State Of Haryana vs Balwant Singh on 4 March, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1253, 2003 (3) SCC 362, 2003 AIR SCW 1645, 2003 LAB. I. C. 1539, 2003 (2) SCALE 599, 2003 (3) ACE 225, 2003 (2) JKJ 11, 2003 (2) UJ (SC) 943, 2003 UJ(SC) 2 943, (2003) 2 SCR 557 (SC), (2003) 4 ALLINDCAS 17 (SC), 2003 (4) ALLINDCAS 17, 2003 (4) SRJ 494, 2003 (2) SLT 551, 2003 SCC (L&S) 279, (2003) 2 LABLJ 527, (2003) 2 LAB LN 349, (2003) 2 SCT 324, (2003) 2 SUPREME 609, (2003) 2 RECCIVR 239, (2003) 2 SCALE 599, (2003) 4 INDLD 656, (2003) 4 CAL HN 49

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  5124 of 2001

PETITIONER:
State of Haryana

RESPONDENT:
Balwant Singh

DATE OF JUDGMENT: 04/03/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T SHIVARAJ V. PATIL J.

The State of Haryana is in appeal challenging the judgment and decree passed by the High Court in second appeal reversing the judgment and decree passed by the trial court as affirmed by the first appellate court.

The respondent was driving bus of the Haryana Roadways. An accident was caused because of the rash and negligent driving of the respondent. In the said accident, one person died and other person suffered injuries. In the claim petition filed before the Motor Accidents Claims Tribunal, an award was passed which resulted in the loss of Rs. 1,12,950/- to the Transport Department of the State. A charge-sheet was issued under Rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for brevity 'the Rules'). After holding enquiry, a punishment was imposed on him reducing the pay to the minimum of time scale of Driver for a period of four years by the order dated 12.3.1990. This order was passed against him in the wake of the orders of the Motor Accidents Claims Tribunal,

Kurukshetra. On account of causing of the same accident, a criminal case was also registered vide F.I.R. No. 127 dated 25.7.1988 for the offences under Sections 279, 337, 338 and 304-A IPC. He was convicted by the court after trial in the said criminal case. Based on this conviction, the General Manager of Haryana Roadways passed another order dated 17.9.1992 terminating the services of the respondent. This order was communicated to the respondent when he was undergoing punishment. After he was released from jail in January, 1993, he submitted a joining report in the office of the General Manager, Haryana Roadways, Karnal. Instead of accepting joining report, the termination order dated 17.9.1992 was handed over to him. He filed an appeal before the Commissioner and Secretary, Haryana Roadways against the order of termination of his services on the ground that he could not be tried twice for the same offence. When the appeal was still pending, he filed a suit alleging that no proper opportunity was given to him and no enquiry was held but the termination order was passed only on the basis of the judgment passed by the learned Sessions Judge upholding his conviction. The appellant contested the suit on several grounds inter alia contending that due to negligence of the respondent, the appellant suffered loss of Rs.1,12,950/- as he was careless on his duty; the order of termination of his services was rightly passed and there was no need to conduct an enquiry under Rule 7(2) of the Rules when the said order was passed on the basis of the conviction and sentence passed against him. After trial, the suit was dismissed. Aggrieved by judgment and decree passed by the trial court, the respondent filed an appeal before the appellate court. The appeal was also dismissed. Not being satisfied with the order passed in the appeal, the respondent filed second appeal before the High Court. The same was allowed setting aside the decrees passed by both the courts below only on the ground that an employee could not be punished twice for the same offence in view of Article 20(2) of the Constitution of India as no person shall be prosecuted and punished for the same offence more than once. Hence, this appeal questioning the validity and correctness of the impugned judgment and decree passed in the second appeal by the High Court.

The learned counsel for the appellant urged that the High Court committed a manifest error in taking a view that the respondent was prosecuted and punished for the same offence twice; earlier order dated 12.3.1990 was passed after holding enquiry under Rule 7 of the Rules, because of rash and negligent driving of the bus, he caused loss to the Haryana Roadways to the tune of Rs.1,12,950/-, defamed the Transport Department and proved indiscipline; the said action was taken in the wake of the orders of the Motor Accidents Claims Tribunal reducing his pay to the minimum time scale of Driver for a period of four years; thereafter, the order dated 17.9.1992 terminating his services was passed on the basis of conviction and sentence passed against him by the criminal court for offence under Section 304-A IPC. According to the learned counsel, the cause of action and grounds for passing two orders aforementioned against the respondent being different and distinct, there was no question of the respondent suffering double jeopardy; he was not prosecuted and punished twice for the same offence; action was taken according to the Rules governing the case of the respondent on two different occasions. He also contended that the High Court was not right and justified in reversing the concurrent findings of fact recorded by both the courts below. As against these submissions, the learned counsel for the respondent supported the impugned judgment for the very reasons stated in the impugned order.

