

PETITIONER:
U.P. STATE ROAD TRANSPORT CORPORATION

Vs.

RESPONDENT:
MUNIRUDDIN

DATE OF JUDGMENT 17/08/1990

BENCH:
KANIA, M.H.
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KANIA, M.H.
REDDY, K. JAYACHANDRA (J)

CITATION:
1990 SCR (3) 777 1990 SCC (4) 464
JT 1990 (3) 494 1990 SCALE (2) 250

ACT:

Service Law: Disciplinary Enquiry--Non-supply of carbon copies of important documents--Whether prejudice caused to the employee--High Court setting aside concurrent findings of courts below--Whether justified--Lump sum compensation towards back wages awarded instead of driving parties to go through indefinite execution proceedings--Relief under Section 89 of the Income Tax Act, 1961 for spreading to be given.

HEADNOTE:

The respondent, a bus-conductor in the appellant-State Road Transport Corporation, was dismissed on the charge that he had erased the way-bills and resold some already sold tickets. He filed a suit challenging the dismissal order on the ground that carbon copies of certain important documents were not made available to him during the enquiry and this had caused serious prejudice to him. The trial court dismissed the suit and the first appellate court also dismissed his appeal. However, the High Court allowed his second appeal, and held that the important documents had been purposely withheld, which had resulted prejudice to the employee.

The appellant-Corporation filed a Special Leave Petition before this Court, contending that the High Court had grossly erred in interfering in second appeal with the concurrent findings, and that the failure to produce the carbon copies of some of the documents did not cause any prejudice and, at any rate, it was a question of fact.

Disposing of the appeal, by special leave, this Court,
HELD: 1. The High Court has not committed any error which warrants interference. 1780E]

The respondent's plea has been that from the carbon copies he would have shown that he could not have carried on the erasures or made false entries and, therefore; non-supply of these carbon copies had caused great prejudice to him. However, the trial court and the first appellate court held that no prejudice was caused since he was

778

shown the originals. The High Court no doubt has considered this aspect in detail and in doing so referred to the contents of various documents. From this alone it cannot be

said that the High Court has not kept in view the scope of second appeal. [779G-H; 780A-B]

Since the employee has been throughout pleading that he did not make the erasures or any other false entry, it naturally became necessary to see whether they were also found in carbon copies. Therefore, the High Court considered the various figures and entries in the originals in which such erasures were alleged to have been made by the employee and eventually observed that the entire enquiry was based on some of these documents, and if a carbon copy of the documents had been shown, the authority may well have been convinced that the charge levelled against him was not correct, and that, therefore, the non-supply of these documents had caused prejudice. [780 D-E]

2. The litigation is going on for the last 25 years and the respondent has already reached the age of superannuation. Hence the parties need not be driven to go through the indefinite execution proceedings again for backwages and allowances and ends of justice require that a lump sum compensation should be granted. Accordingly, a lump sum amount of Rs.35,000 is awarded and the amount should be paid to the respondent without deducting the income tax. The respondent may make an application under Section 89 of the Income Tax Act, 1961 for spreading over this amount, and the concerned Income Tax Officers should also give the necessary relief without any further enquiry. [780F; 781C-E]

Sohan Singh v. Union of India & Anr., [1984] 1 SCC 162 and Sundaram Motors Pvt. Ltd. v. Ameerjan & Ant., [1985] 1 SCC 118, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3 169 of 1981.

From the Judgment and Order dated 7.5.1981 of the Allahabad High Court in Second Appeal No. 1018 of 1974.

Jagan Mohan Rao and R. Ramachandran (N.P.) for the Appellant.

Subodh Markandeya, Mrs. Chitra Markandeya, W.A. Nomani and G.S. Giri for the Respondent.

779

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. This is a case where an order of dismissal passed in a departmental enquiry was challenged in civil court and ultimately has found its way to this Court after a long litigation for over 16 years. The respondent was a bus-conductor in U.P. State Road Transport Corporation (Corporation' for short). A trap was laid against him and a disciplinary enquiry was initiated and dismissal order was passed on 23rd March, 1965. He filed a civil suit questioning the same. One of the main plea taken by the respondent was that certain important documents were not made available to him during the enquiry and this caused serious prejudice to him. The trial court dismissed the suit and an appeal preferred by him was also dismissed by the appellate court. Relentless as he was, he carried the matter to the High Court by way of second appeal and his plea was accepted by the High Court and the second appeal was allowed. Aggrieved by the said judgment, the Corporation has approached this Court.

On behalf of the Corporation it is contended that the High Court has grossly erred in interfering in a second appeal with the concurrent findings and that the plea of the respondent that relevant documents were not supplied to him

during the enquiry has no substance.

