

(1975) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Regular Second Appeal No. 483 of 1971

Union of India (UOI)

APPELLANT

Vs

Phool Chand

RESPONDENT

Date of Decision : 05-02-1975

Acts Referred:

Constitution of India, 1950 — Article 166
Penal Code, 1860 (IPC) — Section 324, 34

Citation : (1975) 8 WLN 93

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

Bench : Single Bench

Judgement

C.M. Lodha, J.—The plaintiff respondent was posted as a skilled fitter in Loco Workshop, Ajmer. He was prosecuted in a Criminal Case under Sees. 323 and 324 read with Sections 34, IPC, and was convicted by the First Class Magistrate, Ajmer u/s 324 read with Section 34, IPC. He was sentenced to pay a fine of Rs. 350/-, The appeal filed by him before the learned Sessions Judge was rejected. As a result of a department action taken against him the Works Manager (Loco), Ajmer removed him from service with effect from 5-3-1986 by his order 4-3-1961 The appeal filed by the plaintiff from the order of removal was unsuccessful and consequently he filed the present suit on 17-4-1967 in the Court of Civil Judge, Ajmer praying that the impugned order of removal may be declared illegal and inoperative and a decree for Rs. 2,995 50 be awarded to him on account of pay and allowances. The suit was based on several grounds one of which was that though the order was parsed under Rules 1719(1) of the Discipline and Appeal Rules contained in the Indian Rules Establishment Code Vol. I, but it did not fulfil the requirements as laid down in that section. It is submitted that while imposing the penalty of removal the punishing authority did not take into consideration the ground of conduct, which had led to the plaintiff's conviction in a criminal charge, nor did he take into consideration the circumstances of the case. This objection prevailed with both the lower Courts with the result that in plaintiff's suit stands decreed. A declaration has been

granted in his favour that the order of dismissal is illegal and further that the plaintiff is entitled to get arrears of salary and allowances, as prayed.

2. The impugned order in this case is Ex. A 8 which is exactly the same as in S.B. Civil Regular Second Appeal No 324/1973, Union of India v. Tara Chand, which I have disposed of on February 3, 1975. No useful purpose would be served by repeating the reasons I have given therein for holding that the impugned order is not in accordance with law. It may be mentioned here that other relevant facts of this case are also the same as in Tarachand's case, except that in the present case, in the notice Ex. 6 issued by the punishing authority it is mentioned that the conduct of the plaintiff which had led to his retention in the public service undesirable Learned Counsel for the appellant has urged that even if it is held that Ex. 8 does not take into consideration the conduct of the respondent which led to his conviction, and the circumstances of the case for imposing the penalty of dismissal, the notice Ex. A6 makes up the deficiency and, therefore, the order of removal does not suffer from any infirmity. In this connection, the learned Counsel has argued that it is open to the Disciplinary Authority to add to the punishing order, or otherwise alter it before it is communicated to the party concerned; and, if any deficiency is left at time of passing the order, the same can be made up while communicating the same. In support of his contention, he has relied upon Bachhittar Singh Vs. The State of Punjab, wherein it was held that to make the opinion by the Council of Minister amount to a decision of the Government, it must be communicated to the person concerned, and that it is of the essence that the order has to be communicated to the person who is affected by the order before such a person can be bound by the order. For until the order is communicated to the person affected by it, it would be open to the Council of Minister to consider the matter over and over again, and till its communication the order cannot be regarded as anything more than provisional in character.

3. The facts of the case relied upon by the learned Counsel are completely distinguishable, and the principle enunciated therein has no application to the present case. The facts in the Supreme Court case referred to above, were that the appellant, who was a Qanungo, was dismissed by the Revenue Secretary. He filed an appeal before the State Government. The Revenue Minister after perusing the record wrote on the file that the charges against the appellant were proved; but his dismissal would be too hard, and, therefore, he should be reverted to his original post of Qanunao, and warned that if he does not behave properly in future he would be dealt with severely. On the next day, the State of PEPSU merged in the State of Punjab. The order of the learned Revenue Minister was never communicated officially to the appellant, and the file was put up before the Revenue Minister of Punjab, who noted that the Chief Minister may kindly advise and the latter opined that the appellant's dismissal from service was the correct punishment, and no leniency should be shown to him. This order was communicated to the appellant and the argument advanced before their Lordships was that the order of the Revenue Minister of PEPSU had become final & the Chief Minister of Punjab could not review the order of the Revenue Minister

of PEPSU & set it aside, as that was an order of the State Government and not open to review. Their Lordships were pleased to hold that mere writing something on the file does not amount to an order of the State Govt. Two things are necessary namely, (1) that the order has to be expressed in the name of the Governor, as required by Clause (1) of Article 166, and (2) then it is to be communicated. It was further observed that until such an order is drawn up the State Government cannot be regarded as bound by what was stated in the file. As long as the matter rested with the Revenue Minister, he could well score out his remarks or minutes on the file and write fresh once. It was further held that till this formality is observed the action cannot be regarded as that of the State Government, and that constitutionally speaking, the minister is no more than an advisor and that the Head of the State, the Governor or Rajpramukh is to act with the aid and advice of his Council of Ministers. In the present case, the Disciplinary Authority was competent to pass the final order. It was not in the nature of advice to anybody; and therefore, the rationale of the decision in *Bachhittar Singh Vs. The State of Punjab*, does not apply to the present case.

4 The result of the foregoing discussion is that the notice Ex. 6 cannot make up the deficiency in the Punishing Authority's order dated 3-3-66, and the impugned order of removal is liable to be struck down.

5. Learned Counsel for the appellant, however, urged that the Courts below had committed an error of law in awarding full salary and allowance to the respondent from the date of dismissal of the respondent to the date of the suit. In this connection, he has invited my attention to Rule 1706 (4) of the aforesaid Rules. For the reasons I have given in *Tarachand's* case, and which I do not think necessary to repeat here, it is open to the Disciplinary Authority even after setting aside the order of dismissal by this Court to hold further inquiry against the plaintiff respondent on the allegations on which penalty of dismissal was imposed. In case the Disciplinary Authority chooses to do so, 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 and shall continue to remain under suspension until further orders. In view of this provision, the money decree for arrears of salary from the date of dismissal to the date of the suit cannot be sustained.

6. No other point has been argued on behalf of either party.

7. Accordingly, I partly allow this appeal and set aside the money decree for arrears of salary and allowances passed in favour of the plaintiff-respondent but maintain the decree declaring that the impugned order of dismissal is illegal and inoperative. However, I leave the matter of salary open. If the Disciplinary Authority decides to proceed against the respondent under Rule 1708(4) of the above Rules the respondent may be paid his salary in accordance with that rule. If not, the salary shall be paid as permissible under the Rules. No decree for any definite sum can be passed at this stage. The respondent will get half costs, throughout.

8. Learned Counsel for both the parties pray for certifying the case to be a fit one for appeal u/s 18(2) of the Rajasthan High Court Ordinance, 1949. The prayer is refused.