

Brahma Chandra Gupta

Vs

Union of India

Civil Appeal No. 730 of 1978

(D. A. Desai, Ranganath Misra, R. B. Mirsa JJ)

29.11.1983

ORDER

1. This appeal by special leave arises from a judgment of the High Court of Allahabad confirming the decision of the District Judge in appeal reversing the decree passed by the trial court in favour of the appellant.

2. Appellant was working as a permanent Upper Division Clerk in the Defence Accounts Department at the relevant time. It appears that one Nathu Singh was wanted in a dacoity case. On May 14, 1962 around about 4.00 the Investigating Officer received an information that Nathu Singh was present in the premises in possession of the present appellant and this information led to a search of the premises occupied by him. The search and consequent seizure led to the prosecution of the appellant for two distinct offences, one under Section 19(F) of the Indian Arms Act and another under Section 5 of the Indian Explosives Substances Act. Pending the investigation appellant was suspended from service with effect from May 14, 1962, the order having been passed on May 5, 1962. The order of suspension simultaneously provided that appellant would be entitled to draw subsistence allowance equal to leave salary which he would have drawn had he been on leave on half pay together with admissible dearness allowance. Appellant was tried in the Court of the Magistrate, First Class, Shahjahanpur for the offence under Section 19(F) of the Indian Arms Act and was convicted and sentenced to suffer imprisonment for a period of one and half years as per the judgment dated September 15, 1964. The conviction led to the order dismissing the appellant from the service effective from October 31, 1964. Appellant preferred an appeal against his conviction and sentence. The appeal was allowed as per the judgment dated October 31, 1964 and appellant was held not guilty of the offence with which he was charged and he was acquitted. On being acquitted the appellant was reinstatement in service effective from September 3, 1965. While ordering reinstatement in service the concerned authority was required to decide how the period of suspension should be treated. The question was to be decided in light of the provision contained in Article 193 of the Civil Services Regulation. The concerned authority divided the period of suspension of the appellant into two parts, the first being from May 14, 1962 to October 31, 1964 when appellant was acquitted and the second being from October 31, 1964 to September 3, 1965 when he was reinstated in service. With regard to the latter part, the concerned authority directed the payment of full salary after giving credit for the suspension allowance that was drawn by him and there is no dispute between the parties about it. The question then remained with regard to the period from May 14, 1962 to October 31, 1964. For this period, the concerned authority was of the opinion that he appellant could not be said to be fully exonerated and, therefore, a direction was given that the appellant should be given three-fourth of his salary for the period of suspension. The consequence was that for the aforementioned period one-fourth of his salary was not paid to the appellant. The appellant filed Suit No. 210 of 1968 in the Court of the Section Civil Judge, Kanpur

against the Union of India contending that as he was never hauled up for departmental enquiry and he was suspended only on the ground that a criminal charge was laid against him and pending the trial of the offence, and therefore Article 193 would not be attracted and accordingly it was not open to the authority concerned to deny him full salary for the period of suspension. Alternatively it was contended that in the circumstances of the case he was deemed to have been fully exonerated and therefore also the order withholding one-fourth of the salary was not sustainable.

3. After all this elaborate pleadings and fifteen years of litigation the claim made in the suit was ridiculously low in the amount of Rs. 3595.07 P.

4. The learned trial Judge accepted the case of the plaintiff-appellant and decreed the suit with costs. Surprisingly, though not unusual these days, for this paltry sum the Union of India carried the matter in appeal. We find it difficult to appreciate this litigious attitude, against a clerk in the lower echelon of service more so when no principle was involved. It may be that the Union of India wanted the Court to consider the true ambit and scope of Article 193 and therefore, the appeal may have been preferred. The learned District Judge was of the opinion that in the circumstances of the case the appellant could not be said to be fully exonerated and accordingly reversed the judgment and decree of the trial court and dismissed the suit. After an unsuccessful appeal to the High Court, the appellant has filed this appeal by special leave petition.

5. The appellant was suspended in 1962 and we are now in 1983 when the appellant prays for a decree for Rs. 3595.07 P. During the passage of the time the purchasing power of this amount must have been considerably reduced by now.

6. Mr. R. K. Garg, learned counsel for the appellant wanted us to examine the scope and ambit of Article 193 and Mr. Gujral learned counsel for the Union of India was equally keen on the other side to do the same thing. We steer clear of both. The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of socio-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because three-fourth of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate court as well of the High Court and restore the one of trial court with this modification that the amount decreed shall be paid with 9 per cent interest p.a. from the date of suit till realisation with costs throughout.

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