

State of U. P. and Others

Vs

Ajit Singh and Another

Civil Appeal No. 1942 of 1998

(Sujata V. Manohar, D. P. Wadhwa JJ)

03.04.1998

ORDER

1. Leave granted.

2. This appeal by the State of Uttar Pradesh is directed against judgment dated 9-4-1997 of the Allahabad High Court (Lucknow Bench). The impugned order of the High Court was passed in writ petition filed by the State of Uttar Pradesh aggrieved by the order dated 7-8-1985 of the Uttar Pradesh Public Services Tribunal, Lucknow by which the claim petition filed by the respondent Ajit Singh was allowed and the order of punishment dated 9-2-1982, passed by the Director of Agriculture against him was quashed. The High Court held that the Tribunal was wrong in quashing the order of punishment dated 9-2-1982. However, it held that the respondent was entitled to full salary for whole of the period for which he was treated to be under suspension, i.e., from 14-9-1962 to 31-10-1975. The High Court maintained the order of recovery of Rs 9928 passed by the disciplinary authority.

3. The respondent was an SAS Group III service officer in the Agricultural Department of the State. At the relevant time he was posted at Burhana Seed Store, District Muzaffarnagar. On a charge of misappropriation he was suspended from service and disciplinary proceedings were initiated against him. The respondent was also tried in a criminal court for having committed the offence of misappropriation of government funds. In contemplation of initiation of disciplinary proceedings, the respondent was suspended on 14-9-1962. Thereafter, he was served with articles of charges. During the pendency of the disciplinary proceedings the respondent was convicted by the criminal court and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs 3000. On account of the conviction of the respondent, he was dismissed from service by order dated 26-2-1969. Against his conviction and sentence the respondent appealed to the High Court, which set aside the conviction and sentence by giving him benefit of doubt by order dated 17-7-1970. On account of his acquittal, the dismissal order passed against him was revoked and it was provided that he shall nevertheless continue to be under suspension from 25-2-1969 and that he would be paid subsistence allowance as admissible under the rules. On a representation made by the respondent, he was reinstated in service by order dated 31-10-1975, which order was passed in continuation of the earlier order dated 27-11-1970. In this latter order it was also provided that the respondent was being reinstated without affecting his case and that a separate order would be passed against the respondent regarding imposition of punishment upon him. Meanwhile the respondent approached the Uttar Pradesh Public Services Tribunal claiming that he was entitled to full salary and other benefits during the period he was under suspension. He also claimed that he was entitled to promotion from the date when his juniors were so promoted. While the matter was pending in the Tribunal, the disciplinary authority by order dated 3-2-1982, passed the following order of

punishment on the respondent :

"(i) Shri Ajit Singh should not be paid anything more than subsistence allowance during the period of suspension.

(ii) The period of suspension of Shri Singh should be computed for the purpose of pension.

(iii) Recovery of Rs 9928.00 (Rupees nine thousand nine hundred and twenty-eight) concerning the loss due to the following charges be made every month from the pay and security of Shri Singh as per law."

This order, it would appear, was also challenged by the respondent before the Tribunal in his petition already pending there. The Tribunal by order dated 7-8-1985 allowed the claim petition of the respondent and quashed the punishment order. It also held that the respondent was entitled to full salary and other benefits during the period of his suspension and that he was also entitled for promotion. This order of the Tribunal, however, was challenged by the State of Uttar Pradesh by filing a writ petition in the High Court, which was partly allowed by the impugned order.

4. The High Court held that when the order was passed reinstating the respondent, there was no separate order that the disciplinary proceedings against him would continue. The High Court, therefore, said that in view of the provisions of Rule 49-A(a) of the Civil Service (Classification, Control and Appeal) Rules, 1930, as applicable in the State of Uttar Pradesh, the respondent would be entitled to full salary from 14-9-1962 to 31-10-1975 when he was reinstated in service. Rule 49-A(4), in relevant part, is as under :

"49-A(4). Where a penalty of dismissal or removal from service imposed upon a government servant is set aside or declared or rendered void in consequence of or by decision of a court of law and the appointing authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, whether the allegations remain in their particulars better specified or any part thereof a minor nature omitted.

(a) if he was under suspension immediately before the penalty was awarded to him the order of his suspension shall, subject to any direction of the appointing authority, be deemed to have continued in force on and from the date of the original order of dismissal or removal.

#(b) \* \* \*"#

5. We have already noticed above that when the order was passed on 27-11-1970 revoking the order of dismissal it was specifically mentioned that the respondent shall continue to be under suspension and this was reaffirmed in the order dated 31-10-1975 when he was reinstated in service stating that the order of reinstatement was being passed without affecting his case and that in that case separate order would be passed regarding imposition of punishment. In our view the High Court fell in error when it said that the orders of revocation and reinstatement did not contain decisions of the appointing authority to hold further inquiry either on the same allegations or some other additional charges. There is a clear direction that inquiry would continue on the allegations on which the respondent was dismissed from service and the dismissal order has subsequently been set aside on

any of the grounds mentioned in the above Rule. We, therefore, set aside the impugned order of the High Court insofar as it holds that since there was no decision to hold further inquiry the respondent would be entitled to full salary for the period from 14-9-1962 to 31-10-1975.

6. The respondent has since superannuated on 29-2-1992. The appellant, therefore, shall calculate his pensionary benefits keeping in view the punishment awarded to him by the disciplinary authority, operative portion of which has been set out above. All the pensionary benefits shall be paid to the respondent expeditiously without any delay.

7. The appeal is, therefore, allowed. There shall be no order as to costs.