
(1980) 01 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1045 of 1977

Union of India (UOI)

APPELLANT

Vs

Burma Nand

RESPONDENT

Date of Decision : 11-01-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1980) 2 ILR (P&H) 211

Hon'ble Judges : Madan Mohan Punchhi, J

Bench : Single Bench

Advocate : B.S. Shant, for the Appellant; Kuldip Singh Kapur, for the Respondent

Final Decision : Allowed

Judgement

Madan Mohan Punchhi, J.—This is a regular second appeal by the Union of India, challenging a decree for declaration, passed in favour of the Plaintiff-Respondent, in the circumstances hereafter.

2. Burma Nand, Plaintiff-Respondent, served in the Railway Workshop, Jagadhri, as a skilled fitter. In the month of August, 1968, a charge was levelled against him that he put a gherao against the Works Manager at the Railway Workshop. A departmental enquiry was held against him. As a result of that departmental enquiry an order of dismissal was recorded against him, by the Deputy Chief Mechanical Engineer, Jagadhri, -vide his order, dated 14th July, 1969. Prior to the aforesaid order of dismissal, an earlier act/ acts, complained of, had merited dismissal of the Plaintiff, -vide an order, dated 14th February, 1969. Thus, it is patent that in a span of five months, there were two orders of dismissal against the same employee. The Plaintiff challenged the earlier as well as the later orders of dismissal, through two separate suits. Undisputably, the suit filed by the Plaintiff, to get set aside the earlier order, dated 14th February, 1969, was dismissed and became final between the parties. The Plaintiff also challenged the later order of dismissal, dated 14th July, 1969, by way of the present suit, out of which the present appeal has arisen on a number of grounds. He challenged the

order, basically on two suggested faults. In the first place, his claim was that the order of removal was illegal, void and inoperative, for factual and legal reasons mentioned in the plaint and in the second place, it was claimed that the second order of dismissal could not be passed at the time when he was not an employee of the employer. The Plaintiff sought a declaration to the effect that the order of dismissal, dated 14th July, 1969 be declared illegal, void and inoperative and a declaration to be granted that he still continued to be in service. On contest by the Respondent-Union of India, the trial Court framed the following three issues:

1. Whether the order of removal, dated 14th July, 1969, is illegal, void, inoperative and not binding on the Plaintiff: for the reasons mentioned in the plaint?
2. Whether the notice u/s 80 CPC is invalid?
3. What is the effect of second removal of the Plaintiff by the Defendant ?

All the three issues were decided in favour of the Plaintiff. It was held that a valid notice had been served by the Plaintiff on the Defendant. It was also held that there had been breach of rules of natural justice in the conduct of the enquiry, and thus the consequential order of removal, dated 14th July, 1969, was illegal. Additionally it was held that when the Plaintiff had already been removed from the service, the second order of removal was outside the authority and the power of the Respondent. This view of the trial Court was challenged in appeal by the Union of India, unsuccessfully. That has given rise to the present second appeal.

3. The Motion Bench, while admitting the appeal, framed the following three substantial questions of law, which arise for determination in the case:

(1) Where two separate enquiries are pending against a public servant and the first concludes in an order of dismissal, whether the second enquiry can proceed in law thereafter?

(2) In case the answer to the question is in the affirmative, whether an order of dismissal can be passed on the conclusion of the second enquiry as well?

(3) Where the order of dismissal in the first enquiry has been upheld in appeal, whether in a civil suit the Court can grant a decree for declaration that the Plaintiff-public servant continues to be in service simply on the ground of the second order of dismissal having been set aside ?

4. The learned Counsel for the Appellant, appearing for the Union of India, contended that at the time when the employee was in service, undisputedly, two separate enquiries for two separate causes of action, were initiated against the public servant. He contended that the transit period of enquiry, culminating in finality, need not be similar, and has to be dissimilar in the common course of events. He explained that if the first enquiry had resulted in exoneration of the employee, concededly, the second enquiry could proceed to its finality. Conversely, it was argued that if the first enquiry resulted in an order of

