
(2020) 12 UK CK 0015

In the Uttarakhand High Court

Case No : Writ Petition No. 608 Of 2019 (S/S)

Assistant Sub Inspector No. 860030295 Narayan Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Citation : (2020) 12 UK CK 0015

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Hargoind Pant, Mangal Singh Chauhan, Monika Pant

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. By means of this petition, petitioner has sought following reliefs:

â??(i) Issue a writ or order in the nature of certiorari to quash the impugned order dated 27.10.2004 passed by respondent department in

contravention of the Honâ??ble High Court order dated 04.08.2004

(ii) Issue any other writ, order or direction in the nature of mandamus directing the respondents to pay the arrears of difference of the regular salary

and provisional salary on the post of head Constable/GD w.e.f. 15/10/2004 to 07/07/2011 with 8% interest.

(iii) Issue writ order or direction in the nature of mandamus directing the respondents to pay the arrears of difference of the regular salary and

provisional salary on the post of Assistant Sub Insepctor/L-6 w.e.f. 07/07/2011 to till date with 8% interest.

(iv) Issue writ order or direction in the nature of mandamus directing the respondents to pay the regular salary on the post of Assistant Sub

Inspector/L-6 onwards.â??

2. Brief facts of the case are that the petitioner was appointed in Indo Tibetan Boarder Police (in short â??I.T.B.P.â??) on 19.09.1986; he was

dismissed from the service vide order dated 04.06.1998. Feeling aggrieved by the order of dismissal, the petitioner preferred WPSS No. 338/2000 (old

No. 6731/1999) â??Narayan singh Vs. Commandant ITBP and othersâ? before High Court of Judicature at Allahabad. After creation of the State of

Uttarakhand, said writ petition was transferred to this Court. A Division Bench of this Court, vide judgment and order dated 04.08.2004 set aside the

dismissal order dated 04.06.1998 & 16.12.1998 and disposed of the writ petition. Relevant paragraph of the judgment and order dated 04.08.2004 is

extracted below:

â??Considering the nature of the charge we find that the order of dismissal of disproportionate and shocking in nature, a lesser

punishment could have been imposed commensurate to the nature of the charge. Therefore, we set aside the orders of dismissal and provide

that the petitioner shall be reverted from the post of Head Constable for two months from the date of production of certified copy of this

order and thereafter he will be given rank of head constable.â??

3. Pursuant to the aforesaid judgment and order, the respondent department reinstated the petitioner in services on 16.08.2004 on the post of

Constable/GD in provisional Pay Rs. 3350/- per month equal to regular pay dated 1.11.1997 under the pay scale Rs. 2750-70-3800-75-4400/- and after

completion of two months i.e. 15/10/2004 he was fixed the provisional pay on the post of head constable/GD Rs. 3370/- per month equal to regular

pay dated 10/10/1997 under the pay scale Rs. 3200-85-4900/-. Meaning thereby, the petitioner was reinstated in the services as Constable for a period

of two months as directed by this Court and has granted provisional pay scale to the him since his reinstatement in service.

4. Thereafter, the petitioner filed a clarification application no. 183 of 2012 in WPSS No. 338 of 2002 (Old No. 6731 of 1999). The Division Bench of

this Court dismissed the said clarification application vide order dated 03.04.2012. Same is extracted below:

â??A disciplinary proceeding resulted in passing of an order of dismissal of the petitioner. In a writ petition, the order of punishment was altered by

providing that the writ petitioner shall be punished by reverting him from the post of head constable to the post of constable for two months, where

after, the petitioner shall be given the rank of head constable. This order is so clear that there is no question of giving any clarification in relation

thereto. While dealing with the matter and directing in the manner as above, the Division Bench allowed reinstatement, but did not give any direction in

relation to the period the petitioner remained out of employment from the date of his dismissal and until the date of passing the order of the Division

Bench and, accordingly, it must be, in Law, deemed that the Division Bench left the matter there. If such a situation is dealt with by the Rules

governing the service conditions of the petitioner, it goes without saying that the matter has to be dealt with in terms of those Rules. However, the

order, at the same time, in so many words directed reinstatement of the petitioner and, accordingly, the status of the petitioner is required to be

ascertained on the basis thereof read with the relevant provisions of the Service Rules. We, accordingly, find no scope to give any clarification to the

order as above.â??

