

Avdesh Chander Vs. State and Others

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Court : Rajasthan

Decided On : Jan-16-2001

Reported in : 2001(2)WLC208; 2001(2)WLN342

Judge : B.J. Shethna and; H.R. Panwar, JJ.

Appeal No. : D.B. Civil Special Appeal (Writ) No. 991 of 1998

Appellant : Avdesh Chander

Respondent : State and Others

Advocate for Def. : Ashok Chhangani, Adv.

Advocate for Pet/Ap. : H.S. Sidhu, Adv.

Judgement :

ORDER

Shethna, J.

(1). The appellant is the original petitioner. He was appointed as Constable on 28.12.65 and later on promoted to the post of Head Constable on 30.6.78. He was given further promotion on the post of Assistant Sub-Inspector (ASI) in November, 1997. On completion of 18 years service, he was given Selection Pay Scale by an order dated 25.1.92 by the Superintendent of Police, Sri Ganganagar by his order dated 26.6.92. He was given Selection Pay Scale after completion of 27 years

service as per order dated 25.1.92 by order dated 26.5.93 (Annex.2) passed by the District Superintendent of Police, Sri Ganganagar.

(2). On 23.7.92 Inspector General of Police (Head Quarter, Rajasthan, Jaipur) passed order to the effect that if an employee is awarded 'censure' then his service cannot be treated as unsatisfactory and such employees are entitled for the Selection Pay-scale (Annex.3). On 24.8.95, another order was passed by IGP Rajasthan, Jaipur, to the effect that the employee who have been awarded penalty of 'censur' after 24.8.95 would not be entitled for Selection Scale (Annex.4). In pursuance of that order the District Superintendent of Police passed order dated 30.7.98 reducing the Pay Scale of the petitioner filed (Annex. 5), therefore, the petitioner filed S.B.C. Writ Petition No. 2639/98 before this Court praying that the impugned order dated 30.7.97 (Annex.-5), be quashed and set aside and the respondents be directed not to recover the amount which was already paid to the petitioner in pursuance of the earlier order dated 26.5,93 (Annex.2),

(3). When the writ petition was placed for 'Admission' before the learned Single Judge on 11.8.99, the learned Single Judge ordered to issue notice only on the point of recovery of amount paid to the petitioner, with the observation that the matter shall be disposed of on the next date of hearing, till then it was ordered that no recovery of the amount shall be made from the petitioner in pursuance of the order (Annex. 5) dated 30.7.98, though, the petitioner has challenged the impugned order at Annex. 5 itself before this Court. The learned Single Judge ordered to issue notice on a limited point regarding recovery of amount already paid to the petitioner. According to Mr. H.S. Sidhu, it amounts to dismissal of the writ petition on the rest of the- points, if he does not challenge the same then he would be debarred from raising this contention in future as and when writ petition was finally decided by the learned Single Judge, therefore, the Special Appeal is filed.

(4). Mr. Ashok Chhangani, learned counsel for the Respondents stated at the bar that the respondents have not yet filed reply- affidavit and after filing of the reply- affidavit, the appellant petitioner is always free and at liberty to raise the point and all other points raised in the writ petition, after obtaining permission from the

learned Single Judge.

(5). Against order of issuing notice, ordinarily this Court does not interfere in Special Appeal but on reading the order passed by the learned Single Judge as a whole, we find that the learned Single Judge before deciding the writ petition finally, has already closed the doors of the appellant petitioner to argue other contentions raised before him. In case of Children Film Society of India vs. Sridhar Sharma (1), the Hon'ble Supreme Court has made it very clear and it was held that if no appeal was preferred against such type of order then it would not be open to challenge.

(6). In view of the above discussions, we accept this Special Appeal and request the learned Single Judge to permit the appellant petitioner to raise all points and argue all other points including the legality and propriety of orders passed at Annex.4 and 5 passed by the I.G.P. and District Superintendent of Police respectfully and decide the same in accordance with law.

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