
(2011) 01 AHC CK 0296
In the Allahabad High Court
Case No : Writ Petition No. 109 (S/B) of 1993

Amar Nath Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 364, 368
Uttar Pradesh Police Regulations, 1948 — Regulation 541

Citation : (2011) 2 ADJ 716 : (2011) 129 FLR 84

Hon'ble Judges : Devi Prasad Singh, J; Anil Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the Petitioner and the learned standing counsel.
2. The Petitioner was appointed as Police Constable by the Senior Superintendent of Police, Varanasi on 1.7.1980. After undergoing training, he was posted at Varanasi. While posted at Varanasi, he was involved in criminal offence punishable u/s 364/368 IPC. Petitioner's services were terminated by innocuous order on 11.1.1985. The order of terminated was the subject matter of dispute before the U.P. State Public Services Tribunal. A plea was taken before the Tribunal by the Petitioner that he was appointed against regular vacancy and his services could not have been terminated by a simplicitor order. A further plea was taken that the foundation of the order of termination was the involvement of the Petitioner in the criminal case which resulted into acquittal. Hence, the termination order also does not survive.
3. Petitioner's counsel submitted that the Petitioner shall be deemed to be on probation and termination of service in violation of Regulation 541 of U.P. Police Regulations, could not have been done.
4. On the other hand, Respondent's stand before the Tribunal was that apart from the criminal case, an adverse entry was given in the year 1984 and

thereafter, the order of suspension was passed simplicitor and and has not caused stigma. According to learned standing counsel the order of termination is simplicitor. Further submission of the learned standing counsel is that the claim petition was barred by time. The claim petition was filed in the year 1988 hence, rightly dismissed by the Tribunal as barred by limitation.

5. A perusal of the impugned order passed by the Tribunal reveals that against the punishment order, the Petitioner preferred an appeal and after dismissal of appeal, the revision was also filed which was decided by the judgment and order dated 2.7.1990. A copy of the order passed by the revisional authority is contained to the writ petition as Annexure No. 4. A perusal of the order of revisional authority shows that it was decided on merit by the revisional authority. The Tribunal has dismissed claim petition as time barred on the ground that the revision was preferred after statutory period of limitation only on 22.2.1988. Hence the claim petition shall not be maintainable. The ground on which, Tribunal dismissed the claim petition being barred by limitation, seems to be not sustainable. The limitation with regard to filing of claim petition should be considered taking into account the last order passed by the statutory authority. Since the revision was entertained by the revisional authority and it was decided on merit by the order dated 2.7.1990, the Tribunal was not correct to dismiss the claim petition by the impugned order dated 28.9.1992 as time barred while calculating limitation for filing claim petition before the Tribunal. The Tribunal could have taken note of the date when last order was passed by the statutory authority is on merit while discharging its obligation. It was not open for the Tribunal to interfere with the jurisdiction exercised by the revisional authority on the ground of limitation. It was only for the revisional authority to record finding as to whether the revision is time barred or not and whether it is maintainable or not. In case revision has been entertained and decided on merit, then no finding could have been recorded by the Tribunal with regard to delay in filing of revision before the statutory revisional authority.

6. In view of the above, we are of the view that the Tribunal has failed to exercised jurisdiction vested in it. The Tribunal has decided the claim petition on merit after taking into account the fact that the revision was dismissed on 2.7.1990. Learned standing counsel submits that this fact was not brought to the notice of the Tribunal. However, from the perusal of the impugned order, passed by the revisional authority it reveals that the revision was dismissed on 2.7.1990 and the claim petition was dismissed by the order dated 28.9.1992 passed by the Tribunal.

7. In view of the above, we allow the writ petition and set aside the judgment and order dated 28.9.1992, passed by the Tribunal in Claim Petition No. 520/V/HM-3/88. The Tribunal shall restore the claim petition to its original number and decide afresh on merit in accordance with law expeditiously, say within four months from the date of receipt of a certified copy of this order.

8. The writ petition is allowed accordingly.