

Union Of India And Others vs Giriraj Sharma on 17 March, 1993

Equivalent citations: AIR1994SC215, (1994)ILLJ604SC, 1994SUPP(3)SCC755, AIR 1994 SUPREME COURT 215, 1993 AIR SCW 3660, 1994 (3) SCC(SUPP) 755, 1995 SCC (L&S) 290, (1993) 2 LAB LN 829, (1994) 1 LAB LJ 604, (1994) 28 ATC 770

Bench: A.M. Ahmadi, Yogeshwar Dayal

JUDGMENT

1. The respondent who was deputed to undergo a course as an electrician sought leave for 10 days on December 10, 1982, which was granted. While he was on leave he sent a telegram for extension of leave by 12 days which request came to be rejected. The respondent, however, joined duty on December 22, 1982 thereby overstaying the period of leave by 12 days. For this misdemeanor his services came to be terminated by an order dated May 7, 1983. His departmental appeal as well as revision were also rejected, whereupon he filed a writ petition in the High Court challenging the order of termination which writ petition came to be allowed by the order of January 3, 1989. The petitioner was directed to be reinstated with all monetary and other service benefits. It is against this order that the present appeal is preferred.

2. Mr. Jain the learned Counsel for the appellant Union of India contended that the interpretation placed on Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter called 'the Act') is not correct and it is on account of this erroneous understanding of the provision that the High Court quashed the order of dismissal. In support of his contention he invited our attention to a decision of the Rajasthan High Court reported in AIR 1965 Raj 140. He also relied on certain other decisions but it is sufficient to state that according to him the learned Judges of the High Court had committed an error in interpreting the said Sub-section. In our opinion it is not necessary for us to construe Sub-section (1) of Section 11 of the Act in the backdrop of the facts of the present case. Assuming Mr. Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the incumbent having over-stayed the period of leave by 12 days. The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been contravened in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances force him to do so. In that view of the matter the learned Counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for We agree with this submission.

3. In the result we see no merit in this appeal but we would modify the order of the High Court by stating that while we affirm the High Court's order quashing the order of dismissal and directing

reinstatement in service with monetary benefits, it will be open to the department, if it so desires, to visit the respondent petitioner with a minor punishment. The appeal will stand disposed of accordingly with no order as to costs. If the reinstatement has not taken place thus far the department should reinstate him latest within two weeks from today.