
State of Uttar Pradesh Vs Debi Prasad

Second Appeal No. 1237 of 1959

Court: Allahabad High Court

Date of Decision: March 8, 1965

Acts Referred:

Contract Act, 1872 & Section 73#Uttar Pradesh Fundamental Rules & Rule 24

Citation: AIR 1966 All 129

Hon'ble Judges: V.G. Oak, J; D.D. Seth, J

Bench: Division Bench

Advocate: Prakash Gupta, for the Respondent

Final Decision: Partly Allowed

Judgement

Oak, J.

This Second Appeal arises out of a suit to recover arrears of salary. Debi Prasad respondent was employed as a driver in the

Government Roadways, Bareilly Division, at Shahjahanpur. He was dismissed from service on 19-2-1952. In 1952 he filed a suit against the State

of Uttar Pradesh for a declaration that the order of dismissal dated 19-2-1952 was illegal and void. He also prayed for arrears of pay. That suit

was decreed in Debi Prasad's favour on 24-9-1955. It was declared that the order of dismissal dated 19-2-1952 was void. The Court also

passed a decree for Rs. 1,378/- for arrears of salary. In the year 1957 Debi Prasad filed against the State of Uttar Pradesh another suit to recover

arrears of salary for the subsequent period. That is Original Suit No. 385 of 1957, out of which the present Second Appeal has arisen. In this suit

filed on 22-2-1957 the plaintiff claimed a sum of Rs. 3,944/- on account of arrears of salary from 11-12-1953 to 10-2-1957. The claim was

resisted by the defendant. The defendant pleaded that the plaintiff never reported for duty with the Government Roadways even after the decree

dated 24-9-1955 in the previous suit. It was further pleaded in defence that the defendant was all along employed in the Tubewell Department of

U. P. Government at Shahjahanpur. The plaintiff has already drawn salary from the Tubewell Department. Consequently the plaintiff was not

entitled to recover any salary from the Government Roadways.

2. The learned Civil Judge of Shahjahanpur held that the defendant was entitled to claim a set off on account of the salary drawn by the plaintiff

from the Tubewell Department. Deducting Rs. 3,230/- on account of salary drawn from the Tubewell Department, the trial Court found that a sum

of Rs. 714/- was due to the plaintiff as arrears of pay in the Government Roadways Department. The Trial Court, therefore, passed in plaintiff's

favour a decree for Rs. 714/- as arrears of pay with proportionate costs.

3. Both the parties were dissatisfied with the decision of the trial Court. The defendant appealed; and the plaintiff filed a cross-objection. The

learned District Judge of Shahjahanpur dismissed the appeal, but allowed the cross-objection. In the result, the plaintiff's claim was decreed in

toto. The State of Uttar Pradesh has now come up in Second Appeal. When the Second Appeal was argued before a learned Single Judge of this

Court, he found that the Second Appeal involves an important question of law. He, therefore, referred the case to a larger Bench.

4. The respondent claimed arrears of salary for the period 11-12-1953 to 10-2-1957 for his services in the Government Roadways Department.

It is common ground that during the material time the plaintiff was employed in the Tubewell Department of U. P. Government, and that he drew

salary from that Department. The principal question for decision in the Second Appeal is whether the plaintiff is entitled to draw salary from the

Government Roadways Department in addition to the salary drawn by him from the Tubewell Department.

5. Parties referred to various rules contained in the Fundamental Rules. The defendant relied upon Rule 17. According to Rule 17, an officer shall

cease to draw salary as soon as he ceases to discharge duties. That rule is meant to govern cases, where an officer ceases to be in service. In the

present case it was held in the previous suit that the order of dismissal dated 19-2-1952 was void. No subsequent order of dismissal was passed

against the respondent. It must, therefore, be held that the respondent continued in service in the Government Roadways Department throughout

the material period (11-12-1953 to 10-2-1957). So, Rule 17 is not of much assistance to the defendant. The plaintiff relies upon Rule 52.

According to Rule 52, the pay and allowances of a Government servant who is dismissed or removed from service cease from the date of such

dismissal or removal. It is true that the respondent never ceased to draw his salary under Rule 52. But the question remains whether the respondent

is entitled to draw salary from one department after having drawn salary from another Department.

6. According to Rule 12, a Government servant cannot be appointed substantively, except as a temporary measure, to two or more permanent

posts at the same time. According to that Rule, the respondent could not be appointed on two different posts, in the Government Roadways

Department and the Tubewell Department, simultaneously. His employment in the Tubewell Department was due to the fact that, it was at one time

thought that he had ceased to be an employee of the Government Roadways Department. That point was clarified by the Civil Court's decree,

dated 24-9-1955. Yet the respondent continued his work in the Tubewell Department.

7. Chapter VI of the Indian Contract Act deals with the consequences of breach of contract. Section 73 deals with compensation for loss or

damage caused by breach of contract. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the

party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things

from such breach. There is an explanation to Section 73 of the Contract Act. That explanation runs thus:

In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-

performance of the contract must be taken into account.

That explanation brings out the principle that a plaintiff claiming damages must do his best to mitigate damages.

8. In the first place, the service rules do not contemplate employment of an official in two different posts simultaneously. Secondly, although the

suit is for arrears of salary, in substance the claim is for damages for refusal by the defendant to pay the plaintiff his salary in terms of the contract of

service. In such a case the plaintiff has to do his best to mitigate damages. In fact, the plaintiff did exert himself to mitigate damages. He got for

himself service in the Tubewell Department. His salary in the Government Roadways Department was Rs. 85 per month. He drew the same salary

from the Tubewell Department. He cannot get the same salary from Government Roadways Department for the same period. The trial Court was

right in making a deduction on account of the salary drawn by the plaintiff from the Tubewell Department.

9. Lastly, we have to consider the plaintiff's claim for increments. Although the plaintiff's initial pay was Rs. 85 per month, his contention is that he

would have earned increments in the ordinary course. He relied upon Rule 24 of the Fundamental Rules. According to Rule 24, an increment shall

ordinarily be drawn as a matter of course unless it is withheld. Sri H. P. Gupta, appearing for the appellant, relied upon Mokau Ouseph

Thomakutty v. Thomas AIR 1954 Trav. Co. 104. In that case it was held that promotions and consequent increase in salary cannot be taken to be

automatic. That observation was not made with respect to any particular service rule. In the present case the plaintiff's increments were governed

by Rule 24 of Fundamental Rules of Uttar Pradesh. According to that Rule, an increment is ordinarily drawn as a matter of course unless it is

withheld. In the instant case no order withholding any increment was passed by the authorities. We may, therefore, presume that the plaintiff would

have earned increments in the ordinary course. It appears that, had ordinary increments been granted to the plaintiff, he would be entitled to a sum

of Rs. 714 in addition to the salary drawn by him from the Tubewell Department. The plaintiff's claim for Rs. 714 was rightly decreed by the trial

Court.

10. The Second Appeal is partly allowed. We set aside the decree of the learned District Judge of Shahjahanpur, and restore the decree passed

by the trial Court. In the result, there will be a decree in plaintiff's favour for a sum of Rs. 714 only. In the circumstances of this case, we direct that

parties shall bear their own costs in all the three Courts.