

Adhyaksha Zilla Parishad, Allahabad

Vs

Babu Ram Tripathi and Others

Civil Appeal No. 281 of 1991

(N. D. Ojha, S. Ranganathan, S. C. Agrawal JJ)

18.01.1991

ORDER

1. This is a special leave petition from the orders of the Allahabad High Court dated January 10, 1989 and December 18, 1989. There is a delay in the filing of the special leave petition so far as the earlier order is concerned, but this delay was on account of the pursuit of relief by the petitioner by way of an application to the High Court for recalling its earlier order. Having considered the facts and circumstances of the case, we are of the opinion that this delay should be condoned. We, therefore, condone to delay. We also grant leave in the special leave petition and proceed to dispose of the appeal after hearing both counsel.

2. The respondent, who was employed as a Junior Engineer by the appellant Zilla Parishad, was suspended by an order dated June 9, 1981 in consequence of a first information report lodged against him and the pendency of investigation and contemplated disciplinary action. However, it appears that no disciplinary proceedings were initiated against the respondent for quite some time. The respondent therefore, filed a writ petition in the Allahabad High Court. By an order dated May 3, 1988, the High Court directed the Zilla Parishad to conclude the disciplinary proceedings within a specified period. I directed further : "We make it clear that if final orders in the disciplinary proceedings are not passed within a period of one month from the date of receipt of reply from the petitioner, the order of suspension shall stand automatically revoked and thereafter it will be open to the Zilla Parishad to take its own time for passing final orders." The Zilla Parishad did not pass final orders for certain reasons which are not relevant at the present moment, expect to say that the disciplinary proceedings over the respondent had been taken over by the State Government sometime in May 1988. Thereupon the respondent filed a writ petition praying that since the disciplinary proceedings had not been concluded, he was entitled to the payment of full salary to him for the entire period since June 9, 1981. This writ petition was allowed by the High Court. The State Government as well as the Zilla Parishad applied to the High Court for recalling the order but this application was rejected on January 10, 1989 and a review application was also rejected on December 18, 1989. Hence the present appeal.

3. We are of the opinion that the High Court was in error in directing the payment to the respondent of his full salary right from June 9, 1981 onwards. The order of the suspension of the respondent dated June 9, 1981 was not in any way vitiated. The High Court was only concerned with the question whether the suspension order could enure indefinitely without any disciplinary proceedings being taken against the respondent. The High Court, rightly in our opinion, held that the Zilla Parishad was not entitled to keep the respondent under suspension indefinitely. So, it limited the period within which the disciplinary proceedings should be completed and directed that if the proceedings were not finalised by June 11, 1988, the suspension order would stand revoked. We do

not understand this order to mean, as contended by the learned counsel for the respondent and held by the High Court, that since the enquiry was not completed by June 11, 1988, the suspension order would stand revoked from the date of issue. In our opinion, the proper construction to be placed on the order is only to say that the suspension order against the respondent could not continue beyond June 12, 1988. The High Court was, therefore, not justified in directing the payment of full salary to the respondent between June 9, 1981 and June 11, 1988.

4. The next question that arises is whether the respondent is entitled to salary from June 12, 1988 to the date of his termination on conclusion of the disciplinary proceedings which was April 11, 1989. So far as this period is concerned, we find that in the order of termination from service dated April 11, 1989 the disciplinary authority has directed the suspension of the respondent from June 9, 1981 and also directed that he will not be entitled for any salary or other allowances from the date of suspension till the date of service of the order of termination except maintenance allowances. This termination order is not the subject matter of challenge before us. We understand that there is a writ petition pending against the termination order before the Allahabad High Court. We, therefore, express no opinion as to the correctness or otherwise of this portion of the order or the manner in which the allowance for the period of suspension has been directed in the final order of termination and leave it to be decided in appropriate proceedings. However, having regard to the terms of this order, we are of the opinion that the direction by the High Court that the respondent should be paid his full salary even in respect of the period from June 12, 1988 would not be correct. The entitlement of the respondent from June 12, 1988 till April 11, 1989 will have to be governed by the terms of the order of termination as it may stand after appropriate appeals or other proceedings. Subject, therefore, to any orders that may be passed in relation to the termination order, we set aside the order of the High Court and allow this appeal.

5. The appeal is disposed of accordingly. There will be no order as to costs.

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