

SUPREME COURT OF INDIA

State of Punjab

Vs.

K.K. Sharma

(G.B. Pattanaik and Doraiswamy Raju JJ.)

08.11.2001

ORDER

1. This appeal is directed against the judgment of the Punjab and Haryana High Court in a Second Appeal. By the impugned judgment, the judgment of the First Appellate Court was reversed and that of the Trial Court was restored. The suit in question had been tiled assailing an order of dismissal passed by the employer in a disciplinary proceedings after holding an enquiry, and on coming to a conclusion that the charges against the delinquent have been established. The Trial Judge came to the conclusion that the enquiry is vitiated on account of non-furnishing the report of the enquiry to the delinquent. He also came to the conclusion that there has been a denial of opportunity to the delinquent inasmuch as the subsistence allowance had not been paid. On appeal by the State Government, both the conclusions were set aside and the suit was dismissed. On a Second Appeal being carried by the delinquent, the High Court relying upon an unamended rule of the service rule came to hold that non-furnishing of report vitiates the entire proceeding, notwithstanding the judgment of this Court in Ramzan's case holding that the judgment would apply prospectively. Obviously, the High Court committed error in relying upon the aforesaid unamended rule, and Mr. Mishra appearing for the respondent fairly concedes to the aforesaid position. The High Court, however, on the second ground came to hold that non-payment of the subsistence allowance, in the case in hand, would tantamount to denial of a reasonable opportunity to the delinquent to defend himself in the enquiry proceedings. Even if the conclusion of the High Court on the question of non-supply of enquiry report vitiating the proceedings cannot be sustained inasmuch as the rule in question, that was relied upon, is an unamended rule, but even on the second conclusion that in the case in hand and in the facts and circumstances of the case, non-payment of subsistence allowance would tantamount to denial of a reasonable opportunity, we see no infirmity with the ultimate judgment of the High Court requiring our interference under Article 136 of the Constitution. Necessarily, therefore the suit has to be decreed. But having regard to the facts and circumstances of the case, the delinquent respondent won't be entitled to any wages from the date of the suit till the judgment of the High Court, and would only be entitled to the wages from the date of the judgment of the High Court.

2. This appeal is dismissed with the aforesaid modification.