
(2010) 09 AHC CK 0012
In the Allahabad High Court
Case No : Special Appeal No. 356 of 2004

Gyan Dutt

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Constitution of India, 1950 — Article 95(1)

Citation : (2011) 2 AWC 1101 : (2011) 128 FLR 283 : (2011) 1 UPLBEC 535

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Judgement

Sunil Ambwani and K.N. Pandey, JJ.—We have heard Shri Santosh Yadav, learned Counsel for the Appellant. Shri J.K. Tiwari, learned Standing Counsel appears for the Respondents.

2. This special appeal filed by the Petitioner against the judgment dated 29.1.2004 in Writ Petition No. 6553 of 1995, Gyan Dutt v. State of U.P. and Ors. is confined to the relief for grant of back wages denied to him by the learned Single Judge after setting aside the notice dated 2.2.1994, issued by the Divisional Director, Social Forestry Division, Azamgarh, and the order dated 24.12.1994, terminating Petitioner's temporary services under the U.P. Temporary Government Servant (Termination of Service) Rules, 1975, on the ground that his services were no longer required.

3. It is submitted that the learned Single Judge has not given any reason except in stating in the operative portion of the judgment that the Petitioner shall not be paid salary for the period he has not worked. Other benefits including continuity in service for the purposes of pension has been extended to him.

4. Learned Counsel for the Appellant would submit that the award of back wages depends upon the facts of each case. In adjudication of labour disputes under the Industrial Disputes Act the Supreme Court held in Rama Kant Misra v. State of U.P. and Ors. that the Labour Court has power and jurisdiction to substitute its

measure of punishment in place of managerial wisdom and found that in case of low paid employees, where Courts had set aside the termination order, withholding of two increments will be sufficient.

5. In *State of Kerala and Others Vs. E.K. Bhaskaran Pillai*, the Supreme Court while allowing the prayers for retrospective promotion held that there is no thumb rule with regard to grant of back wages. There are various facets, which have to be considered and that grant of monetary benefits with retrospective promotion depends upon the case to case. The Supreme Court, thereafter, observed as follows:

Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.

6. In *Cantonment Executive Officer and Another Vs. Vijay D. Wani and Others*, the Supreme Court while reinstating the employee of the Cantonment Board after holding that the Petitioner was acquitted in criminal case, found it appropriate by reinstating him with 50% back wages and continuity of service. In para 9 of the judgment the Supreme Court held:

9. So far as grant of back wages is concerned, it depends upon case to case. But in the present case as the Respondent was found guilty by the Cantonment Board but the order of Cantonment Board was set aside because it suffered from bias and it will be unfair to deny 50% back wages to the Respondent (herein). The Division Bench also directed that more than 13 years have passed, therefore, it did not permit the Respondent to proceed against the petition afresh. The Division Bench decided the matter on 10th January, 2005 and now more than 16 years have lapsed. Therefore, it would not be fair to permit the Respondent to proceed afresh in the matter. Consequently, we do not find any merit in this appeal and the same is dismissed.

7. In the present case the learned Single Judge has held that the Petitioner was holding a substantive post. He was required to submit fortnightly diary of the work verified by him. He did not submit the diary for the month of March and

April, 1993 and was not paid salary for these months. The ground for withholding salary of the Petitioner as disclosed in the counter affidavit was non-submission of the fortnightly diary as per the provisions of Article 95 (1) of the U.P. Forest Manual for verification and checking of field work. Learned Judge held that as far as Article 95 (1) of the U.P. Forest Manual is concerned, the same did not cast any obligation on the employee for submission of fortnightly diary but it provided that in the event of its non-submission the salary could be withheld. The Petitioner had filed rejoinder affidavit stating that he had submitted requisite diary and report to the Range Officer. At no point of time any communication was sent to the Petitioner that on account of non-submission of the diary his salary was to be withheld.

8. Learned Judge thereafter held that if the Petitioner had absented himself as stated in the counter affidavit from 24.5.1993 and did not appear to submit his explanation within one week from the date of notice and thereafter publication, the disciplinary proceedings were required to be drawn against him. He could not be terminated on the ground of failing to submit explanation under the U.P. Temporary Government Servant (Termination of Service) Rules, 1975.

9. There are no allegations of misconduct against the Petitioner. His failing to attend to work for the period for which the Petitioner states that he was working, could not be a ground to terminate his services summarily by giving him one month's notice.

10. After hearing learned Counsel for the parties and perusing the pleadings, we are of the opinion that the learned Single Judge was not justified in refusing to allow back wages to the Petitioner.

11. The question then arises as to what rate the Petitioner should be paid back wages. The Petitioner's services were terminated on 24.12.1994. He filed writ petition in the year 1995 and had waited for the result of the writ petition. It took almost 9 years' time for the Court to decide the writ petition. The Petitioner cannot be put fault on this account, but that since he has not worked during this period, we cannot also saddle the State Government with the liability of payment of full wages to him for long period of 9 years. The Court, in exercising the discretionary powers in such matter, should be guided by the principles of equity and good conscience. A wrong order of termination of services should ordinarily result into reinstatement with full back wages. The denial of part of wages for no fault on the part of employee may violate his rights to be paid for wrongfully depriving him of work which he was ready and willing. The employee, however, is also required to satisfy the Court that he was not gainfully employed during the relevant period or that he had suffered any undue hardship for such wrongful withholding of his salary. In this case the Petitioner has not pleaded or placed on record any such facts.

12. The special appeal is partly allowed to the extent that the Petitioner will be entitled to 50% of the back wages from the date his services were terminated to

the date he was reinstated by the Respondents. The salary will be computed and amount shall be paid within three months from the date a certified copy of this order is produced before the concerned authority.