

(2010) 08 AHC CK 0174
In the Allahabad High Court

Union of India (UOI) and Others

APPELLANT

Vs

Ram Harsh

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Army Act, 1950 — Section 63

Citation : (2010) 08 AHC CK 0174

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri Ajay Bhanot, Learned Counsel for the Union of India-appellant before us. Shri P.N. Saxena, Senior Advocate assisted by Shri Arun Kumar appears for the petitioner-respondent.

2. In this Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, the Union of India-the appellant has challenged the judgment of learned Single Judge dated 11.4.2007 in Writ Petition No. 16478 of 2001 directing it to pay to the petitioner-respondent, his pension and other retiral dues treating him to be in service as a Sepoy from 6.8.1971, till he was discharged from service on 7.11.1991, with 6% interest, and to pay pension regularly. The findings have been questioned on the grounds that the judgment in Writ Petition No. 23709/1991 decided on 20.11.1991, by which the Court did not interfere with the order dated 2.8.1991, directing the petitioner-respondent to be deprived of his rank of Naik by summarily dealing with him u/s 63 of the Army Act, had become final. The petitioner-respondent had filed a Writ Petition No. 8983/1992 to allow him to continue in service for 22 years. The writ petition was dismissed on 7.4.1998. The Special Appeal No. 352/1998 against the judgment was dismissed on 24.4.2000. The Special Leave to Appeal (Civil) No. 9730/2000 was dismissed by the Supreme Court on 14.7.2000. A review petition No. 1203/2000 was also dismissed by the Supreme Court on 30.11.2000.

3. It is submitted by Shri Ajay Bhanot that the petitioner had recorded a drop of performance as Naik, and was awarded a below average Annual Confidential Report in 1991, the extension of 2 years (on account of promotion as Naik) was cancelled by order dated 16.7.1991. In Writ Petition No. 21242 of 1991, an interim order was made on 1.8.1991, and that on 13.9.1992, the writ petition was allowed. In the meantime the petitioner-respondent Ram Harsh was dealt with u/s 63 of the Army Act, for having behaved in a very defiant manner. At the conclusion of Summary Trial he was punished on 2.8.1991, depriving him of the rank of Naik. He challenged the order in Writ Petition No. 23709 of 1991. The writ petition was dismissed on 20.11.1991. A writ petition No. 35135 of 1991, against dismissal order was dismissed on 20.1.92, on the ground of alternative remedy. He was given a Movement Order on 21.10.1991, to report to Adm Bn, Amc Centre and School, Lucknow for preparing his pension paper. He refused to accept the order and absented himself. An apprehension roll was issued on 29.11.1991. The Court of Inquiry was held on 4.2.1992. He was declared as a deserter. He was put to a casual roll and that on 20.4.1997 he was discharged from service as a peace deserter.

4. It is submitted by him that these facts placed before Hon"ble Single Judge have not been considered. Shri Bhanot has questioned the findings recorded by learned Single Judge, that since the petitioner continued to occupy the official quarter allotted to him during his service period till 1999 and there was correspondence with him, he could not be declared as deserter. It is submitted that learned Single Judge has not considered the facts of the refusal of petitioner-respondent to accept the movement order and thereafter the orders of the Army declaring him as peace deserter. Learned Judge has also not considered the effect of judgment dated 20.11.1991 (in Writ Petition No. 23709/1991) and the judgment dated 7.4.1998 (in Writ Petition No. 8983/1992) upheld in Special Appeal No. 352/1998 on 24.4.2000, and the dismissal of SLP No. 9730 of 2000 on 14.7.2000.

5. Shri P.N. Saxena, Senior Advocate, on the other hand, submits that the Army authorities refused to accept the interim order dated 1.8.1991 in Writ Petition No. 21242/1991 filed by the petitioner-respondent challenging the order down grading him and thereby cancelling the extension of two years" service granted to him on his promotion as Naik. A Deputy Registrar was directed to serve the order on the Army authorities. He submits that the Army authorities misbehaved with the Deputy Registrar. The writ petition was finally allowed and that the order dated 16.7.1991 cancelling petitioner"s extension granted by the order dated 14.9.1990 was quashed by the judgment dated 13.9.1992.

6. Shri Saxena submits that learned Single Judge has appreciated all the facts in quashing the order dated 20.4.1997, by which the petitioner-respondent was discharged from service and the order dated 16.3.2001, by which his statutory representation was rejected. The petitioner-respondent had only sought for relief of pension with interest.

7. We have carefully gone through the judgment of learned Single Judge dated 11.4.2007, and find substance in the contention of Shri Ajai Bhanot, that the facts pleaded in the writ petition and brought on record, should have been considered and discussed and the effect of the judgment of the Court which have become final should have been looked into before any findings could be recorded to grant reliefs to the petitioner-respondent.

8. The Special Appeal is allowed. The judgment dated 11.4.2007 in Writ Petition No. 16478 of 2001 is set aside. The matter is remanded back to learned Single Judge with a request to decide it afresh after considering the effect of the facts pleaded in the Special Appeal. We direct both the appellant as well as petitioner-respondent to place a true and accurate list of dates in chronological order at the time of hearing of the writ petition. The writ petition may be decided expeditiously subject to roster of the court.