

Kartar Singh Gerwal

Vs

State of Punjab

Civil Appeal No. 862 of 1978

(T. K. Thommen, R. M. Sahai JJ)

26.03.1991

JUDGEMENT

R. M. SAHAI, J.:-

1. This appeal is directed against judgment of the Punjab & Haryana High Court. The appellant, since dead, was working as Chief Medical Officer, Bhatinda when he was suspended, charge-sheeted and ultimately dismissed from service after enquiry. The order of dismissal was challenged in Civil Court. The trial Court decreed the suit. The order was affirmed in appeal. But the High Court in second appeal set aside the order of the two Courts below and dismissed the suit.

2. The claim of the appellant that he was not afforded reasonable opportunity was not accepted either by the trial Court or the First Appellate Court. But the suit was decreed on construction of Rule 22 of Punjab Civil Services (Punishment) and Appeals Rules, 1970. It was held that the appellant having retired on 31 st August 1972 and the order of dismissal dated 28th August 1972 having been served by registered post on 7th September 1972 it became operative from that date only. But since the appellant had retired prior to the date of communication the order was ineffective as the appellant was not in service any more. The High Court reversed the order and held that, the rule was directory and not mandatory. Further the order having been published in Govt. Gazette extraordinary on 28th August, 1972 and broadcast from AIR Bhatinda on same day, and also published in Tribune it could not be said that it was not communicated under Rule 22.

3. The judgment of the High Court and the order of dismissal were assailed on the ground that. the High Court committed an error of law in construing the rule and holding that it was directory. It was further urged that the enquiry officer did not afford reasonable opportunity and relied even on material which was neither supplied nor was the appellant apprised of it. The learned counsel challenged quantum of punishment as well. It was urged that none out of the six charges which were held to be proved, on scanty material, made out misconduct which justified dismissal. The learned counsel urged that the appellant's record was unblemished for 29 years. In the circumstances the disciplinary authority acted arbitrarily in dismissing the appellant from service. The ends of justice, according to him, would have been adequately met by compulsorily retiring him which was one of the punishments under the rules which could be imposed.

4. Having given our anxious consideration we do not consider it necessary to express any opinion on Rule 22 as the order admittedly was published in Gazette extraordinary on 20th August, 1972 and it was broadcast from the radio as well. Nor do we consider it necessary to decide if the inquiry was vitiated because of non-supply of the material relied by inquiry officer. Normally this Court does not interfere with the order of disciplinary authority on punishment. But what appears from the

record and which could not be disputed by the learned counsel for the State was the averment that appellant's service for 29 years was unblemished was not controverted. Further when inquiry was completed and the papers were sent to Public Service Commission for consultation it did not agree with proposal for dismissal. But the Govt. did not accept it and got further probe made and dismissed the appellant three days prior to his retirement. Even the evidence in support of the two charges which led to appellant's dismissal was not very strong. We have stated so not with a view to reappraise the evidence but to judge whether the circumstances justified the severest punishment. Added to this is the circumstances that the appellant died on 1983 and his widow is said to be in bad health. In our opinion, in the circumstances of this case, the ends of justice would have been met by compulsorily retiring the appellant.

5. In the result the order of the High Court is maintained except to the extent that the order of dismissal dated 28th August 1972 shall stand substituted with an order of compulsory retirement. The State of Punjab shall within a period of six months of the communication of this order get the pension calculated and pay the same. As. an interim measure a sum of Rs. 20,000/- shall be paid to the widow to be adjusted against pension within a period of one month of the same date. Till final calculation of pension and subject to adjustment the widow shall be paid Rs. 300/- p.m. commencing from 1st April 1991.

6. Parties shall bear their own costs.

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