

(1996) 08 GAU CK 0060
In the Gauhati High Court
Case No : Writ Appeal No. 86 of 1996

State of Manipur and Others	Vs	APPELLANT
Abdul Matalib		RESPONDENT

Date of Decision : 30-08-1996

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1997) 1 GLR 365

Hon'ble Judges : P.K. Sarkar, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : A. Jagatchandra Singh, for the Appellant; Kh. Binoykumar Singh, for the Respondent

Judgement

A.K. Patnaik, J.—This is an appeal against the judgment and order dated 24.4.96 of the learned Single Judge passed in Civil Rule No. 338 of 1995. By the said judgment and order dated 24.4.96, the learned Single Judge quashed the order of termination of the Petitioner on the ground that the procedure as laid down under the Rules for disciplinary proceedings was not complied with and that the departmental enquiry was hit by Article 311 of the Constitution of India. While quashing the order of termination the learned Single Judge further directed the Appellant-Respondents to reinstate the Respondent-Petitioner in his service and to pay him the back wages with interest on the arrears at the rate of 12% per annum with effect from the date of termination, i.e. with effect from 24.8.88.

2. The short point that has been raised by Mr. Jagatchandra Singh, learned Counsel for the Appellants-Respondents, is that the learned Single Judge, while quashing the order of termination/dismissal from the service of the Petitioner dated 24.8.88, ought not to have directed the Appellant-Respondents to pay the Respondent-Petitioner the back wages with effect from 24.8.88 with interest @ Rs. 12% per annum in view of the law settled by the Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., Relevant portion of the said judgment on which Mr. Jagatchandra Singh relied on is quoted

hereinbelow:

Where after following the above procedure, the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement, of the employee with liberty to the authority/management to proceed with the inquiry by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and oilier benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should be invariably be left to be decided by the authority concerned according to law, after the culmination of proceedings and depending on the final outcome. If me employee succeeds in the first inquiry and is directed to be reinstated, the authority should be at liberty to decide according 0 law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the sating aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position of law.

According to Mr. Jagatchandra Singh, the aforesaid extract from the judgment of the Apex Court indicated that the proper relief in a case where departmental inquiry is found to be defective is to direct reinstatement of the employee with liberty to the authority to proceed with the inquiry by placing the employee under suspension and to continue inquiry and to leave it open to the authority to decide the question of back wages and other benefits from the date of dismissal till the date of reinstatement as per the final order that may be passed by the disciplinary authority on the culmination of the proceedings depending on its final outcome. But in the instant case, the learned Single Judge in the impugned judgment directed payment of not only full back wages but also interest on the said back-wages at the rate of 12% per annum which the authorities had to pay out of fear of contempt proceedings.

3. Mr. K. Binoykumar, learned Counsel for the Respondent-Petitioner, on the other hand, relied on me judgment of the Apex Court in the case of Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, and submitted that as per law laid down by the Apex Court in that case, the Petitioner is entitled to be compensated alongwith reinstatement in service where the Petitioner has been dismissed from service without his fault. He argued that the direction given by the learned Single Judge in the judgment and order dated 24.4.96 for payment of back-wage from the date of dismissal from service with interest at the rate of Rs. 12% per annum is in accordance with the aforesaid law laid down by the Apex Court. Mr. Binoykumar Singh further stated that the Respondent-Petitioner has already been paid the said back-wages with interest at the rate of Rs. 12% per annum and submitted that once payment has been made to the Respondent-Petitioner it cannot be recovered by the Appellant-

Respondents as has been held by the Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others,

