

Hussaini

Vs

Hon. Chief Justice of High Court of Judicature at Allahabad and Others

Civil Appeal No. 4041 of 1984

24.09.1984

(D. A. Desai, Ranganath Misra JJ)

ORDER

1. Special leave granted.
2. We heard Mrs J. S. Bali, learned counsel for the appellant and Mrs Shobha Dikshit, learned counsel for the respondents. Appellant who was serving as a safai Jamadar was dismissed from the service by the Registrar of the High Court of Judicature at Allahabad. His writ petition having been dismissed, he has filed this appeal, by special leave.
3. It appears that appellant joined service as a sweeper in the High Court on April 25, 1958. By an order dated April 28, 1978 he was placed under suspension and therefore he was dismissed from service on November 30, 1978. At the time of dismissal he had rendered service for over 20 years. As appellant was dismissed from service he has been denied retiral benefits such as pension, provident fund and gratuity to which he would be entitled if he is compulsorily retired from service as and by way of the punishment. We suggested to Mrs. Shobha Dikshit, learned counsel for the respondents to enquire whether any retiral or terminal benefit can be given to the appellant on the basis that he has rendered service for 20 years. The response is positive. However, Mrs Shobha Dikshit, learned counsel for the respondents to enquire whether any retiral or terminal benefit can be given to the appellant on the basis that the he has rendered service for 20 years. The response is positive. However, Mrs Shobha Dikshit, learned counsel for the respondents pointed out that in law appellant would not be entitled to any retirement benefit in view of the fact that he is dismissed from the service by way of the punishment.
4. Appellant was a low paid safai Jamadar. We do not propose to minimise the gravity of his misconduct for which the High Court though fit to the impose maximum punishment of dismissal from service simultaneously denying him all retiral benefits. Without the in any manner detracting from the view taken by the High Court we are of the opinion that there is some scope for the taking a little lenient view the matter of punishment awarded to the appellant. The lenience if at all would render the post-dismissal life of the low paid employee a little tolerable and keep him away from the penury and destitution.
5. How much is the cushion or the elbow room in the matter of punishment ? Appellant cannot be reinstated in service. He must remain out of his last employment. Therefore the only course open to us is to convert the order of punishment into one of compulsory retirement so that while denying service to the appellant he will be ensured retrial benefits.
6. We accordingly allow the appeal, convert the order of dismissal into one of compulsory

retirement. Consequently the respondent shall pay Rs. 150 p.m. towards pension to the appellant from November 30, 1978. The amount of pension is worked out by the respondents on a suggestion made by the Court. The arrears of pension shall be paid within the two months from today and the pension payment order shall be issued within the same time for drawing the pension regularly from month to month. Provident fund and gratuity shall be paid if admissible to the appellant on the same computation. The appeal is allowed to that extent only. There will be no order as to costs.

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