

District Judge, Bijnor and Another

Vs

Raghubir Saran Bhatnagar

Civil Appeal No. 2380 of 1977

(D. A. Desal, R. B. Misra JJ)

15.01.1982

ORDER

1. Respondent Raghubir Saran Bhatnager was compulsorily retired from service as per the order dated September 10, 1975 under clause (c) of the amended Rule 56 of the Financial Handbook, Volume II. The respondent challenged the order of compulsory retirement by filing Civil Miscellaneous Writ No. 10322 of 1975 in the Allahabad High Court. The matter came up before a learned Single Judge of the Allahabad High Court for hearing who dismissed the petition. The respondent preferred Special Appeal No. 73 of 1976 which came up before the Division Bench presided over by the then learned Chief Justice Shri Asthana. The Division Bench as per its judgment and order dated July 8, 1976 allowed the appeal and quashed the order of the District Judge compulsorily retiring the respondent, simultaneously directing reinstatement in service. Hence this appeal by special leave.
2. It is not in dispute that pursuant to the order of the High Court the respondent was reinstated in service.
3. The respondent now informs us that he has reached the age of superannuation and he has retired from service with effect from January 31, 1981.
4. The respondent accordingly moved C.M.P. No. 28373 of 1981 intimating to this Court that he has retired on superannuation with effect from January 31, 1981 and, therefore, according to the respondent the appeal has become infructuous.
5. On this petition notice was served on the State of U.P. and the learned counsel Mrs Shobha Dikshit appeared on behalf of the appellants.
6. The respondent wants us to hold that the appeal has become infructuous. Mrs Shobha Dikshit was very much justified in pointing out to us that if the order of compulsory retirement which has been quashed by the Division Bench of the High Court and which is now under appeal, is restored, the respondent would not be entitled to that part of the salary during which he was not in service, even if service rendered by him since reinstatement cannot be done away with.
7. However, having considered all the aspects of the matter, keeping in view the fact that the respondent was a petty employee and the fact that the Division Bench of the High Court had quashed the order of the District Judge compulsorily retiring the respondent from service and he was actually reinstated and rendered service and that now he has retired, we consider it in the special facts and circumstances of this case that no useful purpose would be served by examining

the contentions in the appeal on merits. We, therefore, while making clear that the decision of the High Court may not be treated as a precedent on the points raised in the writ petition, dismiss this appeal on the ground that for all practical purposes it has become infructuous. We accordingly dismiss the appeal and direct the appellant to pay up the gratuity which the respondent would be entitled on completion of service and also 10 months' salary which he would be entitled on being reinstated as if the order of reinstatement has become final. The respondent also claims some leave encashment. We direct that, if admissible, the same should be paid to the respondent. All the payments herein indicated should be made within two months from today. As the respondent is present in person, there will be no order as to costs.

</html