

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 421 OF 2001@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Notified Area Committee ...APPELLANT (S)

VERSUS

Chhatrapal Singh ...RESPONDENT(S)

Date : 30/01/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. M.P. Verma, Sr. Adv.
Mr. Krishnanand Pandey, Adv.

For Respondent (s) Mr. Akhilesh Kumar Pandey, Adv.
Mr. Sunita R. Singh, Adv.
Mr. Ashok Kr. Pandey, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

Heard learned counsel for the parties for half an
our.
The appeal fails and is dismissed with no order as
to costs.

.SP1

(R.K. Dhawan) (Shelly Sengupta)@@
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA
Court Master Court Master@@
AAAAAAAAAAAAAA AAAAAAAAAAAAAAA

(Signed order is placed on the file)

.PA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 421 OF 2001@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

versus

Chhatrapal Singh

Respondent(s)

O R D E R@@
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

The respondent herein filed Title Suit No.98 of 1977 against the appellant seeking relief for declaration that the orders purporting to dismiss him from service was void, illegal and unenforceable and that he was entitled to continue in service. The trial court, after trial, held that the order of dismissal passed against the plaintiff-respondent was illegal and unenforceable, but dismissed the suit on the ground that it was bad for want of issue of notice under Section 377 of the Bihar and Orissa Municipal Act, 1922. The First Appellate Court, while affirming the findings on other issues, reversed the finding of the trial court as regards the maintainability of the suit for want of notice under Section 377. Aggrieved by the judgment and decree of the First Appellant ...2/-

.PA

-2-

Court, second appeal was filed before the High Court. The High Court affirmed the decree as passed by the First Appellate Court. Hence, this appeal.

The learned senior counsel for the appellant contended that the suit was for mere declaration that the order of dismissal was illegal and bad; that the notice under Section 377 was mandatory before filing the suit; the trial court was right in dismissing the suit on that ground and that the First Appellate Court and the High Court committed an error in holding otherwise. He added that now the respondent has superannuated and as such no relief can be granted to him; if at all he has any claim for recovery of salary, the respondent should go to the civil court seeking relief for recovery of money.

The learned counsel for the respondent made submissions in support of the justification of the impugned order. All the three courts concurrently recorded a finding of fact that the order of dismissal passed against the respondent was illegal and void. The suit was not merely for declaration that the order of dismissal was void, but a further relief was sought that the respondent should be deemed to have continued in service. The ...3/-

.PA

-3-

Division Bench of the High Court, having considered the earlier decisions of the same court and after careful analysis of Section 337 recorded a finding having regard to the reliefs sought for in the suit that issuing of notice under Section 377 was not necessary and that the suit was maintainable even without issuing such notice. We do not have any good or valid reason to differ from the view taken by the High Court in holding that notice under Section 377 of the Act was not necessary in the present case. The

argument of the learned senior counsel for the appellant that the suit for mere declaration was not maintainable is to be rejected because it was not a suit for mere declaration as consequential relief was also sought. We do not think that it is appropriate that this length of time to drive the respondent to file one more suit for recovery of money towards payment of wages and other reliefs to which he is entitled as a consequence of declaring the order of dismissal was void. None of the submissions made on behalf of the appellant appealed to us. We do not find any merit in the appeal. In the result, the appeal fails and it is dismissed with no order as to costs.

However, having regard to the peculiar facts and circumstances of the case and also looking to the passage
..4/-

.PA

-4-

of time between the date of dismissal till the date on which the respondent superannuated, we think it just and appropriate to modify the decree as regards payment of back wages to the respondent, only to the extent of 60%. Except this modification, we make it clear that the respondent is entitled to all other consequential benefits.

.SP1

.....J
(SHIVARAJ V. PATIL)

.....J
(ARIJIT PASAYAT)

New Delhi,
January 30, 2002.