
(2010) 05 AHC CK 0392
In the Allahabad High Court
Case No : Special Appeal No. 630 of 2010

Union of India and others	Vs	APPELLANT
Constable Satish Kumar		RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Citation : (2010) 127 FLR 59

Hon'ble Judges : R.K. Agarwal, J;Abhinava Upadhyaya, J

Bench : Division Bench

Advocate : Ajay Singh, for the Appellant; K.C. Shukla and Shiv Babu Dubey, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agarwal and Abhinava Upadhyaya, JJ.—The present special appeal has been filed against the judgment and order dated 4.10.2002 passed by the learned single Judge whereby the writ petition preferred by the sole respondent has been allowed with the direction to the present appellants to allow him to join duty as soon as he reports for joining within a period of two months and the period between the date of his resignation and the date of his joining shall be converted into leave according to Leave Rules and shall not be entitled for salary during the period he has not worked. However, the said period shall be regularized and shall be counted towards pensionary benefits.

2. The respondent (petitioner before the learned Single Judge), who was enrolled as a Constable in Border Security Force, after having served for 14 years, submitted resignation on 20th July, 1999 due to extreme compassionate ground and family circumstances. The competent authority after making due enquiry and investigation accepted his resignation under Rule 19 of the BSF Rules, 1969 with effect from 31.10.1997. As the respondent (petitioner before the learned Single Judge) had completed 10 years 6 months 26 days of service on 31.10.1997, he was held to be entitled to full pensionary benefit for the qualifying service under Rule 49(2)(b) of CCS (Pension) Rules, 1972. The Rules in fact required 20 years

qualifying service and not 10 years. The authorities realized their mistakes in misinterpreting the aforesaid Rules and, therefore, required the respondent to join back on duty on 15.10.1998 on the ground that those persons, who have resigned not having less than 20 years of qualifying service are not entitled for pensionary benefit. This view was also taken by the Hon"ble Apex Court in Civil Appeal No. 6166 of 1999, 2121 of 2000 and 2491-92 of 2001.

3. The respondent went from Allahabad on 13.2.1999 to Jammu and reported at Jammu on 14.2.1999. Again he went on 23.8.1999 to report for joining duty. However, for some reason he was not permitted to join and was given assurance that a letter will be sent intimating him to join for duty. The learned Single Judge on the basis of the material and evidence on record especially in view of the counter affidavit filed by Sri R.K. Ponoath, Officiating DIF SHO wherein it was stated that the opportunity was afforded to the respondent to rejoin service with some conditions vide letters dated 15.10.1998, 25.1.1999, 13.4.1999, 9.6.1999, 4.8.1999 and 16.8.1999 came to the conclusion that the respondent can not be put at fault for not joining the duty as he was not permitted. The learned single Judge, therefore, directed the appellants (respondents before the learned Single Judge) to allow the respondent (petitioner in the writ petition) to join duty with certain benefits.

4. We have heard Sri Ajai Singh, learned Standing Counsel for the appellants and the learned Counsel for the respondent and have perused the judgment and order dated 4.10.2002 passed by the learned Single Judge as also the grounds taken in the memo of appeal and the documents filed along with it.

Sri Ajai Singh, learned Standing Counsel submitted that as the Petitioner (respondent herein) did not join duty within the stipulated period, the learned Single Judge was not justified in directing the present appellants to permit the respondent (petitioner before the learned Single Judge) to join the service.

5. The submission is wholly misconceived. From the record it is amply clear that the respondent (petitioner before the learned Single Judge) was prepared to join the duty and he had travelled to Jammu for joining his duties in the month of February, 1999 which shows his eagerness and willingness to join the duty. If he was not permitted to join duty at that time for some reason, he cannot be put to blame.

That being the position, we are of the considered opinion that the order of the learned Single Judge does not suffer from any legal infirmity. The appeal fails and is dismissed.