

# SUPREME COURT OF INDIA

Chief Regional Manager, United India Insurance Company Limited

Vs.

Siraj Uddin Khan

C.A.No.5390 of 2019

(Ashok Bhushan and Navin Sinha,JJ.,)

11.07.2019

## JUDGMENT

**Ashok Bhushan,J.,**

SLP (C) No.174 of 2019

1. Leave granted.
2. This appeal has been filed challenging the judgment dated 03.07.2018 of Allahabad High Court, partly allowing the writ petition of the respondent, wherein direction has been issued by the High Court for payment of arrears of salary and other benefits.
3. By our order dated 02.01.2019, limited notice was issued to the question as to whether the respondent was entitled for payment of salary after 14.05.2009. The respondent has filed a counter affidavit and appeared in person when the matter was heard on 01.07.2019.
4. We have heard Mr. P.P. Malhotra, learned senior counsel for the appellant and the respondent appearing in-person.
5. The brief facts of the case necessary to be noticed for deciding the limited issue as entertained by this Court in this appeal are: -

5.1 The respondent was appointed by the appellant company on the post of assistant/typist. The respondent was transferred by order dated 18.08.2006 from Allahabad branch of the company to Jaunpur branch in pursuance of which he was relieved on 01.02.2007 from Allahabad to join at Branch Office, Jaunpur. The respondent did not join and was unauthorizedly absent from 02.02.2007. A charge sheet dated 07.06.2007 was issued with regard to his unauthorised absence from 02.02.2007 to 07.06.2007, for which disciplinary proceedings were initiated, Writ petition No.11840 of 2008 was filed by the respondent praying for expeditious disposal of the departmental inquiry and further direction to the appellant for payment of salary w.e.f. 23.07.2007.

5.2 Learned Single Judge of the High Court vide its order dated 05.03.2008 disposed of the writ petition directing for expeditious disposal of the proceedings and with regard to claim of the salary of the respondent, direction was issued to consider and decide the representation of the respondent dated 11.11.2007. The disciplinary proceedings with regard to unauthorised absence resulted in order dated 14.05.2009 of the disciplinary authority holding the respondent guilty of charge of unauthorised absence and awarding punishment of "reduction of basic pay by two steps" under Rule 23(a) of the General Insurance (Conduct, Discipline & Appeal) Rules, 1975. The respondent filed an appeal, which too was rejected.

5.3 A second charge sheet was issued alleging unauthorised absence of 663 days. Charge sheet was sent to the respondent but he did not receive the same. The inquiry was conducted ex-parte. The respondent, in the meantime, attained the age of superannuation on 20.06.2012. An order dated 26.06.2012 was passed by the disciplinary authority terminating his services. A departmental appeal against the order dated 26.06.2012 was also dismissed on 18.07.2014. A Writ petition No. 59041 of 2014 was filed by the respondent praying for quashing the orders dated 14.05.2009, 26.06.2012 and 18.07.2014. The learned Single Judge decided the writ petition filed by the respondent vide its judgment dated 29.05.2015. The order dated 26.06.2012 terminating his services was set aside on two grounds, firstly, the inquiry proceedings are vitiated since the charge sheet was never served upon the respondent and secondly, the respondent having already retired on 20.06.2012, he could not have been terminated on 26.06.2012. Insofar as the challenge to order dated 14.05.2009 was concerned, awarding punishment of reduction of basic pay by two steps, writ petition was dismissed on the ground that the same is barred by laches and the relief to that extent was denied.

5.4 The appellant aggrieved by the order of the learned Single Judge dated 29.05.2015 had filed a Special Leave Petition (C) No.26395 of 2015, which was dismissed by this Court on 18.09.2015. The respondent, aggrieved by order of learned Single Judge insofar as it has dismissed the writ petition challenging the order dated 14.05.2009, filed a special appeal before Division Bench of the High Court. The Division Bench proceeded to consider the challenge to the order dated 14.05.2009 and allowed the special appeal setting aside the order rejecting the challenge to the order dated 14.05.2009. The order dated 14.05.2009 was quashed and it was held that appellant shall be entitled to all consequential benefits. The order dated 15.02.2016 passed by the Division Bench in the special appeal was not challenged and has become final.

5.5 A contempt application was filed by the respondent being Contempt Application No. 2680 of 2016 alleging disobedience of judgment of learned Single Judge dated 29.05.2015 as well as contempt of the Division Bench order dated 15.02.2016.

