

(1985) 12 AHC CK 0003
In the Allahabad High Court
Case No : Writ Petition No. 2755 of 1979

State of U.P. and Others

APPELLANT

Vs

Ayodhya Prasad Upadhyay and Another

RESPONDENT

Date of Decision : 13-12-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 7
Penal Code, 1860 (IPC) — Section 109, 161
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1985) 12 AHC CK 0003

Hon'ble Judges : H.N. Seth, Acting C.J.

Bench : Single Bench

Advocate : S.P. Singh, for the Respondent

Judgement

H.N. Seth, A.C.J.

1. The State of Uttar Pradesh is aggrieved by an order dated 31st of March, 1979 passed by the Uttar Pradesh Public Services Tribunal allowing the claim of Ayodhya Prasad Upadhyay and directing the State to pay the full pay and allowances after adjusting the suspension allowance already paid to him for the entire period 01.12.1968 to 01.06.1975. It has, accordingly, approached this Court for relief Under Article 226 of the Constitution.

2. Briefly stated, the facts giving rise to the present petition are that Respondent No. 1 was officiating as Assistant Consolidation Officer. On 1st of December, 1968 he was placed under suspension and certain criminal proceedings u/s 161/109 IPC and Section 5(2) of the Prevention of Corruption Act were initiated against him. The criminal court convicted the Respondent and sentenced him to two years' rigorous imprisonment with a fine of Rs. 110/-. The Respondent went up in appeal before the High Court. His appeal was allowed on 9th of April, 1974 and he was acquitted of the criminal charges leveled against him. Thereafter the Consolidation Commissioner, by his order dated 22nd of April, 1975 reinstated

the Respondent in service with full pay and allowances but further directed that he would be entitled to full pay only for three years preceding the date of resumption of duty after reinstatement. The Respondent then filed a petition before the U.P. Public Services Tribunal and claimed that the Consolidation Commissioner should have allowed him full pay for the entire period during which he remained under suspension. He also asserted that the Defendants did not pay him even the amount which they had been directed to pay by the Consolidation Commissioner.

3. The claim made by the Respondent was resisted by the Petitioner (Defendant) on the ground that the law of limitation was applicable in the present matter and the Respondent was not entitled to any amount more than what had been allowed to him. The Tribunal came to the conclusion that the Respondent had remained under suspension from 01.12.1968 to 01.06.1975 and that after being acquitted and being reinstated he became entitled to full pay and allowances for the entire period from 1st of December, 1968 to 1st of June, 1975. It observed that the present Petitioners (Defendants) were not entitled to withhold any portion of the amount due to the Respondent on ground of limitation inasmuch as the Respondent was, prior to his acquittal by the High Court, not entitled to initiate any proceedings for recovering the difference between the pay and allowance due to him and the suspension allowance already paid to him. In the result, the Tribunal allowed the claim petition and declared the part of the order of the Consolidation Commissioner dated 22nd April, 1975 so far as it restricted the payment of full salary to three years only, as null and void and held that the Respondent was entitled to get his full pay and allowances for the entire period of the suspension after adjusting the suspension allowance already received by him. It directed the Petitioner to pay the said amount to the Respondent at the earliest.

4. Learned Counsel appearing for the Petitioner submitted that inasmuch as the pay and allowances due to the Respondent for the period prior to three years of the date of his reinstatement had become barred by time, the Tribunal was not justified in interfering with the order of the Consolidation Commissioner and granting the relief to the claimant. In this regard he relied upon Article 7 of Part II of the Schedule to the Limitation Act which provides for a limitation of three years for entertaining suits for recovery of wages. According to the said Article the limitation is to commence when the wages accrue due. The principal question involved in the instant case is as to the date when the difference in the wages already paid to the Respondent and to which he was eventually found entitled to, accrued due to him. So long as the Respondent was under suspension and he had not been reinstated after acquittal by the High Court, he was not entitled to receive the difference between his salary due to him and the suspension allowance which was being paid to him. It cannot be said that during that period any amount over and above what was being paid to him had accrued due. He became entitled to the said difference the moment he was acquitted and he was directed to be reinstated with full back wages. It is at this stage that the

difference between the amount already paid to him and his full salary accrued due to him. It is not disputed that the present claim petition had been filed within three years of the date on which he was actually reinstated. In this view of the matter, it cannot be said that any part of the claim made by the Respondent had become barred by time. The judgment of the Tribunal, therefore, does not stand vitiated on this account.

5. Learned Counsel for the Petitioner contended that according to Fundamental Rule 54, the Respondent would have been entitled to the full wages for the suspension period only if the competent authority was of opinion that the Government servant had been fully exonerated or in case of suspension the suspension was fully unjustified. He contended that in the instant case as the Respondent was not fully exonerated, and he had merely been given benefit of doubt, he was thus not entitled to the full wages for the suspension period as claimed by him. I find that the Consolidation Commissioner had, while reinstating the Respondent directed that he be paid full wages for the period during which he had remained under suspension. He imposed the condition that such wages for only three years is paid under on erroneous impression that the claim for earlier period had become barred by time. He did not refuse to pay the wages for earlier period on the ground that in his opinion the Respondent did not stand completely exonerated. If that had been the position, there was no point in his awarding full wages to the Respondent even for the period of three years. In these circumstances, I am not inclined to permit the Petitioner to raise this fresh ground in the writ petition, especially when the same was not urged before the Tribunal.

6. In the result, I find no merit in this petition which fails and is dismissed with costs.