5. Heard learned counsel for the parties and perused the material available on record.

6. Learned counsel for the petitioner would submit that in pursuance of the judgment and order passed by the Division Bench of this Court, the

respondent department has reinstated the petitioner in service on 16.08.2004 on the post of Constable/GD in provisional pay scale Rs. 3350/- per

month. He would further submit that the respondent department misinterpreting the order of the Division Bench dated 04.08.2004 as in the said order,

no directions in regard to payment of salary has been issued. He would further submit that due to said anomaly, the petitioner, who is presently

working as Assistant Sub Inspector drawing the gross salary Rs. 47136 per month whereas Mr. Dharendra Kumar, similarly situated Assistant Sub

Inspector, is drawing the gross salary Rs. 58,310/- per month, therefore, petitioner is also entitled to receive the arrear of the difference of regular

salary and provisional salary on the post of Head Constable/GD w.e.f. 15.10.2004 to 06.07.2011 with 8% interest. He would further submit that the

respondent department has not providing regular pay scale of Head Constable to the petitioner w.e.f. his reinstatement till today.

7. A counter affidavit has been filed by the respondents stating therein that on the directions issued by this Court, the petitioner was reverted to the post of constable for two months w.e.f. 16.08.2004 to 17.10.2004 and after that automatically he become Head Constable/GD w.e.f. 18.10.2004. It is further stated that since no directions were given by this Court regarding payment of salary for the period from 04.06.1998 to 15.8.2004, during which the petitioner services were terminated. It is further stated that the petitioner was not fully exonerated, principle of "No work No pay" has been applied in the case of the petitioner.

6. Rejoinder affidavit has been filed by the petitioner stating therein that the Division Bench of this Court has set aside the dismissal order providing that the petitioner shall be reverted from the post of Head Constable to the post of Constable for two months. It is further stated that the respondent department by his own way misinterpreted the Court's judgment and order. It is further stated that the Division Bench has not given any such direction that the petitioner be reinstated in provisional pay scale. It is further stated that the respondent department arbitrarily reinstated the petitioner in provisional pay scale of Constable/GD for two months from 16.08.2004 to 15.10.2004 and thereafter reinstated him in the provisional pay scale of Head Constable. It is further stated that the act of the respondent is violative to the Court's order dated 04.08.2004.

7. Perusal of the orders impugned would reveal that the petitioner was dismissed from service on 04.06.1998 and thereafter reinstated on 16.08.2004 on the post of Constable in provisional pay scale of Rs. 3350/- per month equal to salary dated 01.11.1997 for a period of two months and after completion of two months, he was reverted to the post of Head Constable. Perusal of the record would further reveal that respondent department has misinterpreted the order of the Division Bench dated 04.08.2004. From the perusal of judgment passed by Division Bench of this Court it is evidently clear that no such directions were issued by the Division Bench in regard to payment of salary to the petitioner. A perusal of the order passed in the clarification application would further reveal that the reinstatement of the petitioner be given as per Service Rules. In the impugned order nowhere it is mentioned that any rules prohibits that the period for which the petitioner was out of service he shall not be paid any salary. Further it has come in the

order of Division Bench that the order of dismissal is disproportionate and shocking in nature and a lesser punishment could have been imposed

commensurate to the nature of the charge and set aside the orders of dismissal and provide that the petitioner shall be reverted to the post of

Constable for two months and thereafter shall be given the rank of the Head Constable. Therefore, the respondents have no authority to misinterpret

the order of this Court, showing that the petitioner is not entitled to get the salary from the period of his dismissal till the date of his reinstatement on

the principle of no work no pay. The principle of "no work no pay" would apply where an employee unauthorizedly absented himself from the

duties but in the present case, the petitioner himself has not chosen to disappear from his duties. Due to the termination order, he could not presented

himself for his duties. As the termination of the petitioner was held disproportionate, the Division Bench imposed lesser punishment upon him. Thus,

the respondents have no authority to interfere and apply the principle of "No Work No Pay" in the case of the petitioner.

8. In view of the above facts and circumstances of the case, this Court is of the view that the respondent authority by misinterpreted the order of

coordinate bench has granted provisional pay scale to the petitioner, which is unsustainable in the eyes of law. The writ petition is allowed. Impugned

order dated 27.10.2004 is quashed. Mandamus is issued to the respondent authority to pay the arrears of the difference of the regular salary and

provisional salary to the petitioner for the post of Head Constable/G.D. w.e.f. 15.10.2004 to 06.07.2011. Further the respondent authority shall also

pay the salary arrears of difference of the regular salary and provisional salary on the post of Assistant Sub Inspector/L-6 w.e.f. 07.07.2011 and shall

continuously pay the salary to the petitioner for the post of Assistant Inspector/L-6.

9. Pending applications stand disposed of.

10. No order as to costs.