

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(s). 2827 OF 2006

TARSEM LAL JAIN (DEAD) THROUGH LRS.

Appellant (s)

VERSUS

DIRECTOR, PUBLIC INSTRUCTIONS & ANR.

Respondent(s)

(With appln(s) for substitution,exemption from filing
O.T.,permission,permission to file additional documents and
office report)

Date: 15/12/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Mr. P.P. Rao,Sr.Adv.
Mr. Shish Pal Laler,Adv.
Mr. Balbir Singh Gupta,Adv.

For Respondent(s) Mr. H.M. Singh,Adv.
Ms. Shabana Saifi,Adv.
Mr. Kaushal Yadav,Adv.
Mr. Ajay Pal,Adv.

Mr. Ugra Shankar Prasad,Adv.

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

In terms of the signed order, the appeal is allowed in part. The punishment of dismissal imposed upon the appellant is set aside and the appellant is treated as having been retired from service on superannuation on 31.12.2002, subject to the condition that he will not be entitled of any terminal or retirement benefits or any salary arrears or other monetary benefits as a consequence of such retirement. The appellant will however be entitled to the subsistence allowance for the period 6.11.1995 to 27.12.2002, as directed by the DPI, by orders dated 4.7.2001 and 29.1.2002.

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(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPEALTE JURISDICTION

CIVIL APPEAL NO. 2827 OF 2006

TARSEM LAL JAIN (DEAD) THROUGH LRS.

Appellant (s)

VERSUS

O R D E R

The appellant (who died during the pendency of this appeal) was working as the Principal of S.D.P. Senior Secondary School, Ludhiana, the second respondent herein.

A chargesheet dated 28.10.1995 was issued to him alleging certain financial irregularities.

An inquiry was held in respect of those 16 charges and the Inquiry Report dated 20.1.2000 held him guilty of charges No.1,3,4, 9 to 14 and 16 and part of charges 6 and 15.

A show cause notice dated 11.4.2000 was issued to the appellant as to why he should not be dismissed from service.

After considering his reply, the Managing Committee of the School passed a resolution dated 20.6.2000 imposing the punishment of 'dismissal from service' with immediate effect and sent the resolution to the Director of Public Instructions, Punjab, for approval. The said decision regarding dismissal was communicated to the appellant on 21.6.2000.

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2. The Director of Public Instructions ('DPI' for short) by order dated 4.7.2001 directed the second respondent to pay to the appellant 75% in the revised grade as subsistence allowance from 6.11.1995.

The said decision was reiterated by order dated 29.1.2002.

Ultimately by order dated 27.12.2002, the Directorate of Public Instructions held that the charges levelled against appellant being serious, he deserves to be dismissed and granted approval sought by the management subject to the condition that appellant be paid subsistence allowance in terms of the directions issued by DPI on 4.7.2001.

But

for the dismissal, the appellant would have retired on attaining the age of superannuation, on 31.12.2002.

3. The second respondent filed an appeal against the order dated 27.12.2002 granting approval for his dismissal before the Schools Tribunal, under Section 4 of Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 ('Act' for short). The School Management filed a cross appeal in respect of that portion of the order dated 27.12.2002 by which the direction for payment of subsistence allowance was affirmed. The Tribunal by order dated 3.8.2004 affirmed the order of the Directorate of Public Instructions and dismissed both the appeals with a direction to pay subsistence allowance till 27.12.2002. The said order was challenged by the

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appellant by filing a writ petition which was dismissed by the High court by the impugned order dated 4.12.2004. The High Court held that dismissal was justified and there was no irregularity in the resolution dated 20.6.2000 passed by the Managing Committee to dismiss the appellant from service and thereafter sending the resolution to the DPI for approval. It also held that in view of the order of the DPI dated 27.12.2002, the dismissal came into effect on that day and appellant was not in service from that date. The High Court ultimately held that having regard to the evidence in the enquiry in regard to the serious charges, he did not entitle to any discretionary relief in regard to the punishment.

4. The said order is challenged by the appellant in this appeal by special leave inter alia on the following grounds:

(a) The inquiry was not properly conducted and the Inquiry Report holding the appellant guilty of serious charges, was unwarranted and he ought to have been exonerated.

(b) The resolution of the Managing Committee dated

20.6.2000 and the communication thereof on 21.6.2000 clearly showed that the Managing Committee had categorically dismissed the appellant from service and only thereafter applied to the DPI for approval. The

resolution of the Managing Committee dated 20.6.2000 was

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contrary to Section 4 of the Act which requires that no employee shall be dismissed, removed or reduced in rank or otherwise terminated except with the prior approval of the Director. Therefore, the dismissal prior to approval was invalid.

(c) The DPI had failed to consider the representation submitted by the appellant, while passing the order dated 27.12.2002 approving the dismissal, and therefore, the order dated 27.12.2002 was illegal.

5. The second respondent contended that the enquiry was fair and proper and the findings were based on evidence. It was also submitted that dismissal dated 20.6.2000 came into effect only on grant of approval on 27.12.2002, and the order dated 27.12.2002 did not suffer from any infirmity.

6. After the matter was argued for some time, the learned counsel for the appellant submitted that during the pendency of this appeal, the appellant had died and if the order of dismissal is set aside and he is treated as having retired due to superannuation, his legal heirs will not make any claim for salary or for terminal or retiral benefits except for the subsistence allowance that was directed to be paid upto 27.12.2002.

7. The learned counsel for the second respondent

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School submitted that having regard to the fact that the

appellant is dead and keeping in view the earlier service rendered by him, it has no objection for setting aside the dismissal, subject to the condition that there is no liability whatsoever on the respondents, other than the liability to pay the subsistence allowance as already directed by order dated 27.12.2002.

8. Both parties submitted that the appeal may be disposed of in view of the said submissions. In view of the above the appeal is allowed in part. The punishment of dismissal imposed upon the appellant is set aside and the appellant is treated as having been retired from service on superannuation on 31.12.2002, subject to the condition that he will not be entitled of any terminal or retirement benefits or any salary arrears or other monetary benefits as a consequence of such retirement. The appellant will however be entitled to the subsistence allowance for the period 6.11.1995 to 27.12.2002, as directed by the DPI, by orders dated 4.7.2001 and 29.1.2002.

.....J.
[R.V. RAVEENDRAN]

NEW DELHI
DECEMBER 15, 2010

.....J.
[A.K. PATNAIK]