

(1996) 11 SC CK 0201
In the Supreme Court Of India
Case No : Civil Appeal No. 135(N) Of 1976

State of U.P. and Others

APPELLANT

Vs

Ratan Narain Mulla (Dead) by Lrs

RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Citation : (1997) 11 SCC 623

Hon'ble Judges : S. C. Agrawal, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Ratan Narain Mulla, the deceased respondent, was employed as Superintendent of central Jail in Class I U.P. Jail Services. Disciplinary proceedings were initiated against him on charges of misconduct. He was placed under suspension on 27/3/1959. By order dated 10/12/1960, he was dismissed from service with effect from 12/12/1960. The respondent filed a writ petition (Civil Miscellaneous Writ Petition No. 685 of 1961 in the Allahabad High court challenging the said order of dismissal. The said writ petition was dismissed by a learned Single Judge of the High court by judgment dated 22/8/1970. Special Appeal (SA No. 828 of 1970 filed by the respondent against the said judgment was allowed by a division bench of the High court by judgment dated 24/5/1973. By the said judgment the order of dismissal passed against the respondent was quashed. During the pendency of the said writ petition in the High court, the respondent attained the age of superannuation on 28/8/1969. On the basis of the judgment of the High court, setting aside the order of dismissal, the respondent submitted a representation for payment of arrears of salary for the period from 27/3/1959, the date of his suspension, till 27/8/1969, the date on which he attained the age of superannuation. The said representation was disposed of by order dated 25/7/1974 whereby it was directed that the respondent will be treated to be in service from 27/3/1959 to 27/8/1969 and shall be treated to be discharged from service from 28/8/1969 and he was

entitled to salary and allowances and thereafter pension with effect from 27/3/1959 to 27-8-1969. In the said order it was stated that so far as the question of allowances and salary from 27/3/1959 to 27/8/1969 is concerned, the Administration, applying the law of limitation, had decided not to pay salary for the aforesaid period but pension would be deemed to be payable from 28/8/1969 and for that purpose the period from 27/3/1959 to 27/8/1969 shall be taken to be the period of service of the respondent.

2. Feeling aggrieved by the said order dated 25/7/1974, insofar as it denied the salary for the period from 27/3/1959 to 27/8/1969, the respondent filed the writ petition (Civil Miscellaneous Writ Petition No. 8379 of 1974, which has given rise to this appeal, in the Allahabad High Court. The said writ petition has been allowed by the High court by the impugned judgment dated 21/10/1975. The High court has found that Rule 54-A of the U.P. Fundamental Rules, which was brought in by Government Notification dated 13-10-1973, was applicable when the matter was considered by the government while passing the order dated 25/7/1974 and that in view of the said rule it was necessary for the authorities to consider the matter regarding payment of salary for the period from the date of suspension till the date of his attaining the age of superannuation. But the ultimate direction that has been given by the High court, while allowing the writ petition of the respondent, is that the respondent be paid salary and allowances and other emoluments due to him for the period from 27/3/1959 to 27/8/1969 in accordance with Rule 54-A of the U.P. Fundamental Rules.

3. We find that in the earlier part of the judgment, the High court has taken note of the contention urged on behalf of the appellants that the case of the respondent had not been considered on the basis of Rule 54-A of the U.P. Fundamental Rules on the view that the said rule was not applicable in case of the respondent. In view of the finding of the High court that the said rule was applicable, the matter regarding payment of salary and allowances to the respondent for the period from 27/3/1959 to 27/8/1969 was required to be considered in accordance with the provisions of Rule 54-A of the U.P. Fundamental Rules. Since there was no such consideration by the authorities, the High court could have given a direction for such consideration in accordance with Rule 54-A of the U.P. Fundamental Rules but a direction regarding payment of salary and allowances could not be given in the absence of such consideration. The said direction regarding payment of salary and allowances cannot, therefore, be upheld and has to be set aside.

4. The appeal is accordingly partly allowed and the direction given by the High court regarding payment of salary and allowances and other emoluments to the respondent for the period from 27/3/1959 to 27/8/1969 is set aside. The competent authority is directed to consider the case of the respondent for payment of salary and allowances for the said period in accordance with the provisions of Rule 54-A of the U.P. Fundamental Rules. The said consideration shall be made within a period of three months. If on such consideration any

amount towards salary and allowances is found payable, the same shall be paid within one month of the passing of the order under Rule 54-A of the U.P. Fundamental Rules. No orders as to costs.