dismissal, the second enquiry could definitely proceed to its culmination, in order to record an order of exoneration or an order of dismissal, as the case may be. The counsel maintains that in either of the two results, the orders would be declaratory, but could be operative only if they are capable of being put into operation. If the result of the first enquiry necessitated passing of an order of dismissal by the punishing authority, its view, if challenged, could be differed from the higher authority, or the order of dismissal could be found defective by the Civil Court. In that case, it was contended, that the declaratory as well as the operative part of the order would be wiped out. It is in that eventuality that the second order of dismissal, though declaratory in nature, could be put into operation, to effectuate its intention. On this line of reasoning, it was contended, though unsupported by any precedent for and against the proposition, that the second order of dismissal could validly be passed in the presence of the first order of dismissal. The learned Counsel for the Respondent controverted this line of reasoning and put in aid the Railway Servants Discipline and Appeal Rules, 1968, to contend, that concededly, both the enquiries were conducted under the aforesaid Rules and the said Rules operate within a field when the public servant is in service. In other words, it was maintained that if the public servant was not in service on the day when the impugned order was passed, the order would be void ab-initio. In support thereof a decision of the Madhya Pradesh High Court reported in V.P. Gidroniya v. State of Madhya Pradesh and Ors. 1967 S.L.R. 243, was cited to contend that the right of the employer to proceed against an employee departmentally subsists only so long as there remains the relationship of master and servant between them; this right cannot be claimed by the employer after the relationship has ceased to exist.

5. After giving careful thought to the respective contentions of the learned Counsel for the parties, it appears that the questions of law, enumerated earlier, have to be answered in the following terms:

(i) There is no bar for two separate pending enquiries against a public servant, to conclude one after the other. There is no specific bar for recording two separate orders of dismissal as a result of culmination of two separate enquiries, but at one point of time only one order can operate and not both orders. An employee cannot be dismissed twice from service. There can be no dismissal of an already dismissed servant.

(ii) The second question is correlative with the first and an order of dismissal can be passed on the conclusion of the second enquiry as well, in the absence of a specific legal bar. The bar is only operative vis-a-vis the operation.

(iii) When the operated order of dismissal arising from an enquiry remains unchallenged, or after challenge has been upheld and continues to operate, a Civil Court, while granting a declaration that an order of dismissal passed in another enquiry was bad and inoperative in law, cannot as a consequence declare the public servant to be continuing in service, simply for the reason that the subsequent order of dismissal had been set aside by it. In one breath the

Court cannot blow hot and cold. Taking note of the first operated order of dismissal, the Court cannot declare that the second order of dismissal could not be passed in the presence of the first, and yet at the same time cannot set at naught the operation of the first order by declaring the public servant to be in continuity of service as a sequel to the setting aside of the subsequent order of dismissal. The course of two separate enquiries and the respective orders run in two parallel lines and seldom do they meet. Of course they cast shadow on one another, but they operate in their respective spheres, if put into operation; otherwise they remain just declare.

Bereft of any case law on the subject, cited at the bar, as at present advised, these answers to the questions of law posed, appear to me to effectuate and promote the course of justice and fairplay.

6. As a result, the appeal of the Union of India is partially allowed, to the extent that the finding on issue No. 3 is set aside, and it is held that the second order of removal could be passed by the Appellant, against the Respondent, but it could not be put into operation during the subsistence of the earlier operated order of dismissal. Conversely, the orders of the Courts below are set aside, to the extent to which they have declared the Plaintiff to be in continuity of service, as a sequel to the declaration granted by them that the later order of removal, dated 14th July, 1969, was illegal, void and inoperative, for reasons other than the reason of existence of the first dismissal order. The declaration stands modified to that extent. Now, the declaration in favour of the Plaintiff would stand granted simpliciter that the order of his removal, dated 14th July, 1969, is illegal, void and inoperative and not binding on the Plaintiff, without any consequential order with regard to the continuity of service in the presence of the operated order of dismissal, dated 14th February, 1969.

7. With this modification the appeal is partially allowed, but the Plaintiff's suit stands decreed with the amended declaration, as specified above. No costs.

8. Before parting with the judgment, and to be fair to the learned Counsel for the Appellant, it deserves mention that he attempted to question the finding of the trial Court on issue No. 1, but since no argument was addressed against that finding before the lower appellate Court, he was not allowed to agitate the matter, having left it unagitated before the lower appellate Court.