4. In the present case, it is true that the learned Single Judge has directed reinstatement in service of the Respondent-Petitioner with effect from the date of his dismissal/termination with no liberty given to the Appellant-Respondents to place the Petitioner under suspension and to continue the departmental inquiry, but we find from a reading of the appeal memo that the aforesaid portion of the direction of the learned Single Judge for reinstatement of the Respondent-Petitioner without liberty to the Appellant-Respondents to put the Petitioner under suspension and to continue the departmental inquiry has not been challenged in this appeal. Mr. Jagatchandra Singh, learned Counsel for the Appellant-Respondents, however, explained that the said portion of the impugned judgment of the learned Single Judge has not been challenged in this appeal because the Respondent-Petitioner was dismissed from service on the charge of having remained absent from duty only for one day. Whatever may be the reason for not challenging the aforesaid portion of the impugned judgment and order dated 24.4.96, we are of the view that the fact that the aforesaid portion of impugned judgment of the learned Single Judge has not been challenged would show that Appellant-Respondents are no longer interested in placing the Petitioner under suspension and to continue the departmental inquiry. This being the position, it is clear that the Appellant-Respondents do not want to exercise the liberty of suspending the Respondent-Petitioner and to continue the inquiry against him afresh in respect of the charge. In that case, there is no question of any final order being passed by the disciplinary authority at the culmination of the disciplinary proceedings regarding payment of back-wages to the Respondent-Petitioner for the period of suspension and inquiry as held by the Apex Court in the case of the Managing Director ECIL v. B. Karunakar (supra). The direction of the learned Single Judge in so far as it relates to payment back-wages to the Respondent-Petitioner with effect from the date of his termination/dismissal from his service therefore need not be interfered with, particularly when he was deprived of the said back-wages on a charge of absence of duty for only one day and that too after an enquiry which has been found by the learned Single Judge as one not in accordance with the Rules.

5. But so far as direction of the learned Single Judge for payment of interest at the rate of Rs. 12% per annum on the arrears of the back-wages is concerned, we have carefully applied our mind to the judgments of the Apex Court in the case of Surjit Ghosh v. Chairman and Managing Director (supra) cited by Mr. Binoykumar learned Counsel for the Respondent-Petitioner in support of his submission that compensation was allowed by the Apex Court to the delinquent officer of the bank in the aforesaid case while directing his reinstatement in service, but we find that in the said judgment of the Apex Court compensation of Rs. 50,000.00 was allowed in lieu of arrear of salary at the rate of Rs. 5,350/- per month for a period of about 13 years. Thus, by the said judgment of the Apex Court, relied on by Mr. Binoykumar, the Supreme Court instead of directing

a huge amount of arrears of salary has given a much lesser amount of compensation to the delinquent officer of the bank. The said judgment of the Apex Court, therefore, does not support the contention of Mr. Binoykumar that the Respondent-Petitioner was entitled to interest at the rate of Rs. 12% per annum on the arrear pay in addition to backwages. The further submission of Mr. Binoykumar that once the back-wages with interest at the rate of Rs. 12% per annum have been paid to the Respondent-Petitioner, the same cannot be recovered, in our opinion, equally has no force. The back-wages with interest were paid pursuant to the direction of the learned Single Judge in the impugned judgment and order dated 24.4.96 and in case, the said judgment and order is modified by this Court in appeal, the payment made to the Respondent-Petitioner in excess of the amount allowed by this Court in this appeal would have to be recovered from the Respondent-Petitioner. The facts in the case of Shyam Babu v. Chairman and Managing Director (supra) cited by Mr. Binoykumar are entirely different from the facts of the present case. In the case of Shyam Babu, higher pay scale was erroneously given to him since 1973 but the pay scale was reduced subsequently in the year 1994 and the Apex Court held that higher scale of pay once drawn due to no fault of the incumbent concerned it was just and proper that the excess amount drawn by him should not be recovered. Considering the fact that the Respondent-Petitioner was allowed full back-wages with effect from the date of his termination/dismissal from service on 24.8.88, we are of the considered opinion that the direction given by the learned Single Judge in live impugned judgment for payment of interest at the rate of Rs. 12% per annum on the arrear back-wages was not justified.

Accordingly, we set aside the said direction of the learned Single Judge for payment of interest at the rate of Rs. 12% per annum on the back-wages and direct that only the amount of interest said to have been already paid pursuant to impugned judgment and order dated 24.4.96 of the learned Single Judge shall be recovered from the further wages of the Respondent-Petitioner in such a easy monthly installments as may be fixed by the competent authority.

The Writ Appeal is disposed of. No costs.