

(2016) 02 AHC CK 0071

In the Allahabad High Court

Case No : Special Appeal Defective No. 159 of 2016

State of U.P. and another

APPELLANT

Vs

Ravindra Nath Mishra and 4 ors.

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) 4 ADJ 267 : (2016) 2 AllWC 2103 : (2016) 116 ALR 216 :
(2016) 150 FLR 146 : (2016) 2 UPLBEC 1064

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Yashwant Verma, J.

Bench : Division Bench

Advocate : Piyush Shukla, Advocate, for the Appellant; Subhash Singh Yadav, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. This special appeal has arisen from a judgment and order of the learned Single Judge dated 24 March 2015. Briefly stated, the services of the respondent who was a Constable in the Provincial Armed Constabulary (PAC) were terminated on 14 October 1977 on the ground that he had been involved in a revolt which had taken place in 1973. The respondent filed a claim petition before the Public Services Tribunal (Tribunal). The Tribunal dismissed the claim petition by an order dated 19 January 1998. A writ petition was filed by the respondent to challenge the order of the Tribunal.

2. A writ petition was filed before this Court by one Vijay Bahadur Singh who was similarly circumstanced. A learned Single Judge of this Court by judgment dated 26 September 1997 allowed the writ petition and while setting aside the order of termination directed the State to reinstate the petitioner in those proceedings with full benefits with retrospective effect.

3. In the writ petition filed by the respondent, the Division Bench while allowing the writ petition issued the following directions :

"Impugned termination order dated 14.10.1977 and the order of the Tribunal dated 19.01.1998 are quashed."

4. Following the order of the Division Bench, the respondent was reinstated on 21 June 2000. The respondent then filed a writ petition in 2002 for a mandamus seeking the payment of back wages for the period between 14 October 1977 and 20 June 2000. By an order of the learned Single Judge dated 20 May 2002, the writ petition was disposed of with a direction to decide the representation of the respondent within three months. In terms of the order of the Division Bench, the respondent submitted a representation on 7 June 2002. The representation was rejected on 10 June 2002 by the Senior Superintendent of Police, Bareilly. The order of the Division Bench setting aside the termination of the respondent is the subject matter of a special leave petition which was filed by the State.

5. Once again, the respondent filed a writ petition in 2009 for the payment of back wages for the period between 1977 and 2000. This writ petition was disposed of by a learned Single Judge on 29 July 2009 with a direction to the State to decide the representation of the respondent in pursuance of the directions of this Court. The representation submitted by the respondent on 27 August 2009 was rejected on 9 November 2009. The respondent filed a writ petition challenging the order rejecting his representation.

6. The writ petition was allowed by the learned Single Judge by the impugned judgment dated 24 March 2015. The order rejecting the representation of the respondent dated 9 November 2009 was quashed and set aside. The writ petition was allowed with the direction that the respondent would be entitled to full back wages from 14 October 1977 to 1 June 2000. The State is in appeal.

7. The sole basis on which the learned Single Judge has allowed the writ petition is the judgment in *Vijay Bahadur Singh v. State of U.P.*, Writ Petition No.46061 of 1998 decided on 26.9.1997.

8. The submission which has been urged on behalf of the State in appeal by the learned Chief Standing Counsel is that this view of the learned Single Judge has failed to take into account several relevant circumstances.

9. Having found substance in the submission which has been urged on behalf of the State and after hearing both the learned counsel, we now indicate our reasons for holding that there were material aspects of the case which should have been, but have not been considered by the learned Single Judge.

10. The first aspect of the matter which would warrant consideration by the learned Single Judge is the order of the Division Bench in the case of the respondent himself dated 4 November 1999 which set aside the termination and quashed the order of the Tribunal. There is no specific direction in the order of the Division Bench in regard to the grant of back wages. Secondly, following the order of reinstatement, the respondent had filed a representation seeking back wages in 2002 which was disposed of without acceding to the claim of the

respondent for the payment of back wages. Thirdly sometime in 2009 the respondent filed a writ petition seeking the payment of back wages upon which a direction was issued for consideration of the representation. Perhaps at that stage, the Court was not apprised of the fact that the claim for back wages had already been disposed of in the order dated 10 June 2002. Nevertheless in terms of the directions issued by the learned Single Judge, the claim for back wages was again rejected on 9 November 2009.

11. Apart from these facts another material aspect of the controversy which would need to be considered is the fact that a learned Single Judge of this Court in *Mahendra Nath Tewari v. State of U.P.*, Civil Misc. Writ Petition No.13710 of 1999 allowed a writ petition on 5 November 1999 in terms of the decision in *Vijay Bahadur Singh* (supra). This decision was challenged in appeal and the Division Bench confirmed the judgment of the learned Single Judge dated 16 October 2006. The State Government carried the matter in appeal to the Supreme Court. By a judgment and order dated 17 December 2009, the Supreme Court set aside the order for the payment of back wages in Civil Appeal No.2186 of 2007. A similar view was taken by the Supreme Court in *State of Uttar Pradesh v. Chandrika Yadav*, Civil Appeal No.9377 of 20014. In an appeal against the judgment of a Division Bench of this Court dated 5 October 2010 awarding reinstatement with back wages, the Supreme Court followed the earlier decision in *Mahendra Nath Tewari* (supra) and held that back wages would not be allowed. The learned Chief Standing Counsel has also placed on the record another order dated 15 February 2010 of the Supreme Court in *State of U.P. v. Ayodhya Rai*, Petition(s) for Special Leave to Appeal No. 244 of 2010 where back wages were not allowed.

12. Evidently, this background particularly the judgments of the Supreme Court in *Mahendra Nath Tewari* (supra) and *Chandrika Yadav* (supra) were not placed before the learned Single Judge. This would have a tangible bearing on the issue as to whether the respondent would be entitled to back wages. Hence, we are inclined to remit the proceedings back to the learned Single Judge for disposal afresh having due regard to the fact that the learned counsel appearing on behalf of the respondent has also drawn the attention of the Court to a communication issued on 27 September 2004 by the Director General of Police granting back wages to a group of employees. The learned Chief Standing Counsel states that this was done only in the case of *Vijay Bahadur Singh* (supra). However, we are of the view that since this is an aspect which would require some scrutiny, it would be appropriate and proper if permission is granted to the State to file a counter affidavit in that regard before the learned Single Judge.

13. For these reasons, we set aside the impugned judgment and order dated 24 March 2015 and remit the proceedings back to the learned Single Judge for disposal afresh, having due regard to the observations contained in this judgment. Writ - A No.7290 of 2010 is restored to the file of the learned Single Judge.

14. The special appeal is accordingly disposed of. There shall be no order as to costs.