
(2011) 02 AHC CK 0385

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7917 of 2011

Naseem Fatma, Mahila Constable

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Citation : (2011) 3 ADJ 564 : (2011) 4 AWC 3824 : (2011) 129 FLR 210 :
(2011) 2 UPLBEC 1080

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The Petitioner was a Constable in the Civil Police. Her services were terminated by the order dated 13th February, 1998 against which she filed Writ Petition No. 16307 of 1998 which was dismissed on 9th February, 2009 as the Petitioner had an alternative remedy of filing an appeal. The appeal filed by the Petitioner has been allowed by the order dated 17th December, 2009 passed by the Inspector General of Police, Allahabad and the dismissal order dated 13th February, 1998 has been set aside. The grievance of the Petitioner is that despite the setting aside the aforesaid dismissal order dated 13th February, 1998, the Petitioner has not been paid arrears of salary for the intervening period and nor the benefit of seniority has been given to the Petitioner.

2. Sri Vijay Gautam, learned Counsel for the Petitioner submitted that the Petitioner is clearly entitled for the payment of arrears of salary for the period she was out of service and seniority is also required to be given to the Petitioner.

3. Sri Shashank Shekhar Singh, learned Additional Chief Standing Counsel appearing for the Respondents has submitted that the appellate authority has only quashed the order of dismissal and has not granted any relief for payment of arrears of salary or seniority and, therefore, in the absence of such a direction, the Petitioner is not entitled to such benefits. In support of this contention,

learned Additional Chief Standing Counsel has placed reliance upon the decision of the Supreme Court in Rajasthan State Road Transport Corporation and Others Vs. Shyam Bihari Lal Gupta,

4. I have considered the submissions advanced by the learned Counsel for the parties.

5. The appellate order only quashes the dismissal order. It does not grant any relief for payment of arrears of salary or seniority to the Petitioner. The issue, therefore, that needs to be decided is whether in the absence of any such direction, the Petitioner can claim these reliefs.

6. This matter was examined by the Supreme Court in Rajasthan State Road Transport Corporation (supra) and the Supreme Court, after taking into consideration its earlier judgments, rejected the claim of the employee for payment of back-wages since there was no decree to that effect. Paragraphs 3 and 4 of the judgment are quoted below:

3. According to learned Counsel for the Appellant-Corporation, the decree is absolutely silent so far as the back wages are concerned. The decree in essence contains only a declaratory relief without any consequential payment for monetary benefits. That being so, the Executing Court and the High Court were not justified in granting the relief sought for. Learned Counsel for the Respondent on the other hand submitted that when the decree clearly indicated that the termination was illegal non est, as a natural corollary, the Plaintiff was entitled to the back wages.

4. In an almost identical case, this Court in Rajasthan S.R.T.C. and Another Vs. Ladulal Mali, held that the decree does not contain payment of back wages. Only declaratory relief of the nature granted in the present case was granted. Further, in A.P.S.R.T.C. and Another Vs. S. Narsagoud, this Court held as follows:

9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earning during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.

Of course, the abovenoted case related to the question of granting increments notionally. But the principles laid down relating to specific non-mention about any monetary benefit is relevant. As was noted in the Rajasthan State Road Transport Corporation's case there was no decree for grant of any monetary benefits.

7. A perusal of the judgment and order of the Supreme Court shows that the termination order was assailed in a Suit for declaration. The suit was decreed on 3rd May, 1987 and it was held that the termination was void ab initio and non est and the Plaintiff shall be treated in continuity of service of the Corporation. The execution application was filed for claiming salary for the intervening period from January 1982 to May 1987. The claim of the employer was that there was no direction for back-wages and merely because the Plaintiff-employee managed to get some amount by executing a decree for the previous period will not enable to Plaintiff-employee to get back wages for the period during which he had not worked and there was nothing in the decree so far as back wages are concerned. The Executing Court granted relief to the employee and the High Court also dismissed the writ petition. The Rajasthan State Road Transport Corporation filed the appeal before the Supreme Court. The appeal was allowed holding that back-wages could not be paid as there was no direction of the Court.

8. In the present case also, only the dismissal order of the Petitioner has been quashed. There was no direction for payment of salary for the intervening period.

9. The Petitioner cannot also claim that the intervening period should be counted for the purpose of seniority. The decision of the Supreme Court in Shyam Bihari Lal Gupta (supra) has relied upon the earlier decision of the Supreme Court in Rajasthan S.R.T.C. and Another Vs. Ladulal Mali, In this decision, the Supreme Court observed that there was a difference between an order of reinstatement accompanied by a direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits which necessarily flow from reinstatement and that in the absence of any such direction, the employee cannot claim benefit of increments notionally earned during the period of unauthorized absence, even if there was a direction for reinstatement with the benefit of continuity in service.

10. In the present, there was no direction issued by the appellate authority for adding the length of service during the intervening period for the purpose of seniority. In the absence of any such direction, no benefit can be given to the Petitioner.

11. It also needs to be noticed that the Petitioner also gave an undertaking before the Disciplinary Authority that she will not claim any arrears of salary for the intervening period.

12. It is the submission of the learned Counsel for the Petitioner that the Petitioner was compelled to give this undertaking. There is nothing on the record to indicate that that the Petitioner made any representation to the Disciplinary Authority or to the Appellate Authority regarding this fact and nor is there any averment in the writ petition that such undertaking was taken by coercion. It is, therefore, not possible to accept this contention of the learned Counsel for the Petitioner. Even otherwise, in law the Petitioner is not entitled for any such claim.

There is, therefore, no merit in this petition. It is, accordingly, dismissed.