

State of Uttar Pradesh

Vs

Mohd. Sharif (Dead) Through Lrs.

Civil Appeal No. 1603 of 1970

(V. D. Tulzapurkar, A. N. Sen JJ)

13.01.1982

JUDGMENT

1. There is no substance in this appeal which has been preferred by the State of U.P. against the judgment and decree, dated November 25, 1969 of the High Court Allahabad in Second Appeal No. 2226 of 1969.

2. The plaintiff Mohd. Sharif (since deceased) was working as a Head Constable of the Daksiti guard at P.S. Kakwan, district Kanpur. On January 22, 1955 he was served with a charge-sheet under Section 7 of the Police Act calling upon him to submit his explanation thereto; he submitted the explanation on the following day. After holding the departmental disciplinary enquiry against him the Enquiry Officer submitted his report which was accepted and ultimately he was dismissed from service by an order dated June 3rd, 1955. After departmental appeal and revision to higher authorities failed, the plaintiff filed a suit challenging his dismissal on the ground that the said order was illegal and void as no proper enquiry was held against him and no reasonable opportunity was given to him to defend himself against the charges framed against him and for recovery of arrears of salary. The trial court dismissed the suit. In Civil Appeal No. 478 of 1962 preferred by him the learned Second Additional Civil Judge, Kanpur, reversed the trial Court's findings and decreed his suit holding that the charge-sheet framed against him was vague, that the plaintiff was prejudiced in his defence and was not given a reasonable opportunity to defend himself during the enquiry. The appeal court set aside the dismissal by declaring the same to be illegal and void but the matter was remanded back in respect of the relief pertaining to salary etc. The State preferred a second appeal and the High Court has confirmed the decree passed by the appeal Court and dismissed the second appeal. The State of U.P. has come up in appeal to this Court.

3. After hearing counsel appearing for the State, we are satisfied that both the appeal court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the matter of his defence. Only two aspects need be mentioned in this connection. Admittedly, in the charge-sheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia district, Farrukhabad and hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank, were not mentioned. Not only were those particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiff was obviously prejudiced in the matter of his defence at the enquiry. Secondly, it was not disputed before us that a preliminary enquiry had preceded the disciplinary enquiry and during the preliminary enquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the

disciplinary enquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary enquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position it is difficult to accept the contention urged by the counsel for the appellant that the view taken by the trial court should be accepted by us. We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief that would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased.

4. The appeal is dismissed with costs.

</html