

(2010) 09 AHC CK 0289
In the Allahabad High Court

Managing Director,U.P. Co-Operative Bank Ltd.,
Vs

APPELLANT

Ram Lal (1034 S/S 1999)

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0289

Hon'ble Judges : F.I.Rebello, CJ and Pradeep Kant, J

Final Decision : Partly Allowed

Judgement

Pradeep Kant, J.—This special appeal is directed against the order dated 21.5.2010 whereby the learned Single Judge has set aside the order of punishment pursuant to disciplinary proceedings with a further direction to reinstate the respondent (petitioner in the writ petition) in service with continuity of service and all consequential benefits and has also directed for payment of salary to the extent of 50% admissible under the Rules. The learned Single Judge was also pleased to permit the respondent (appellant in this appeal) to proceed afresh in case they are advised to do so.

2. Pursuant to the judgement, the appellant has reinstated the original petitioner in service w.e.f. 11.8.2010, but they are aggrieved by that part of the order whereby direction has been issued to pay 50% of back wages with all consequential benefits, as also the order to the extent it has directed for continuity of service.

3. On behalf of the appellant, learned counsel relies upon the judgement of the Supreme Court in the case of U.P. State Textile Corporation Ltd. vs. P.C. Chaturvedi and others, (2005) 8 SCC 211, to contend that once the Court has permitted the holding of fresh departmental proceedings, back wages and consequential benefits cannot be awarded at that stage.

4. On the other hand, on behalf of the original petitioner, respondent's counsel submitted that once the order of punishment is set aside, the petitioner is entitled to continuity of service. In the instant case, the learned Single Judge has

exercised his discretion and awarded only 50% back wages.

5. We have heard learned counsel for the parties.

6. Considering the challenge, the only question which is called for consideration is whether learned Single Judge when fresh departmental enquiry was permitted, could have directed for 50% back wages to be paid to the respondent with all consequential benefits.

7. If the punishment is imposed on the respondent herein, the issue is to left before the disciplinary authority, as it would be for the disciplinary authority to decide the issue.

8. Considering the ratio of the judgement in U.P. State Textile Corporation Ltd. (supra), in our opinion, that part of the order directing back wages to be paid to the respondent at this stage be set aside, which is hereby set aside. The matter is left open for consideration by the disciplinary authority after completing the enquiry proceedings.

9. Attention was also invited to the judgement in the case of State of U.P. and others vs. Saroj Kumar Sinhab, but we find that the judgement in the case of P.C. Chaturvedi and others (supra) is only applicable in the issue.

10. Considering the ratio in the case of P.C. Chaturvedi and others, the law would be that it has to be left to the discretion of the disciplinary authority, as to what punishment should be awarded, including the issue of admissibility of back wages, and consequential benefits.

11. As a result of setting aside the order of punishment, the respondent was entitled to be reinstated in service, which has been done and is also entitled for the salary regularly from the date of such reinstatement. The period during which, he remained out of employment because of the passing of the punishment order, till the date of his reinstatement, is not to be treated as break in service but shall be treated as continuous service, for the purpose of other service benefits, including the post retiral dues but all other consequential benefits and salary for the aforesaid period shall abide the result of the enquiry.

12. With the above observations, the special appeal is partly allowed. Impugned direction is accordingly modified.