

(2010) 04 AHC CK 0003

In the Allahabad High Court

Case No : Special Appeal No. 86 of 2010

U.P. Scheduled Caste Finance & Development Corporation
Limited, Lucknow and others

APPELLANT

Vs

Surendra Pal Singh and another

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Citation : (2010) 04 AHC CK 0003

Hon'ble Judges : Pradeep Kant, J and Shabihul Hasnain, J

Final Decision : Partly Allowed

Judgement

Pradeep Kant, J.

Heard Sri Rajan Roy, learned counsel for the appellants and Sri Raghvendra Singh, learned Senior Advocate, for respondent no.1.

This special appeal by the U.P. Scheduled Caste Finance & Development Corporation challenges the judgement and order dated 7.1.2010 passed by the learned Single Judge allowing the writ petition preferred by the respondent Surendra Pal Singh, setting aside his order of dismissal from service dated 19.9.2000 and the appellate order dated 14.1.2003.

Learned counsel for the appellants has not disputed the correctness of the findings recorded by the learned Single Judge that while passing the order of dismissal from service, the respondent was not afforded any opportunity in the departmental enquiry and that, in fact, the order was passed without holding any enquiry as contemplated under law.

The only submission is that though the learned Single Judge has given liberty to the appellants for proceeding in accordance with law, but at the same time while setting aside the punishment orders, he has also directed for giving all consequential benefits to the respondent, which order need be modified to this extent.

Learned counsel for the appellants submitted that the dismissal order has not been set aside on the ground that the charges levelled against the respondent were not proved nor he has been exonerated by the Court after judging the merits of the charges, but simply on technical ground, namely, procedural irregularities in holding the departmental enquiry, the orders have been set aside and, therefore, the respondent could not be rewarded for misconduct, for which order of punishment was passed.

Sri Raghvendra Singh, learned Senior Advocate, appearing for the respondent, relies upon a judgement of the apex court in the case of *State of U.P. and others vs. Saroj Kumar Sinha*, (2010) 2 SCC 772, defending the order, saying that in the aforesaid case also, the punishment orders were set aside by the High Court with all consequential benefits, which became the subject matter of challenge before the apex court and the apex court dismissed the appeal but without modifying the order.

We have gone through the aforesaid order and we find that though the High Court while quashing the punishment orders on the ground that opportunity was not afforded to the respondent, also directed for reinstatement of the respondent with all consequential benefits, but in that case, no challenge appears to have been made on the aforesaid portion of the order and thus, an issue which was not raised before the Supreme Court, and on which findings have not been recorded, can be of no assistance to the respondent in the present case.

The law is settled that in case the order of punishment is set aside on mere technical or procedural irregularity or for violation of principles of natural justice and not on merits, liberty is given to the appointing authority/department to hold the enquiry afresh from the stage where the default has been committed. In case such a liberty is given, the natural outcome would be that the departmental enquiry would be held again from the stage where the default had occurred and in those proceedings, the delinquent may or may not be found guilty of the charges levelled against him. In case the charges levelled against him are found proved, necessary punishment is to be awarded, but otherwise he would stand exonerated. The payment of arrears of salary for the period during which he remained out of employment or the grant of consequential benefits would thus depend upon the enquiry so held.

Reference can be made to the case of *Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others* (1993) 4 SCC 727.

In case the delinquent whose dismissal order has been set aside on procedural irregularities in holding the disciplinary enquiry is awarded all consequential benefits before the fresh enquiry is conducted, it would mean rewarding the delinquent despite the alleged misconduct and without getting the enquiry concluded.

In the instant case also when the learned Single Judge has given liberty to hold the enquiry afresh, the order of providing all consequential benefits cannot be

sustained. It would have been a different matter that the learned Single Judge has ordered that no fresh enquiry was required or was to be conducted.

We, therefore, while upholding the order passed by the learned Single Judge, in so far it quashes the order of dismissal from service and the appellate order, modify it to the extent that the respondent shall be reinstated into service forthwith, if he has not yet been reinstated, and he shall be paid salary from the date of passing of the order by the learned Single Judge, but the payment of arrears of salary from the date of passing of the order of dismissal till his reinstatement into service, as aforesaid, would abide the final out come of the enquiry.

We further provide that the period aforesaid shall not be treated as break in service, but shall be treated as continuity in service for the purpose of service benefits. The respondent shall report for duty within a maximum period of 15 days from the date of receipt of a certified copy of this order. The respondent shall be paid his regular salary and the amount of arrears of salary which had become due from the date of passing of the order by the learned Single Judge shall also be paid to him within one month.

Accordingly, the special appeal is partly allowed. No order as to costs.

Dated: April 05, 2010