

SUPREME COURT OF INDIA

State of U.P.

Vs.

Mahendra Nath Tewari

C.A.No.2816 of 2007

(J.M. Panchal and Mukundakam Sharma JJ.)

17.12.2009

JUDGEMENT

J.M.Panchal, J.

1. Challenge in this appeal by special leave is to the judgment dated October 16, 2006 passed by a Division Bench of the High Court of Judicature at Allahabad in Special Appeal No.42 of 2001, by which order dated November 5, 1999 pronounced by the learned Single Judge of the Allahabad High Court in Civil Miscellaneous Writ Petition No.13710 of 1999 setting aside order dated November 20, 1975 terminating the services of the 2 respondent and allowing the petition filed by the respondent, is confirmed.

2. The brief facts of the case are as under: The respondent was appointed as a Constable in PAC (Provincial Armed Constabulary), U.P. on June 10, 1970. He was convicted in a criminal case. Therefore, his services were terminated by the appellant vide order dated November 25, 1975. Ultimately, he was acquitted in appeal and his acquittal was confirmed by this Court. On acquittal, the appellant should have reinstated the respondent in service but no action was taken by the appellant at all. Therefore, the respondent was compelled to file writ petition No.5224 of 1997 before the High Court for his reinstatement. The said writ petition was disposed of on September 5, 1997 with a direction to the respondent to make representation and to the appellants to consider the same. The respondent made representation which was rejected by the appellants on February 17, 1998. Therefore, the respondent filed Writ Petition No.13170 of 1999 before the Allahabad High Court.

“The learned Single Judge allowed the same on the basis of judgment dated September 26, 1997 rendered in Writ Petition No.46061 of 1998 filed by Vijay Bahadur Singh against State of U.P. Thereupon, the appellants preferred an appeal before the Division Bench of the High Court. The Division Bench has dismissed the appeal because it found that exhaustive judgment was delivered by the Division Bench of the Allahabad High Court taking into consideration all the aspects of the matter and the special leave petition filed before this Court was dismissed by order

dated May 7, 2003. The judgment delivered by the Division Bench is the subject matter of challenge in the instant appeal.”

3. The only contention raised by the learned counsel for the appellant before this Court is that the respondent would not be entitled to back wages, more particularly when order dated November 20, 1975 terminating his services was challenged by him in writ petition which was filed after about 22 years. The learned counsel for the respondent pleaded that, in fact, the appellants have not been directed by the learned Single Judge or by the Division Bench to pay 4 back wages to the respondent and, therefore, there being no substance in the appeal, the same should be dismissed.

4. This Court has considered the arguments advanced at the Bar and the documents forming part of the appeal.

“From the judgment delivered by the learned Single Judge, it is evident that while allowing the petition of the respondent, reliance was placed on the decision dated September 26, 1997 rendered in Writ Petition No.46061 of 1998 filed by Vijay Bahadur Singh against State of U.P. The said judgment is produced before this Court for perusal. It does not indicate that in the said case, any back wages were awarded to the petitioner. Further, the impugned judgment also does not direct the appellants to pay back wages to the respondent. The fact that the respondent would not be entitled to back wages is accepted by the learned counsel for the respondent. Therefore, the present appeal deserves to be disposed of with clarification that the respondent would not be entitled to back wages.”

5. For the foregoing reasons, it is clarified that the respondents would not be entitled to back wages at all. Subject to above referred to clarification, the appeal stands disposed of. There shall be no order as to costs.