
(2011) 01 AHC CK 0156
In the Allahabad High Court
Case No : Service Single No. 4599 of 2010

Mukeem Ahmad

APPELLANT

Vs

The State Of U.P. and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Constitution of India, 1950 — Article 311

Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 29

Citation : (2011) 01 AHC CK 0156

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard Mr Amit Bose, learned Counsel for the Petitioner and learned Standing Counsel.

2. Brief facts of the Petitioner's case are that by the order dated 26.12.1997, the Petitioner was dismissed from service in pursuance of the departmental proceedings conducted against him on the allegation of having contracted a second marriage during the subsistence of his first marriage and thereby had violated the provisions of Rule 29 of the U. P. Government Servants Conduct Rules. Being aggrieved, he filed an appeal before the Deputy Inspector General of Police, PAC, Bareilly Sector, Bareilly, which was rejected by the order dated 24.2.1998. Aggrieved by the aforesaid orders, the Petitioner filed Claim Petition No. 1144 of 1998 before the State Public Services Tribunal. By the judgment and order dated 9.1.2008, the Tribunal allowed the Claim Petition and the order of punishment dated 26.12.1997 and appellate order dated 24.2.1998 were quashed and a direction was issued to the opposite parties to the claim petition to reinstate the Petitioner in service with continuity in service from 16.12.1997 and all consequential benefits with a further direction to the opposite parties to pass a speaking order in respect of the pay and allowances payable to the Petitioner from 26.12.1997 till his reinstatement in service. It was also directed

in the aforesaid judgment and order that the directions issued therein should be complied within three months from the date of receipt of a certified copy of the aforesaid judgment and order.

3. Thereafter, by a representation dated 17.1.2008 preferred by the Petitioner, the aforesaid judgment and order was served on the Commandant, 2nd Battalion PAC, Sitapur. In the meantime, the State preferred a writ petition No. 837 (SB) of 2008, which was dismissed by the order dated 28.4.2009. Being aggrieved, the SLP was filed which too was dismissed by the judgment and order dated 9.10.2009 resulting thereby the judgment and order passed in Claim Petition attains finality. Thereafter, by an order dated 10.12.009, the Petitioner was reinstated in service by the Commandant, 2nd Battalion, Sitapur.

4. Learned Counsel for the Petitioner submits that the Petitioner has approached the opposite parties for payment of backwages by preferring representation which was decided by means of impugned order dated 24.1.2010, by which it has been directed that the Petitioner would be paid Re.1/-per month with effect from 26.12.1997.

5. A counter-affidavit has been filed by the State, wherein it has been stated that the Petitioner is entitled for backwages on the principle of no work no pay, whereas the legal proposition has not been denied. Learned Counsel for the Petitioner submits that there was no specific direction by any of the Courts for not paying the backwages to the Petitioner. Further he states that Fundamental Rule 54A 2 (i) of Financial Handbook Volumes II to IV provides for payment of arrears of pay and allowances to a Government Servant for the period he has remained out of employment as a result of an order of dismissal from service having been passed against him which order has been set aside by a Court on the technical ground of violation of principles of natural justice or violation of the provisions of Article 311 of the Constitution of India. Further, it is provided that in such a situation, the appointing authority can pass orders of either withholding the entire arrears of pay and allowances or allow the Government Servant concerned a portion of such pay and allowances and in such a situation, the Government Servant concerned is entitled to an opportunity of hearing before such an order is passed. On the other hand, Rule 54A (3) provides that in case an order of dismissal from service is set aside by a Court on merits, the Government Servant concerned is entitled to full pay and allowances for the period he was out of employment as a result of the order of dismissal from service.

6. As the learned Counsel for the Petitioner has relied upon the provisions of Rule 54A (3), they are reproduced hereunder:

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period of intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory

retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

7. After hearing learned Counsel for the parties, I am of the opinion that the principle of "no work no pay" will not be applicable in the instant case, as the Tribunal while setting aside the order of dismissal had granted continuity in service to the Petitioner with effect from the order of dismissal from service and also consequential benefits, which is in consonance with the provisions of Rule 54A (3) of Fundamental Rules. While deciding the representation, the Commandant has passed the order that the Petitioner would be paid a token of Re.1/-per month for the period 26.12.1997 to 10.2.2009. As the impugned order has not been passed in accordance with rules, it is not sustainable in the eyes of law. On this count alone, it is liable to be set aside.

8. In view of above, the writ petition is allowed and the impugned order dated 24.1.2010 is set aside. The opposite parties are directed to pay the backwages, in accordance with law, within a maximum period of three months, from the date of presentation of a certified copy of this order.