

STATE OF PUNJAB AND ORS.

A

v.

KRISHAN NIWAS

MARCH 14, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

B

*Service Law :*

*Departmental proceedings—Employee convicted u/s. 302 IPC and sentenced to undergo imprisonment for life—Departmental proceedings initiated against him and he was removed from service—On appeal against judgment of trial court, conviction u/s. 302 modified to one u/s. 325 IPC and imprisonment for 1-1/2 years awarded—After undergoing the sentence delinquent filed departmental appeal and the appellate authority reduced punishment of removal from service to reversion in lower pay scale without the benefit of back-wages—Employee accepted the order and joined duty—Later he filed a civil suit for declaration that his dismissal from service, reduction of rank and not allowing him back-wages were illegal—Trial Court dismissed the suit but appellate court decreed the suit and High Court confirmed the decree—Held, the employee having accepted the order of the appellate authority and joined the post, it was not open to him to challenge the order subsequently—By his conduct he has accepted the correctness of the order and acted upon it—Civil Court would not have gone into the merits and decided the matter against the Government—Order of appellate court and High Court are set aside and the order of trial court stands confirmed.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2222 of 1997.

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From the Judgment and Order dated 7.3.96 of the Punjab & Haryana High Court in R.S.A. No. 2662 of 1995.

H.M. Singh and R.S. Suri for the Appellants.

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P.N. Puri for the Respondent.

The following Order of the Court was delivered :

Leave granted. We have heard counsel on both sides.

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A This appeal, by special leave, arises from the judgment of the Punjab & Haryana High Court made on March 7, 1996 in Second Appeal No. 2662/95.

B The admitted facts are that the respondent was charged for an offence under Section 302 I.P.C. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 I.P.C. was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing the imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated March 1, 1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back-wages. The respondent accepted it and joined duty on June 5, 1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The trial Court dismissed the suit. On appeal, the Addl. District Judge reversed the judgment of the trial Court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.

E Learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back-wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on June 5, 1989, it was not open to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil Court would not have gone into the merits and decided the matter against the appellants.

G Accordingly, the appeal is allowed. The orders of the High Court and the appellate Court stand set aside and that of the trial Court stands confirmed. No costs.

R.P.

Appeal allowed.

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