
(1999) 05 AHC CK 0163
In the Allahabad High Court
Case No : Writ Petition No. 437 (S/B) of 1998

Amarjeet Yadav

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4A(5)(a), 4A(6)

Citation : (1999) 05 AHC CK 0163

Hon'ble Judges : S.H.A.Raza, J and R.D.Shukla, J

Final Decision : Dismissed

Judgement

1. Section 4A(5)(a) of the U.P. Public Services (Tribunal) Act, 1976 provides that a reference of claim, wherein the validity of any order of dismissal or removal from service (not being an order for termination of temporary service) or reduction in rank is involved, shall be heard and finally decided by a Bench consisting of two members:

Provided that any order, other than an order finally disposing of the case on merits, may be passed, evidence may be received and proceeding (except hearing of oral arguments for final disposal of the case) may be conducted by a single member.

2. Section 4A(5)(b) provides that a reference of claim other than that referred to in clause (a) may be heard and finally decided by a Bench consisting of a single member.

3. Section 4A(6) provides that where the members of a Bench consisting of two members are unable to agree, the matter shall be referred to another member nominated by the Chairman and the decision of such other member shall be final and operative.

4. In the present case one learned Member Sri R.N. Sharma held that the order of dismissal of the petitioner was vitiated by law, while another member Sri Nagendra Singh observed that the order of dismissal was a valid one. As there

was a difference between the learned two members, the Chairman referred the case to ViceChairman Shri B.B. Agarwal for his opinion, the learned member Sri Nagender Singh although agreed with the opinion of learned Member Sri R.N. Sharma by giving a findings to the effect that the order of dismissal was vitiated; but he further observed that the petitioner shall not be entitled for the back wages. Thereafter the present writ petition was filed by the petitioner who was a claimant before the Tribunal.

5. Mr. Amit Bose. learned counsel appearing on behalf of the petitioner submits that after the third Member of the Tribunal (ViceChairman Sri B.B. Agarwal) concurred with the opinion of another Member Shri R.N. Sharma, he could have not passed an order for nonpayment of back wages. He further submitted that after ViceChairman Sri B.B. Agarwal expressed his opinion that the claim petition ought to have been referred back to the Bench concerned for passing final order; but it was not done.

6. We have perused the provisions of Section 4A(5) (a) and 4A(6). There seems to be a conflict between those provisions. According to provisions contained in Section 4A(5) (a), a reference of claim, wherein the validity of any order of dismissal or removal from service (not being an order for termination of temporary service) or reduction in rank is involved, shall be heard and finally decided by a Bench consisting of two members. Section 4A (6) provides that where the members of a Bench consisting of two members are unable to agree, the matter shall be referred to another member nominated by the Chairman and the decision of such other member shall be final and operative.

7. It is well settled principles of rules of the Interpretation of Statute that when two provisions of a particular section of the Act cannot be reconciled, the Court instead of striking down one provision can reconcile the same by the doctrine of harmonious construction. We arc of the view that the provisions of Section 4A(6) can be saved if the verdict of the third Judge should be sent before the Bench again to pass final orders, because the final order can only be passed pertaining to dismissal or removal from service by a Bench consisting of two members. The Bench considering the opinion of third Judge could have allowed to claim petition either in toto or in part.

8. In view of the aforesaid situation, we direct that the opinion of third member may be sent to the Bench to pass a final order and to decide as to whether the petitioner should be paid his back wages or not . As one of the member Sri R.N. Sharma has retired, the claim petition may be placed before a Bench in which Sri Nagender Singh is a member. Thereafter the Bench considering the majority verdict can pass final order.