
(1995) 08 AHC CK 0013
In the Allahabad High Court
Case No : C.M.W.P. No. 9669 of 1985

Om Prakash Khare

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, 192, 451, 468

Citation : (1995) 08 AHC CK 0013

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : S.P. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Petitioner, by means of the present petition Under Article 226 of the Constitution of India, prays for a writ, order or direction in the nature of certiorari quashing the order dated 24.6.85 passed by the District Magistrate, Banda Respondent No. 2, terminating the services of the Petitioner. By means of amendment application, which was allowed by this Court, following reliefs have also been asked In the writ petition:

(f) To Issue a writ, direction or order in the nature of mandamus commanding the Respondents to pay the unpaid full salary with allowances for the period 24.6.85 to 17.6.89 (between the period of termination and re-employment/fresh appointment) with 18% interest thereon within one month.

(g) To issue a writ, direction or order in the nature of mandamus commanding the Respondents to treat the intervening period between the date of dismissal and the date of fresh appointment as on duty for all purposes including for the computation of seniority, relaxation of salary and promotional benefits.

(h) To issue a writ, direction or order in the nature of mandamus commanding the Respondents to treat the order of fresh appointment dated 17.6.89 as order

of reinstatement.

2. Brief facts of the case are that on 22.10.82 Petitioner was appointed as extra-copyist In the Collectorate, Banda on account of death of his father Sri Vijai Narain Khare Under the provisions of U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1947, According to Petitioner, he had to finish the urgent official work assigned to him and the same had to be put up in the meeting, he stayed in the office of S.D.M. Baveroo, district Banda, which was got locked by the Chaukidar, whereupon the S.D.M., Baveroo lodged a first information report Under Sections 120B, 192, 451 and 468, I.P.C. against the Chaukidar and other persons including the Petitioner. Thereafter, the S.D.M. made a recommendation for transfer of the Petitioner to some other place as well as placing him under suspension. Whereupon the District Magistrate, Banda passed the order dated 24.6.85 instead of suspending or transferring the Petitioner, terminating the services of the Petitioner. Petitioner challenges the validity of the said order dated 24.6.85 by the means of the present petition as stated above. The writ petition was admitted, but no interim relief was granted to the Petitioner.

3. In the meanwhile, Petitioner and two other accused persons were tried by the criminal court for the criminal charges leveled against them and they were ultimately acquitted by the Chief Judicial Magistrate, Banda vide his order dated 28.5.87, which became final as no appeal or revision was filed against the same by anybody. On the basis of the provisions contained in Rule 54A of U.P. Fundamental Rules contained in Financial Hand Book (Vol. II, Part II to IV), Petitioner made an application for reinstatement. For the purpose of present case, it is necessary to reproduce the Sub-Rules (1) and (3) of Rule 54A of the Fundamental Rules, which read as Under:

(1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further enquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of Sub-Rules (2) or (3) subject to the directions, if any of the court.

(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 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 compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be."

When no heed was paid, to the representation dated 5.6.87 filed by the

Petitioner, by the District Magistrate, another representation dated 21.8.87 was filed by him.

4. It would not be out of place to state that the other two co-accused persons, namely, Sri Vijai Chaukldar and Prem Bihari Bajpai (Clerk) after their acquittal in the criminal case were already reinstated on then original posts, therefore, the Petitioner invited the attention of the authorities concerned towards the said facts also as well as he moved an application for amendment of the writ petition and the same was allowed as stated above and has also placed on record the judgment and order of acquittal passed by the Chief Judicial Magistrate, Banda.

5. The matter was ultimately listed for hearing before Hon"ble Palok Basu, J. who after hearing the counsel for the parties, passed a detailed order dated 1.12.1988 observing that very foundation of the termination order passed against the Petitioner was without basis as apparent from the order of acquittal. The Petitioner was, therefore, entitled to be reinstated. In this regard, directions to the District Magistrate to consider the matter of reinstatement were also given and the District Magistrate, Banda was required to reconsider the matter within a period of three weeks.

6. Since the aforesaid order, inspite of the fact that a certified copy was served upon the District Magistrate, Banda, no action was taken by him, there fore, the contempt petition No. 405 of 1989 was filed on which notices were issued to the parties. On receipt of the notice in the contempt matter, the District Magistrate, Banda passed the order dated 7.6.89 whereby the Petitioner was reappointed on the post of clerk instead of passing the order of reinstatement. Since the Petitioner was not satisfied by the said order dated 7.6.89, he moved an application for amendment of the writ petition praying for consequential relief to which he is entitled Under Rules 54A of Fundamental Rules and the same was allowed.

7. Learned Counsel for the Petitioner has urged that after the order of acquittal was passed In favour of the Petitioner, Under Sub-rule (3) of Rule 54A of Fundamental Rules, Petitioner was entitled to be reinstated on the post of clerk by the District Magistrate, Banda who has failed to discharge his statutory duty and has illegally not reinstated him, instead he has passed the order of reappointment. He further contended that from 24.6.85 to 17.6.89, i.e., from the date of termination to the date of reappointment the Petitioner is entitled to his salary. He is also entitled to other benefits in the matter of seniority, etc. It has also been contended by the learned Counsel for the Petitioner that he has never refused to perform his duty as clerk and it was on account of illegal order of termination passed by the District Magistrate, Banda that he was not permitted to perform his duty, therefore, he Is legally entitled to receive the arrears of salary for the said period and he is also entitled to have the consequential benefits.

8. On the other hand, learned standing counsel contended that since the

Petitioner has not worked from 24.6.85 to 17.6.89, therefore, in view of the principle "no work no pay", the Petitioner is not entitled to get any salary for the said period. It has also been contended that the Petitioner having been reappointed, therefore the present petition becomes infructuous and deserves to be dismissed.

9. I have given due consideration to the rival contentions made on behalf of the parties. In my opinion, the Respondents are bound to comply with the provisions contained in Rule 54A of the Fundamental Rules. In Sub-rule (1), it is provided that where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further enquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of Sub-Rules (2) or (3) subject to the directions, if any, of the court.

10. Sub-Rule (3) of the said Rule 54A provides that 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 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 compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

11. In view of the said provisions of Rule 54A, which are mandatory, the Respondents have no option but to comply with the said rules. Therefore, it cannot be said that the Petitioner is not entitled to his salary for the period he was not permitted to perform his duty before the illegal order of termination was passed by the District Magistrate Banda. Further, the Petitioner never refused to perform his duty, on the other hand, the Respondents themselves have not permitted him to discharge his duty, therefore the writ petition deserves to be allowed.

12. The writ petition is allowed with costs. The Respondents are directed to pay the arrears of salary for the period 24.6.85 to 17.6.89 to the Petitioner and they are further directed to treat him in continuous service and to give him other benefit in the matter of seniority, etc., to which he is entitled under the provisions of aforesaid rules. The arrears of salary shall be paid to the Petitioner within a period of two months from today.