

State Of Uttar Pradesh vs Mohd. Sharif (Dead) Through Lrs. on 13 January, 1982

Equivalent citations: AIR1982SC937, [1982(45)FLR289], 1982LABLC1234, (1982)ILLJ180SC, (1982)2SCC376, 1982(2)SLJ259(SC), AIR 1982 SUPREME COURT 937, 1982 LAB. I. C. 1234, 1982 ALL. L. J. 452, 1982 2 SCWR 118, 1982 2 SCC 376, 1982 (14) LAWYER 61, (1982) 45 FACLR 289, 45 FACLR 289, 1982 LAWYER 14 61, 1982 SCC (L&S) 253, (1982) 2 LAB LN 408, (1982) 1 SCJ 223, (1982) 2 SERVLR 265, (1982) 2 LABLJ 180, (1982) 2 SERVLJ 259

Bench: A.N.Sen, V.D. Tulzapurkar

JUDGMENT

1. There is no substance in this appeal which has been preferred by the State of U. P. against the judgment and decree dated 25th Nov., 1969 of the High Court of Allahabad in Second Appeal No. 2226 of 1969.

2. The plaintiff Mohd. Sharif (since deceased) was working as a Head Constable of the Daksiti Guard at P.S. Kakwan District Kanpur. On 22nd Jan., 1955 he was served with a charge-sheet under Section 7 of the Police Act calling upon him to submit his explanation thereto; he submitted the explanation on the following day. After holding the department disciplinary inquiry against him the inquiry officer submitted his report which was accepted and ultimately he was dismissed from service by an order dated 3rd June, 1955. After departmental appeal and revision to higher authorities failed, the plaintiff filed a suit challenging his dismissal on the ground that the said order was illegal and void as no proper inquiry was held against him and no reasonable opportunity was given to him to defend himself against the charges framed against him and for recovery of arrears of salary. The trial Court dismissed the suit. In Civil Appeal No. 478 of 1962 preferred by him the learned Second Addl. Civil Judge, Kanpur, reversed the trial Court's findings and decreed his suit holding that the charge-sheet framed against him was vague, that the plaintiff was prejudiced in his defence and was not given a reasonable opportunity to defend himself during the inquiry. The appeal Court set aside the dismissal by de-daring the same to be illegal and void but the matter was remanded back in respect of the relief pertaining to salary etc. The State preferred a second appeal and the High Court has confirmed the decree passed by the appeal Court and dismissed the second appeal. The State of U. P. has come up in appeal to this Court.

3. After hearing counsel appearing for the State, we are satisfied that both the appeal Court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the matters of his defence. Only two aspects need be mentioned in this connection. Admittedly, in the charge-sheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia District Farrukhabad and

hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and sank, were not mentioned. Not only were these particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiff was obviously prejudiced in the matter of his defence at the inquiry. Secondly, it was not disputed before us that a preliminary inquiry had preceded the disciplinary inquiry and during the preliminary inquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary inquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary inquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal Court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable-opportunity to defend himself at the disciplinary inquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position it is difficult to accept the contention urged by the counsel for the appellant that the view taken by the trial Court should be accepted by us. We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief that would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased.

4. The appeal is dismissed with costs.