

(2006) 02 JH CK 0044
In the Jharkhand High Court
Case No : L.P.A. No. 541 of 2003

Mahendra Harizan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Citation : (2006) 2 JCR 111

Hon'ble Judges : S.J. Mukhopadhaya, J;D.K. Sinha, J

Bench : Division Bench

Advocate : Ritu Kumar and P.K. Verma, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant having been removed from service on 13th June, 1989, challenged the order before the appropriate forum. It having been declared illegal was set aside and he was reinstated on 16th June, 1997. When the writ petition for payment of arrears of salary for the period from 13th June, 1989 to 16th June, 1997 was preferred, the learned Single Judge vide order dated 16th July, 2003 rejected the claim on the ground that no order or direction was earlier issued for payment of salary. Admittedly when the order of removal was declared illegal no declaration was given as to what salary to which the appellant is entitled. It was neither observed that he should get it nor any rejection was made, as the issue was not raised at that time. The question arises for determination is as to whether in such cases a person can be refused consequential benefits of salary on the ground that no order or direction was passed.

2. Having heard the learned counsel for the appellant, we are of the opinion that a party cannot suffer if the order reinstating the person is silent on the issue as to what consequential benefit to which the employee is entitled. Normally if an order of removal is declared illegal and is set aside by the Court of law/competent authority, it will be presumed that there is no order of removal in the

eye of law and the person automatically stands reinstated with consequential benefits Le. seniority, arrears of salary etc. But taking into consideration the fact of each case, and latches, if any, on the part of one or the other party/parties. Court may determine as to whether full back wages or part wages be allowed.

3. In the case of G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., , the Supreme Court held that where reinstatement has been directed by the Court, the entire back wages must follow as a matter of course. Of course there is discretion in the Court having regard to special circumstances if any to modify the normal rule.

4. In the case of the present appellant reinstatement having been directed by the Court, the appellant is entitled for back wages as a matter of course; he cannot be denied such benefit, if the order of Court is silent in regard to payment of wages. While reinstating the appellant as the Court has not passed any order as a matter of course and normal rule the appellant is entitled for full back wages.

5. We, accordingly, set aside the order dated 16th July. 2003 passed by the learned Single Judge in W.P. (S) No. 4477 of 2002 and direct the respondents to pay the appellant full back wages for the period from 13th June 1989 to 16th June, 1997 within two months from the date of receipt of this order. The appeal is allowed with the aforesaid direction and observations. However, in the facts and circumstances of the case no order as to the costs.