One of the main issues framed before the trial court was whether all the way-bills, carbon copies of the tickets issued on the said dates and carbon copy of checking report were not shown to the delinquent employee by the investigating officer and if so what would be its effect? The charge against the respondent was that he erased the waybills and resold some already sold tickets. During the enquiry the delinquent employee was permitted to inspect the documents but he intended to inspect the carbon copies and made a request by way of a letter. However, the carbon copies of the way-bills dated 7th, 8th and 10th January, 1963 which are the relevant dates and carbon copies of the checking report were not shown to him. The plea of the delinquent employee has been that from the carbon copies he would have shown that he could not have carried on such erasure or made false entries and non-supply of them had caused great prejudice. As already mentioned, the trial court as well as the first appellate court did not accept this plea and held that no prejudice was caused inasmuch as he was shown the originals and also on the ground that he did not later insisted on those carbon copies being shown to him. The High Court, however, in an elaborate judgment referred to the various documents

780

and it ultimately reached the conclusion that the important documents have been purposely withheld which resulted in prejudice to the employee. In this appeal, the learned counsel for the Corporation contended that where failure to produce the carbon copies of some of the documents did not cause any prejudice and that at any rate it is a question of fact, the High Court erred in interfering in the second appeal. To satisfy ourselves we wanted to peruse the judgments of the trial court as well as of the first appellate court but the Corporation has not placed a copy of the appellate court judgment before us. We have perused the trial court judgment and we find at more than one place that the learned District Munsif has observed that the employee could have insisted on production of these documents. The High Court no doubt has considered this aspect in detail and in doing so has referred to the contents of the various documents. From this alone it cannot be said that the High Court has not kept in view the scope of second appeal. Since the employee has been throughout pleading that he did not make the erasures or any other false entry, it naturally became necessary to see whether they were also found in carbon copies. From this point of view the High Court considered the various figures and entries in the originals in which such erasures and entries are alleged to have been made by the employee and eventually observed that the entire enquiry was based on some of these documents and if a carbon copy of the way-bills had been shown, the authority may well have been convinced that the charge levelled against him was not correct, and that, therefore the non-supply of these documents has caused prejudice. Having examined the findings arrived at by the High Court, we are unable to say that the High Court has committed any error which warrants interference under Article 136 of the Constitution.

The High Court decreed the suit for pendente-lite and future pay and allowances and this was passed on 7th May, 1981. It can therefore be seen that for the last 25 years this litigation went on i.e. from the date of dismissal till today. Admittedly the respondent has already reached the age of superannuation some years ago. During these years the respondent must have sought some employment or the other and

the learned counsel also could not seriously dispute the same. Under these circumstances the question is whether again the parties should be driven to go through the indefinite execution proceedings. On the question of granting lump sum amount towards the backwages and allowances till the date of his retirement we have also heard both sides. Under somewhat similar circumstances this Court in *Sohan Singh v. Union of India and Another*, [1984] 1 SCC 162 granted lump sum amount instead of driving the parties to go to the executing court for further relief. That was a case where the service of an airman in the Air Force was not extended for a period of six years as per the regulation and the matter ultimately came up before this Court. Taking into consideration the facts and circumstances this Court held that the employee should be compensated by payment of a lump sum amount in lieu of the benefits to which he would have been otherwise entitled if he had continued in service for the extended period of six years. Without going into the merits of the actual claim this Court awarded a sum of Rs.35,000 by way of compensation.

In the instant case also we are of the view that ends of justice require that such a relief should be granted. Taking into consideration all these aspects including that the respondent would have been entitled for some retirement benefit, we award Rs.35,000 and direct the U.P. State Road Transport Corporation, the appellant herein, to pay this amount to the respondent within two months from today. Since the amount would be received in lump sum by the respondent, it may attract the levy of income tax. But since the amount represents the salary and allowances over the last so many years the respondent may make an application under Section 89 of the Income Tax Act for spreading over this lump sum amount. We may also point out that in similar circumstances, this Court, in *Sundaram Motors Pvt. Ltd. v. Ameerjan and Another*, [1985] 1 SCC 118 where the compensation by way of lump sum amount was awarded, observed that the same should be spread over and gave a direction to the concerned Income Tax Officer to give immediate relief under Section 89 without further enquiry.

Accordingly We direct the Corporation to pay the lump sum amount of Rs.35,000 without deducting income tax. Since the respondent is entitled for relief under Section 89 of the Income Tax Act, he shall make an application to the concerned Income Tax Officer who shall give the necessary relief without any further enquiry. The appeal is disposed of accordingly. In the circumstances of the case there will be no order as to costs.

N.P.V.
of.
782

Appeal disposed