

State of Punjab

Vs

Darshan Singh

Civil Appeal No. 3776 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

15.02.1996

ORDER

1. Leave granted.

2. On 11-1-1996, since the respondent had not appeared, the matter was heard ex parte. However, the appellant was directed to produce a copy of the order dismissing the respondent from service. That order has now been placed on record. The respondent was removed from service by the proceedings of the General Manager of the appellant on 26-5-1989. The respondent filed Suit No. 450 of 1991 questioning it for a declaration that the order of removal was illegal. The trial court proceeded on the finding that the order of removal is based upon the previous conduct of the respondent which was not put in issue before he was removed from service. Therefore, the order is vitiated by error of law. That was upheld by the appellate court. The second appeal was dismissed summarily. Thus this appeal is by special leave.

3. The order of removal clearly indicates that the charge was framed on the basis that he committed misconduct in collecting fares from the passengers but had not issued the tickets to them. Evidence was adduced after giving reasonable opportunity and it was found that the defence of the respondent was not proved. As a consequence, it was held in paragraph 5 that "in view of foregoing discussions, the charge of committing fraud to the tune of Rs 7.50 p. against Shri Darshan Singh, C. is established". In view of that finding, the respondent was removed from service. While communicating the order, they have indicated the previous punishments he had to his credit. That does not mean that they have taken into account those previous punishments imposed on him. The courts below, therefore, have wrongly proceeded on the assumption that the disciplinary authority had taken into consideration the previous conduct without any charge being framed in that behalf or that no opportunity was given to the respondent in this behalf.

4. The appeal is accordingly allowed. The suit stands dismissed. No costs.