

Punni Lal Vs. G.O.C.-in-chief, Central Command and ors.

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Court : Allahabad

Decided On : Apr-12-1968

Reported in : (1970)ILLJ694All

Judge : Rajeshwari Prasad, J.

Appellant : Punni Lal

Respondent : G.O.C.-in-chief, Central Command and ors.

Judgement :

Rajeshwari Prasad, J.

1. Punni Lal has filed this petition under Article 226 of the Constitution of India. He was a peon in the Cantonment Board, Allahabad, and was getting a salary of Rs. 55 per month for the last twenty-four years as alleged by him. From the office of the Cantonment Board, two typewriters were stolen in the night between 10 and 11 February 1960.

2. The Executive Officer of the Board lodged a first Information report with the police. On the following morning, the Executive Officer sent for the petitioner at 8 a.m. and maltreated him. Thereafter, he handed over the petitioner to the police without any reasonable cause. He was taken in police custody and was given severe beating and subjected to torture. He was released at 10 p.m. and he got his injuries medically examined. After four or five days, he filed a complaint against

the Executive Officer as well as the local police under Sections 342, 323, 504 and 109 of the Indian Penal Code. The Judicial Officer, Karchhana, Allahabad, after making enquiry under Section 202 of the Code of Criminal Procedure dismissed the complaint on the ground that no previous sanction for prosecuting the Executive Officer had been obtained as required by Section 197 of the Code of Criminal Procedure. A petition in revision against that order was also dismissed by the Sessions Judge.

3. According to the petitioner, no sanction was necessary for the prosecution of the Executive Officer on the facts of the case as the act of the Executive Officer was not an official one.

4. After the dismissal of his complaint, the petitioner was put under suspension by the Executive Officer by his order dated 13 October 1960 and he was served with a chargesheet on 10 October 1960 under Rule 12 of the Cantonment Fund Servants' Rules, 1937. The first charge was to the effect that the petitioner was guilty of misconduct for filing complaint against a superior in Court without sanction of the competent authority. The second charge was that the petitioner was a confirmed bad character and history-sheeter having contacts with seasoned criminals. The petitioner submitted his explanation dated 17 October 1960 to the Executive Officer. He denied the charges made against him. He further requested that an open enquiry be made and several witnesses named by him be examined on his behalf. He denied having stolen the typewriters and attributed the conduct of the Executive Officer to his displeasure against the petitioner on the question of payment of arrears of salary. He also wanted to be heard in person. He further requested that the enquiry be conducted by some one other than the Executive Officer. He was, however, not heard personally by the Executive Officer. He was not allowed to produce his witnesses. No impartial or independent enquiry was made. The enquiry was made by the Executive Officer himself and ultimately, the petitioner was dismissed under Rule 11 of the Cantonment Fund Servants' Rules, 1937, from service with immediate effect by the order dated 28 October 1960.

5. The Executive Officer considered only the first charge and abandoned the second charge. The order of dismissal was passed only on the basis of the first

charges.

6. The petitioner made an appeal to the Cantonment Board, Allahabad, but the Board dismissed that appeal by its resolution dated 10 March 1961. A second appeal was likewise dismissed by the G.O.C.-in-charge, Central Command, Lucknow, by his order dated 2 July 1963.

7. The petition proceeded to allege that the order of the Executive Officer was not only illegal but was also mala fide.

8. On such facts, the petitioner filed the instance petition and prayed that the order of dismissal passed by the Executive Officer dated 26 October 1960, resolution No. 18 of the Cantonment Board, Allahabad, dated 10 March 1961, and the order of G. O. C.-in-charge, Central Command, Lucknow, dated 2 July 1963 be set aside and quashed. He has further prayed that the authorities be commanded to reinstate the petitioner and pay him his salary including all allowances, etc, since the order of suspension dated 13 October 1960 passed by the Executive Officer till the date of reinstatement.

9. The petition has been contested by the respondents on various grounds given in the counter-affidavit filed on their behalf.