From the facts that are not in dispute, it is abundantly clear that the order dated 12.3.1990 was passed against the respondent reducing the pay to the minimum of time scale of Driver for a period

of four years on account of his causing loss and bringing bad name to the Department in the light of the order passed by the Motor Accidents Claims Tribunal, that too after holding enquiry under the Rules after giving him opportunity. The second order dated 17.9.1992 was passed on the basis of the conviction and sentence passed against him by the competent criminal court for the offence under Section 304-A IPC which was permissible under the Rules. These being the facts, there was no question of prosecuting and punishing the respondent for the same offence twice. The High Court was not right in equating departmental enquiries on different grounds to a prosecution in criminal case. The High Court also has failed to see that the two orders passed against the respondent were on different grounds and were on different cause of actions.

Under Rule 7(1) of the Rules, no order imposing a major penalty shall be passed against a person to whom the said Rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken. Under Rule 7(2) procedure to be followed and the requirements to be satisfied before imposing penalty in that regard are indicated. Sub-rule 2(b) of Rule 7 states that the provisions of the foregoing sub-rule shall not apply where any major penalty is proposed to be imposed upon a person on the ground of conduct which has led to his conviction on a criminal case. In the present case, the first order was passed on 12.3.1990 reducing the pay to the minimum of time scale of Driver under Rule 7(1) of the Rules. The second order terminating his services was passed on 17.9.1992 under Rule 7(2)(b). When a major penalty is proposed to be imposed upon a person on the ground of conduct which led to his conviction on a criminal charge following the provisions contained in Rule 7(1) and (2) is not required. Rule 7 itself makes a distinction in regard to the punishment to be imposed depending on the grounds.

A three Judge Bench of this Court in Union of India and anr. vs. P.D. Yadav [(2002) 1 SCC 405], while dealing with more or less a similar contention with regard to double jeopardy, has held thus:-

> "A contention, though feebly, was advanced on behalf of some of the respondents that forfeiture of pension in addition to the punishment imposed under Section 71 of the Army Act amounted to double jeopardy. In our view, this contention has no force. There is no question of prosecuting and punishing a person twice for the same offence. Punishment is imposed under Section 71 of the Army Act after trial by Court Martial. Passing an order under Regulation 16(a) in the matter of grant or forfeiture of pension comes thereafter and it is related to satisfactory service. There is no merit in the contention that the said Regulation is bad on the ground that it authorized imposition of a double penalty; may be in a given case, penalty of cashiering or dismissal from service and the consequential forfeiture of pension may be harsh and may cause great hardship but that is an aspect which is for the President to consider while exercising his discretion under the said Regulation. May be in his discretion, the President may hold that the punishment of cashiering or dismissal or removal from service was sufficient having regard to circumstances of the case and that a person need not be deprived of his right to pension. A crime is a legal wrong for which an offender is liable to be prosecuted and punished but only once for such a crime. In other words, an offender cannot be punished twice for the same offence. This is demand of justice and public policy supports it. This principle is embodied in

> the well-known maxim nemo debet bis vexari, (si constat curiae quod sit) pro una et eadem causa meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others. Article 20(2) expressly provides that: "No. one shall be prosecuted and punished for the same offence more than once." Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law. In the proceedings before General Court Martial, a person is tried for an offence of misconduct and whereas in passing order under Regulation 16(a) for forfeiting pension, a person is not tried for the same offence of misconduct after the punishment is imposed for a proven misconduct by the General Court Martial resulting in cashiering, dismissing or removing from service. Only further action is taken under Regulation 16(a) in relation to forfeiture of pension. Thus, punishing a person under Section 71 of the Army Act and making order under Regulation 16(a) are entirely different. Hence, there is no question of applying principle of double jeopardy to the present case."

Under these circumstances, there was no question of the respondent suffering a double jeopardy. The aid of Article 20(2) of the Constitution of India was wrongly taken. Article 20(2) of the Constitution of India does not get attracted to the facts of the present case. Before the trial court, no issue was raised as to the respondent suffering a double jeopardy although in the first appellate court, the discussion was made on this point. In the view we have expressed above that the High Court committed a serious error in holding that the respondent was prosecuted and punished for the same offence twice, the impugned judgment cannot be sustained. Hence, the same is set aside. The judgment and decree passed by the trial court as affirmed by the first appellate court is restored. The appeal is allowed accordingly but with no order as to costs.