

Chairman, Governing Council Anjuman Arts, Commerce & Science and Others

Vs

Sayyed Mohammad Shafi

Civil Appeal No. 1662 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

08.01.1996

ORDER

1. Delay condoned.

2. Leave granted.

3. We have heard the counsel for both the parties. This appeal is directed against the order of the Civil Judge, Bijapur passed on 29-10-1991 and confirmed by the High Court in the impugned order made on 5-4-1993 in CRP No. 3565 of 1991. The facts are clearly not in dispute. The service of the respondent was terminated which order was ultimately set aside. The order has merged with dismissal of the special leave petition by this Court on 31-7-1989. This Court observed thus :

"The Management may move the Government for reimbursement of the salary paid to Respondent 1 and the Government will decide that question according to law and in the light of the stand taken by the University."

4. In the proceedings for contempt, it was held by the Division Bench that normally the arrears of salary accrue to a person whose termination of service is set aside, but payment depends upon other factors as well. In the absence of a clear direction while issuing the writ, it is not possible to hold that the refusal to pay the arrears of salary would be an act of contempt. Setting aside an order of dismissal creates a cause of action to claim arrears of salary. But in such case where no direction was given for the intervening period, payment of salary need not be ordered, as held by this Court in *Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee*.

5. Thereafter, it would appear that the respondent had moved an execution application in the District Court to give effect to the order of the tribunal which is envisaged under the Rules. Since the executing court rejected the claim, the respondent went in revision under Section 115 of Code of Civil Procedure which was dismissed in the impugned order dated 5-4-1993 in CRP No. 3565 of 1991 by the Karnataka High Court. Pending the special leave petition, an enquiry whether the respondent was gainfully employed was conducted and it was found that he was gainfully employed.

6. It is contended by the counsel for the respondent that this appeal has become infructuous. We cannot conclude on that premise since the respondent is claiming back wages. There should be a finding in that behalf. Accordingly, we held that the respondent is not entitled to back wages. As far as the reinstatement is concerned, it is not canvassed by the learned counsel for the appellant that he is not entitled to reinstatement due to the fact that the order of dismissal was set aside and had

become final.

7. The respondent is entitled to the payment of admitted salary from the date of reinstatement. We do not propose to express any opinion on other consequential benefits since the same is to be worked out in the light of the judgment of the tribunal which was upheld by this Court. If the admitted salary from the date of reinstatement is not paid, the same is directed to be paid within a period of six months from the date of the receipt of this order.

8. The appeal is disposed of accordingly. No costs.