stand and the appellant may be given retirement benefit as if he was a postal peon on the date of his retirement. Thus, the points raised in the review application were considered by this Court while deciding the second appeal and above points cannot be treated as an error apparent on the face of record or discovery of a new fact.

11. However, the learned counsel for the applicant raised a new point in written argument, which was not taken either in suit or in first appeal or second appeal or in review application that the judgment of this Court dated 24.3.1998 in second appeal indicated that the second appeal was partly allowed. Unless and until the appellate court finds something favourable in the judgment and decree of the court, there is absolutely no justification to show that the appeal was partly allowed. The fact of the matter is that 5 years period of reversion to the post of Mail Peon is to be computed from the date of earlier punishment dated 18.1.1963 and then the appellant would have completed 5 years reversion on 18.1.1968 and after 18.1.1968 he shall be automatically a Postal Clerk. Admittedly, the appellant retired in July, 1968 and, therefore, he would be

deemed to have retired as a Postal Clerk and not as a Mail Peon and this legal point can be raised at any stage as held by the Apex Court in the case of Ram Kristo Mandal and Another Vs. Dhankisto Mandal, .

12. The learned counsel for the applicant, therefore, tried to impress the Court that the effect and consequence of order of departmental appellate authority would have been considered and the reversion of the appellant from the post of Postal Clerk to the post of Mail Peon for a period of 5 years be treated to be effective from 18.1.1963. This plea was not raised either before the trial court or before the first appellate court. It was also not raised in the second appeal and was not argued when the second appeal was argued. It can also not be said that this fact was not within the knowledge of the appellant or he could not discover the same despite of due diligence. Assuming that it is legal point and can be raised at any stage, there appears no force in the above contention. There is nothing in the order of departmental appellate authority to show that order would be deemed to be effective retrospectively. Therefore, the order of the appellate authority would be deemed to have come in effect from the date of order. There is no force in the contention of the learned counsel for the applicant that the order of the appellate authority should be deemed to be effective from the date of order of initial punishment passed by enquiry officer. However, he raised an analogy that if the order of the appellate authority is not deemed to be effective from the date of initial punishment, it would mean that the appellant was doubly punished. i.e., he was awarded punishment of dismissal from service with effect from 18.1.1963 and thereafter reversion in rank from the date of order of departmental appellate authority, i.e., 19.1.1964. This argument has also no force as according to principle of merger, the order of the departmental punishing authority stood merged with the order of the appellate authority. Therefore, there was no question of awarding two punishments to the applicant.

13. It was further contended by the learned counsel for the applicant that this Court partly allowed the second appeal, which means that the appellant was allowed pensionary benefit of the post of Postal Clerk. There is nothing in the order of this Court dated 24.3.1998 to infer that this Court meant that the pensionary benefit to the appellant was admissible for the post of Postal Clerk nor it indicate that there was any apparent error to this effect on the face of record.

14. It appears that the trial court as well as lower appellate court have outrightly dismissed the suit of the applicant and therefore, this Court in second appeal clarified that punishment of reversion is allowed to stand and the appellant be given retirement benefit as if he was a Postal Peon on the date of his retirement and he should be given pensionary benefit including arrears of pension accordingly.

15. In this way, I find no force in the review application and the same is, accordingly, rejected.