
(2008) 08 AHC CK 0311

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47399 of 2002

R.N. Bhagat

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Citation : (2008) 119 FLR 999

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Lokendra Kumar, for the Appellant; B.N. Singh, K.C. Sinha, N.P. Shukla and R.N. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The Petitioner was appointed as a Cook in the Central Reserve Police Force in the year 1991. On account of over-stay, the Petitioner's services was terminated by an order dated 24th February, 1999, against which, he filed an appeal which was also dismissed. The Petitioner preferred a revision, which was also rejected. The Petitioner thereafter filed Writ Petition No. 28801 of 1999 praying for the quashing of the orders of the disciplinary authority, the appellate authority as well as the revisional authority and also prayed for a writ of mandamus commanding the Respondents to restore the services of the Petitioner as Cook and to pay him the arrears of salary, and also continue to pay him the current salary month to month. The said writ petition was allowed by a judgment dated 27th February, 2001 and the order of termination was set aside. The Court while setting aside the order of termination, moulded the relief and directed that instead of removing the Petitioner from service, 3 increments with cumulative effect be withheld, which would commensurate with the misconduct. The Court was of the opinion that the punishment awarded was excessive and disproportionate to the misconduct. It transpires that the Respondents, being aggrieved by the judgment of the learned Single Judge, preferred a special appeal, which was also rejected. Even then the order of the Court was not

complied with and the Petitioner was compelled to file a contempt application. During the pendency of the contempt proceedings, the Petitioner was reinstated in service, but was not paid the arrears of salary vide order dated 24th June, 2002, on the ground, that the Petitioner did not work during the intervening period. The Petitioner, being aggrieved by the order dated 24th June, 2002, has filed the present writ petition.

2. Heard Shri Lokendra Kumar, learned Counsel for the Petitioner and Shri N.P. Shukla, the learned Counsel for the Respondents.

The learned Counsel for the Petitioner submitted that the order of termination was set aside by the Court and the Petitioner was directed to be reinstated. Consequently, when there was a direction for reinstatement, he was entitled for payment of back wages from the date of the alleged dismissal till the date of his reinstatement. In support of his submission, the learned Counsel placed reliance upon a decision of the Supreme Court in *Brahma Chandra Gupta Vs. Union of India (UOI)*, wherein the Supreme Court found it fit to grant full salary upon reinstatement of the said Petitioner. Similarly, reliance was placed on a decision of the Supreme Court in *Syed Zaheer Hussain Vs. Union of India (UOI) and Others*, wherein the Supreme Court while reinstating the delinquent employee, granted 50% back wages.

The learned Counsel consequently submitted that the principle of "no work no pay" cannot be applied and that there are exceptions when the Courts has granted monetary benefits from a back date, and consequently, in the circumstances of the present case, when the order of dismissal was found to be disproportionate with the misconduct, the relief of back wages should be granted. The learned Counsel, consequently, submitted that a writ of mandamus should be issued directing the authorities to grant back wages to the Petitioner.

3. Having considered the submissions of the learned Counsel for the Petitioner this Court is of the opinion that the Petitioner is not entitled to any relief.

In the case of *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, the Supreme Court held that if there is no specific direction by a Court of law to reinstate a person, consequently, the Respondents could not be held liable for any wilful contempt for not reinstating that person.

In *Mrs. Harbans Kaur v. Sardar (Ch) Narendra Singh and Anr.* 1992 AWC 1398 and in *Tannary and Foot Wear Corporation Vs. T. Rudra, Chairman cum Managing Director and Others*, the Court held that there was no wilful contempt on the part of the Respondents in not paying the salary to the applicant since there was no specific direction for the payment of the salary by the Court. In the *Director of Education, Uttaranchal and Ors. v. Ved Prakash Joshi and Ors.* 2005 (106) FLR 817 (SC) : 2005 (32) (Sic) the order of termination was set aside and there was no specific direction for the payment of the arrears of salary. The Court held that there was no contempt against the opposite parties since there was no specific

direction for the payment of the salary.

4. The said principle enunciated in the aforesaid decisions is clearly applicable in the present case. Admittedly, in the present case, the order of dismissal was set aside and the Court directed reinstatement of the Petitioner. There was no specific direction for the payment of the arrears of the salary while reinstating the Petitioner. That judgment has now become final. Consequently, applying the aforesaid principles, as enunciated in the aforesaid decisions since there was no specific direction for payment of arrears of salary, the Petitioner could not get the arrears of salary automatically upon his reinstatement. The Supreme Court has held in a large number of cases that payment of arrears of salary upon reinstatement is not automatic and each and every case has to be considered in the facts and circumstances of each case.

5. In the present case, the authority while reinstating the Petitioner, declined to grant arrears on the principle of "no work no pay". In my view, the order of the authority does not suffer from any error of law. Further, the Court finds that the relief of arrears of salary was specifically prayed for by the Petitioner in his earlier writ petition, which relief was not granted by the Court and the punishment of dismissal was converted into a reinstatement with stoppage of 3 increments with cumulative effect. Since there was no specific direction for payment of arrears of salary, while reinstating the Petitioner, it can safely be said that the payment of arrears of salary was denied by the Writ Court, and that judgment, has now become final. Consequently, the Petitioner cannot be granted arrears of salary.

6. The learned Counsel for the Petitioner placed reliance upon Sub-rule (3) of Rule 54-A of the Fundamental Rules, which provides for payment of arrears of salary and other allowances upon reinstatement, and consequently submitted that the Petitioner was entitled for full salary for the intervening period upon his reinstatement.

7. In my opinion, the submission of the learned Counsel for the Petitioner is bereft of merit as the provision of Sub-rule (3) of Rule 54-A is subject to the provision of Sub-rule (1) of Rule 54-A of the Fundamental Rules. For facility, Fundamental Rule 54-A(1) and (3) are quoted hereunder:

F.R. 54-A. 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 inquiry, 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-rule (2) or (3) subject to the directions, if any, of the Court.

....

1. 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 compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case maybe.

8. Sub-rule (1) of Rule 54-A indicates that where the order of dismissal is set aside by the Court of law and the Government servant is reinstated without holding any further inquiry, the said Government servant would be paid the pay and allowances in accordance with the provisions of Sub-rule (2) or Sub-rule (3) subject to the directions of the Court, if any.

9. In the present case, the Court declined to grant the arrears of salary, and therefore, the authorities were justified in refusing to grant arrears of salary to the Petitioner upon his reinstatement under Sub-rule (3) of Rule 54-A of the Fundamental Rules.

In view of the aforesaid, the impugned order does not suffer from any error of law. The writ petition fails and is dismissed.