

Awadh Kishore Tiwari (since deceased) by L.Rs.

Vs

Damodar Valley Corporation, Calcutta and another

Civil Appeal No. 821 of 1992

(L. M. Sharma, B. P. Jeevan Reddy JJ)

10.02.1992

JUDGMENT

1. Special leave is granted. The appeal arises out of a suit filed by Awadh Kishore Tiwari, plaintiff, an employee of the defendant-Corporation who has died during the pendency of the litigation and has been substituted by his legal representatives, the present appellants. The plaintiff submitted a bill under the Leave Travel Concession Scheme claiming to have gone to Kashmir with his family, and another bill being a medical bill, and received the money under both the bills. According to the defence case, it was discovered that there was some discrepancy between the two bills on the basis of which a show cause notice was issued asking the plaintiff to explain as to why he should not be held to be guilty of making false claim. The plaintiff denied the charges. However, without holding an inquiry in accordance with the Rules of the respondent-Corporation it was held that the charge was well established. Accordingly an order stopping three increments of pay with cumulative effect was passed and he was asked to refund the amount drawn under the Leave Travel Concession bill. This order was challenged in the present suit, which was decreed by the trial court. An appeal filed by the State was allowed by the Additional District Judge, Dhanbad and the suit was dismissed. The legal representatives of the deceased plaintiff filed a second appeal before the High Court which was dismissed summarily without assigning reasons.

2. Mr. P. P. Rao, the learned counsel for the appellants, has contended that the learned Additional District Judge erroneously assumed in paragraph 9 of his judgment that the increments of the plaintiff were not stopped with cumulative effect, and on that basis held that Regulation 98(1) requiring the holding of an inquiry was not applicable. Mr. Mukherjee, appearing on behalf of the respondent State, did not dispute the fact that by the order impugned in the suit the plaintiff's three increments had been stopped with cumulative effect. If that is so then Regulation 98(1) is clearly attracted. Admittedly no inquiry was held where the plaintiff could have led evidence in support of his explanation mentioned in the show cause. It follows, therefore, that the trial court was right in decreeing the suit and the first appellate court as well as the High Court were misled, by the assumption of wrong facts, in dismissing the suit. Consequently their judgments are set aside.

3. We have considered all the relevant circumstances in the case as to whether it should be left to the State to decide the advisability of commencing an inquiry even now, and our conclusion is in the negative specially as the plaintiff is now dead, and he cannot be held to be responsible for the omission to hold the inquiry. Accordingly we direct the Corporation to pay to the appellants the amount covered by Leave Travel Concession bill which the plaintiff had to refund, within a period of four months. The appellants shall not be entitled to claim any interest thereupon, but if the

amount is not paid within the period indicated, they will be entitled to interest at the rate of 12% per annum for the future period commencing on 9th June, 1992. The appeal is allowed in part as above but the parties shall bear their own costs throughout. Appeal partly allowed.

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