

(1976) 07 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Regular Second Appeal No. 137 of 1975

Union of India (UOI)

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision : 05-07-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Penal Code, 1860 (IPC) — Section 324, 34

Citation : (1976) WLN 249

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Judgement

S.N. Modi, J.—This second appeal by the defendant Union of India is directed against the appellate judgment of the Additional District Judge, Ajmer, dated September 9, 1974, reversing the decree of the trial court, which dismissed the suit.

2. The admitted facts of the case are that the plaintiff respondent was a Railway employee during the relevant period and was working as Class IV relevant in the Western Railway. He was a confirmed permanent Class IV employee. The plaintiff was convicted on a criminal charge u/s 324 I.P.C by the Additional Munsiff Magistrate, Ajmer, on July 31, 1965, and was sentenced to pay a fine of Rs. 250/-, or in default of payment of fine to undergo rigorous imprisonment for three months. On March 2, 1967, the Divisional Electrical Engineer, Western Railway, Ajmer, removed the plaintiff from service with effect from March 3, 1967. The order of removal is Ex. 3 on the record and it reads as under,-

"Notice

Whereas Shri Mohan Lal, Khallasi, T. No. 8059 of Loco Electric Shop, Aimer has been convicted on a Criminal Charge u/s 324 I.P.C. read with Section 34 I.P.C by the Additional Mursif & Magistrate (East), Ajmer, on 31.7.1965, and sentenced to pay a fine of Rs. 250/- and in default to undergo R.I. for three months.

And whereas it is considered that the conduct of the said Shri Mohan Lal, Khallaei, T. No. 8059 which has led to his conviction is such as to render his further retention in the public service undesirable.

Now, therefore, the DEE (W/S), Ajmer hereby removes the said Shri Mohan Lal, Khallasi, T. No. 8059 from service with effect from the forenoon of 3.3.1967.

Sd/-

D.E.E. (W/S) Ajmer.

3. The plaintiff-respondent preferred an appeal against the said order of the Divisional Electrical Engineer, Western Railway, to the Chief Electrical Engineer, Western Railway, Bombay, but without any success. Ultimately, the plaintiff served a notice u/s 80 C.P.C., and filed the present suit for declaration challenging the legality of the impugned order of removal from service and also claimed Rs. 4,698/- as arrears of pay and allowances from March 3, 1967 and Rs. 400/- as value of railway passes, which he would have got, if he had remained in service.

4. The defendant-appellant Union of India admitted that the plaintiff-respondent was a continued class IV servant in the employment of the Western Railway, and further that he was removed from service with effect from March 3, 1967, because he was convicted u/s 324 I.P.C. by a criminal court. The defendant-appellant alleged that the District Electrical Engineer, after going through the judgment in the criminal case, came to the conclusion that the conduct of the plaintiff, which has led to his (defendant's) conviction, is such as to render his further retention in the public service undesirable.

5. The trial court, after framing the relevant issues and on consideration of the evidence led by the parties, dismissed the suit. On appeal by the plaintiff, the learned Additional District Judge, Ajmer, relying upon a Division Bench decision of this Court in *Kuldeep Singh and Ors. v. Union of India* and Ors. 1974 WLN 16 came to the conclusion that the impugned order cannot be called a speaking order and it suffers from arbitrariness. The learned Additional District Judge, accordingly, held the impugned order dated March 2, 1967 to be ineffective, void and illegal. He further passed a decree for a sum of Rs. 4,698/- It is against this decree that the defendant Union of India has preferred "his second appeal

6. It is not disputed before me that the impugned order passed in *Kuldeep Singh's* case 1974 WLN 176 was almost identical with the impugned order passed in the present case. It is also not in dispute that in *Kuldeep Singh's* case 1974 WLN 176, a Division Bench of this Court struck down the order passed in that case on the ground that it was not a speaking order and it suffered from arbitrariness. It is, however, contended on behalf of the defendant-appellant that an appeal against the decision of this Court in *Kuldeep Singh's* case 1974 WLN 176 is pending before the Hon'ble the Supreme Court of India, and as such it cannot be said that what has been decided in *Kuldeep Singh's* case 1974 WLN

176 is the correct law. In my opinion, this contention has no force so far as this Court is concerned. The decision in Kuldeep Singh's case 1974 WLN 176 is binding on this Court till it is reverted by Hon'ble the Supreme Court.

7. The next submission made by the learned Counsel for the appellant is that the lower appellate court has committed a grave error of law in awarding a decree for Rs. 4,698/- representing the salary and allowances of the plaintiff respondent from March 3, 1967 to the date of the suit. In this connection, he has invited my attention to Sub-rule (4) of Rule 1706 of the Discipline and Appeal Rules for railway servants, as contained in Chapter XVII of the Indian Railway Establishment Code, Volume I. This rule reads as under,-

1706(1). A railway servant may be placed under suspension-

(a)

(b)

(2)

(3)

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decided to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the railway servant shall be deemed to have been placed under suspension by the competent authority, mentioned in Rule 1705, from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5)

A bare reading of Sub-rule (4) of Rule 1708, reproduced above, would reveal that it authorises the disciplinary authority to hold a further inquiry against the delinquent employee on the consideration of the circumstances of the case. It is further evident from Sub-rule (4) that where such a course is adopted, the delinquent railway employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal and shall continue to remain under suspension until further orders. In view of the above clear provision of law, the lower court was clearly in error in passing a money decree for full salary for the period from the date of dismissal up to the date of the suit. The same view was taken by Hon'ble Lodha J. in *Union of India v. Tara Chand* 1975 (2) SLR 28.

8. In this view of the matter I allow the appeal in part, and while setting aside the impugned order of removal, leave the matter regarding the grant of decree for salary open. If the disciplinary authority decides to proceed against the

plaintiff respondent under Rule 1706(4), the plaintiff-respondent may be paid his salary in accordance with the said rule. If not, the salary may be paid as permissible under the Rules. Since the respondent has not put in appearance to contest this appeal, I leave the parties to bear their own costs in this Court.

9. Learned Counsel for the appellant prays for leave to appeal to a Division Bench. It is hereby refused.