

State of U. P. and Another

Vs

Atal Behari Shastri and Another

Civil Appeal No. 3799 of 1992

(L. M. Sharma, P. B. Sawant, N. Venkatachala JJ)

16.09.1992

JUDGMENT

VENKATACHALA, J. –

1. Special leave is granted and the appeal is heard on merits.

2. The second appeal is the Administrative Board established under the U.P. Women's & Children Institutions (Control) Act, 1956 for properly controlling and supervising orphanages and other institutions of destitute children and women in the state, with the funds to be received by way of donations from the public and aid from the State Government. The first respondent was appointed on September 29, 1958 in a temporary post of Licensing Inspector in the establishment of the Administrative Board, on a pay scale of Rs. 120-8-200 EB 10-300 plus dearness and other allowances as admissible to State Government employees. The first respondent who should have returned to duty by March 26, 1970 after availing of the 'Holi' Holidays, failed to do so even by the month of July 1970 despite a notice served upon him in that regard. This situation led to the issuing of an order dated July 15, 1970 by the Administrative Board terminating the services of the first respondents as its Licensing Inspector with effect from March 26, 1970 by informing him that he would get one month's salary in lieu of notice. The first respondent's suit, filed in the Munsif Court at Meerut in the year 1971 seeking the reliefs of declaration that the order of the Administrative Board by which his services were terminated was void and of the mandatory injunction for his reinstatement, was dismissed on December 4, 1974. Civil appeal preferred by the first respondent in the District Court at Kanpur against the dismissal of his suit was transferred by that court to the U.P. Public Services Tribunal for disposal on the coming into force of the U.P. Public Services (Tribunal) Act, 1976. But, that Tribunal, by its order dated July 7, 1978 dismissed the appeal finding, inter alia, that the order of termination of services of the respondent by the Administrative Board cannot be held to be invalid when the first respondent who had undisputably received a notice dated May 6, 1970 by which he was called upon to return to duty, had failed to respond to the same. The non-success of first respondent's appeal before the Tribunal, led him to the filing of a writ petition in the matter before the High Court of Judicature at Allahabad. A learned Single Judge of that High Court, who took the view that although the first respondent was a holder of a temporary post, his services could not have been terminated without affording him an opportunity of being heard in the matter, allowed the writ petition by his order dated November 27, 1991, quashed the impugned decisions of the Court of Munsif and of the Service Tribunal, besides the impugned order of first respondent's termination and granted to first respondent a relief in the following terms :

"In the affidavit sworn in support of the writ petition filed in 1978, the petitioner has given his age as 54 years. It is thus obvious that during the pendency of the writ

petition he has attained the age of superannuation. For this reason, although the writ petition is being allowed his reinstatement in service cannot be ordered. However, he is entitled to his salary from the date of the order of termination to the date of his retirement. Salary and other permissible allowances for the aforesaid period shall be paid to the petitioner within three months from the date of presentation of a certified copy of this order."

3. In the present appeal preferred under Article 136 of the Constitution, the legality of the said order of the High Court is questioned.

4. The relief relating to his past salary could not have been granted to the first respondent even if he had succeeded in his suit, for the suit was not for recovery of arrears of salary as such. Besides no arrears of salary of first respondent could have been granted in the absence of a finding recorded by the Court that the first respondent was not otherwise gainfully employed during the relevant period. Moreover, the first respondent is not free from blame, for the termination of his services was due to his admitted non-response to the notice of the Advisory Board asking him to return and resume the duties of his office.

5. In the circumstances, it would be just and reasonable to direct the second appellant-Advisory Board to pay a lump sum of Rs. 25,000 (twenty-five thousand only) to first respondent within three months from today instead of salary and allowances ordered to be paid by the High Court in its order in appeal.

6. In the result, we allow the appeal partly and direct the second appellant-Advisory Board to pay to first respondent Atal Behari Shastri a lump sum of Rs. 25,000 within three months from today in lieu of all his claims against the second appellant-Advisory Board for the alleged wrongful termination of his services as Licensing Inspector. In the peculiar circumstances of this appeal we make no order as to costs.

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