

(2011) 08 AHC CK 0248
In the Allahabad High Court
Case No : Special Appeal No. 1911 of 2009

Managing Director, U.P. Co-operative Federration Ltd. and
Others

APPELLANT

Vs

Chandra Kesh Yadav

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Citation : (2011) 08 AHC CK 0248

Hon'ble Judges : Syed Rafat Alam, C.J;Krishna Murari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard learned Counsel for the Appellants.
2. This intra Court appeal is directed against the judgment and order dated 26.10.2009 passed by the learned Single Judge, allowing the writ petition filed by the Petitioner-Respondent herein.
3. The undisputed facts are that the Petitioner-Respondent was working as Assistant in the Office of the U.P. Cooperative Federation, Siddharthnagar. The disciplinary proceedings were initiated against him on the charge of manipulating a forged receipt in the year 2000-2001, on the strength of which a Rice Mill was absolved of the payment of Rs. 28,97,547.60 paise as the price of 2895 quintals of rice. The Petitioner-Respondent was found guilty of the charge in the disciplinary proceedings and vide order dated 13.10.2005 passed by the Managing Director, U.P. Cooperative Federation Ltd., Lucknow, a major penalty of dismissal from service was inflicted upon him. Writ Petition No. 3884 of 2006 filed by the Petitioner-Respondent, challenging the order dated 13.10.2005, was allowed by this Court, vide judgment and order dated 22.5.2006 and the order of dismissal from service was set aside with a liberty to undertake fresh disciplinary proceedings, in case the employer desires, in accordance with law. Vide order dated 15.7.2006, the Petitioner-Respondent was reinstated in service and fresh

disciplinary proceedings were initiated. In the subsequent disciplinary proceedings, the charge against the Petitioner-Respondent was not found to be proved. Although the charge, on which the disciplinary inquiry was instituted against the Petitioner-Respondent was not found to be proved, still vide order dated 31.3.2009, he was awarded censure for not cooperating with the disciplinary inquiry and his salary and allowances for the period from 13.10.2005 to 15.7.2006, during which he remained dismissed from service were withheld.

4. Learned Single Judge finding that No. disciplinary inquiry was held against the Petitioner-Respondent in respect of charge of not cooperating in the disciplinary inquiry and the same was levelled against him during the course of inquiry without any proper charge-sheet, held that No. punishment could have been inflicted upon him in respect of the said charge. With respect to stopping the payment of salary and allowances to the Petitioner-Respondent for the period from 13.10.2005 to 15.7.2006, the learned Single Judge found that the same was also untenable and is in breach of Rule 54 of the Financial Handbook Vol. II, Part II to IV.

5. Learned Counsel for the Appellants submitted that the Appellants are only aggrieved by the part of the order by which the Petitioner-Respondent has been held to be entitled for full salary and allowances for the period 13.10.2005 to 15.7.2006. He further submitted that since the Petitioner-Respondent, admittedly, did not work during the aforesaid period, as he was dismissed from service, he cannot be held to be entitled for the payment of salary and allowances for the said period.

6. We are not impressed with the submission of the learned Counsel for the Appellants. Admittedly, the order inflicting punishment of dismissal from service upon the Petitioner-Respondent was set aside and he was reinstated back in service on 15.7.2006, but No. specific order with respect to salary and allowances for the period in question was passed by the authority. In the subsequent disciplinary proceedings, the Petitioner-Respondent was exonerated of the charge levelled against him. Once he has been exonerated of the charge completely, ordinarily he would be entitled for the full salary and allowances for the period he was under wrongful dismissal from service. Even while passing the order disentitling the Petitioner-Respondent from salary and allowances for the period, in question, the authority has not recorded any reason for the same. In the absence of any reason, once the dismissal order has been set aside and in the subsequent disciplinary proceedings, the Petitioner-Respondent has not been found guilty of the charge levelled against him, there is No. reason why he should not be paid salary and allowances for the period, in question.

7. The learned Single Judge has rightly set aside the order stopping payment of salary and allowances to the Petitioner-Respondent and held that the Petitioner-Respondent would be entitled for full salary and allowances for the period, in question.

8. Apart from the above, it has been brought to our notice that during the pendency of the appeal, the payment of entire outstanding salary and other allowances, for the period in question, has already been made to the Petitioner-Respondent.

9. In this view of the matter, we find No. reason to interfere with the judgment and order of the learned Single Judge. The appeal being without merit, accordingly, stands dismissed.