

State of Punjab and Others

Vs

Krishan Niwas

Civil Appeal No. 2222 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

14.03.1997

ORDER

1. Leave granted. We have heard counsel on both sides.
2. This appeal, by special leave, arises from the judgment of the Punjab & Haryana High Court made on 7-3-1996 in Second Appeal No. 2662 of 1995.
3. The admitted facts are that the respondent was charged for an offence under Section 302 IPC. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 IPC was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for years. After undergoing imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated 1-3-1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back wages. The respondent accepted it and joined duty on 5-6-1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The trial court dismissed the suit. On appeal, the Additional District Judge reversed the judgment of the trial court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.
4. The learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on 5-6-1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil court would not have gone into the merits and decided the matter against the appellants.
5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate court stand set aside and that of the trial court stands confirmed. No costs.