10. The first submission made on behalf of the petitioner is that the petitioner was drawing a salary of more than Rs. 50 per month. Consequently, the Executive Officer did not have the authority to dismiss him from service. Reliance has been placed on Rule 11 of the Cantonment Fund Servants' Rules, 1937. This contention on behalf of the petitioner has been met by the submission that the salary of the petitioner was less than Rs. 50 per month. Consequently, the Executive Officer was competent to order his dismissal. It is not in controversy that the pay of the petitioner is less than Rs. 50 but what has been contended is that the dearness allowance granted to him should be deemed to be a part of his salary. Consequently, his salary came to be more than Rs. 60 per month. The question, therefore that arose in the case is whether the dearness allowance should be treated as part of the salary or not. The word 'salary' has been defined in Rule 2, Clause (c), of the abovenoted rules of 1937. ' Salary ' includes all fixed monthly

allowances by way of pay or personal allowances paid from cantonment funds, but does not include allowances granted to meet specific expenditure such as travelling, house, conveyance or house rent allowances, whether daily, monthly or yearly. Opportunity was given by me to the learned Counsel appearing for the respondent to furnish facts and materials which could assist the Court in deciding the question whether dearness allowance is to be treated as a part of the salary or not. A supplementary counter affidavit has been filed and it has been pointed out that when the cost of living went up, the Government considered the question whether its employees be given a dearness allowance over and above their pay to ease their circumstances. Dearness allowances were also sanctioned to certain cantonment servants. It has then been said in Para. 3 of the supplementary counter-affidavit that it is the basic pay alone of the cantonment servants which is taken into account for the purposes of determining the provident fund amount and certain other allowances. Dearness allowance is not taken into consideration for determining the provident funds, bonus and other allowances payable to a cantonment fund servant as it does not form part of his pay.

11. The question is whether dearness allowance can be said to be 'fixed monthly allowance by way of pay' or not. It has been further alleged in that supplementary counter-affidavit that the National Industrial Tribunal by its award dated 2 February 1960 decided that 60 per cent of the dearness allowance of all the employees of the cantonment fund servants should merge in the pay. On the averments made in that supplementary counter-affidavit, it must be held that dearness allowance is not actual salary within the meaning of the words as defined by Rule 2(c) of the Cantonment Fund Servants' Rules. In view, however, of the definition of the word 'salary' it is clear that salary does not consist of only the amount paid as salary, but it also includes monthly allowances by way of pay. It is true that dearness allowance is not actual salary but there is no reason, why, it cannot be treated as 'fixed monthly allowance by way of pay' within the meaning of that definition. Dearness allowance is certainly 'fixed monthly allowance' paid along with the payment of the pay itself. No doubt allowances granted to meet specific expenditure such as travelling, house, conveyance or house-rent allowances cannot be included in the expression 'salary' but to my mind dearness allowance cannot be said to be an allowance to meet specific expenditure of the nature

described in Rule (2)(c) of the Cantonment Fund Servants' Rules. I am, therefore, of the opinion that dearness allowance which did not merge in salary, though not actual salary, is certainly 'a fixed monthly allowance by way of pay.' Half of the dearness allowance has concededly merged into salary according to the averments made in the supplementary counter-affidavit and that half would undoubtedly be deemed to be salary. The remaining half of the dearness allowance as pointed out must be treated as fixed monthly allowance by way of pay and should be deemed to be included in the expression 'salary' within the meaning of the aforesaid rules. It is not in dispute that if the whole of the dearness allowances is either salary or is to be deemed to be included in the expression 'salary' the monthly payment to the petitioner would come to more than Rs. 60. It has farther not been urged before me that the Executive Officer of the Board had power to direct dismissal of a servant who was in receipt of a monthly salary exceeding Rs. 60. This being so, the order of dismissal of the petitioner passed by the Executive Officer of the cantonment is not valid. as the order is liable to be set aside on this ground alone, it is not necessary nor proper for me, to enter into the correctness of the other grounds of attack, relied upon by the petitioner. The order proposed to be passed by me, however, does not affect the power of the Cantonment Board itself, to take lawful steps and measures against the petitioner.

12. The order of the Executive Officer, Cantonment Board, Allahabad, dated 28 October 1960 dismissing the petitioner from service and resolution No. 18 of the Cantonment Board, Allahabad, dated 10 March 1981 and also the order of G.O.C.-in-charge, Central Command, Lucknow, dated 2 July 1963 are set aside and quashed. The petitioner will further be entitled to be reinstated and to receive payment of his salary and allowances to which he may be entitled to under the relevant rules. The respondents will not refuse to reinstate the petitioner and pay him such dues as he may be entitled to under the rules, on the basis of the order of dismissal which has been quashed by me.

13. The writ petition is allowed with costs.