5.6 The respondent filed another writ petition being Writ Petition No. 61102 of

2017 praying for salary for the period from January, 2007 to June, 2012 with interest and all consequential benefits, such as, promotion arrears, medical bills, lump sum medical reimbursement and re-fixation of pension. The said writ petition has been partly allowed by impugned judgment dated 03.07.2018.

5.7 The learned Single Judge held that the order dated 14.05.2009 awarding punishment having been set aside by Division Bench of the High Court by order dated 15.02.2016, the appellant is entitled for salary w.e.f. 02.02.2007 upto 14.05.2009. The contention regarding non-payment of salary by the appellant from 02.02.2007 to 20.06.2012 was noticed in paragraph No.16 of the impugned judgment, to the effect that respondent having been relieved from Branch Office, Allahabad by relieving order dated 01.02.2007 and he having not joined the Branch Office, Jaunpur, he was not entitled for any salary. Insofar as entitlement of salary from 02.02.2007 to 14.05.2009 is concerned following directions were issued by learned Single Judge in paragraph Nos. 17 and 19, which is to the following effect:

-  
"17. However, this Court in Special Appeal Defective No. 87 of 2016 by its order dated 15.02.2016 had set aside the punishment order dated 14.05.2009 and directed that the appellant shall be entitled to consequential reliefs. This Court having directed the petitioner to be given all consequential benefits and the order dated 14th of May, 2009 being quashed, the petitioner was entitled to salary w.e.f. 02.02.2007 up to 14.05.2009, the date, the punishment order was passed of reduction in basic pay by two stages. This payment of salary has apparently not been made by the respondent on the ground of "No Work No Pay".

19. The petitioner is entitled to salary w.e.f. 02.02.2007 up to 14.05.2009 along with interest at the rate of 18 per cent per annum." With regard to claim of salary of the appellant after 14.05.2009, learned Single Judge took the view that the order dated 26.06.2012 having been set aside by learned Single Judge on 29.05.2015, which judgment was unsuccessfully challenged in this Court and has attained finality, hence salary w.e.f. 14.05.2009 to 20.06.2012 cannot be denied and direction was issued to pay salary with 18% interest. With regard to other claims, the High Court noticed the payments made to the respondent towards provident fund, gratuity fund, GSLI Claim, Leave Encashment and other payments totalling Rs.25,73,830/-. There is no other issue in the present appeal except direction for payment of salary after 14.05.2009 to 20.06.2012.

6. Learned counsel for the appellant submits that High Court committed error in directing for payment of salary after 14.05.2009 to 20.06.2012, whereas the respondent absented from work during the period and was clearly not entitled for payment of salary on the principle of "No Work No Pay". It is submitted that present is not a case where by virtue of any order terminating the services of the respondent, he could not work. With regard to salary after 14.05.2009 till 20.06.2012, learned Single Judge has not adjudicated the claim except observing that in view of the judgment of High Court dated 29.05.2015 against which special leave petition was dismissed, respondent was entitled for arrears of salary.

He further submits that the fact that by virtue of the judgment of learned Single Judge dated 29.05.2015, respondent has to be treated in service does not automatically result in any direction to pay the salary, since no such direction was issued in the judgment of learned Single Judge dated 29.05.2015. The payment of salary for the aforesaid period does not automatically flow from the judgment of learned Single Judge. He submits that the fund of the appellant company being public fund, the payment of salary cannot be made when the respondent kept himself away from the work.

7. The respondent appearing in person refuted the submissions of the appellant and submits that he was entitled for salary since his dismissal order dated 26.06.2012 was set aside on 29.05.2015, against which special leave petition filed by the company had been dismissed by this Court on 18.09.2015. He submits that he went to join the Branch Office at Allahabad on 23.07.2007 but he was not permitted to take charge by Branch Manager of Branch Office-1, Allahabad. He has placed reliance on the judgment of this Court in *Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and Others'*. He submits that the principle of "No Work No Pay" does not apply in the facts of the present case and learned Single Judge has rightly directed for payment of salary after 14.05.2009 to 20.06.2012.

8. We have considered the submissions of the learned counsel for the parties and have perused the records.

9. In Writ Petition No. 59041 of 2014, two set of orders were challenged namely the order dated 14.05.2009, by which for unauthorised absence for the period 02.02.2007 to 07.06.2007, he was awarded punishment of reduction of basic pay by two steps and secondly, the order dated 26.06.2012 terminating his services and order dated 18.07.2014 dismissing his departmental appeal. Learned Single Judge has set aside the order dated 26.06.2012 vide its judgment dated 29.05.2015 as noted above. The learned Single Judge quashed the order dated 26.06.2012 on following two grounds - one, second charge sheet alleging unauthorised absence for 663 days was never served on the respondent and second, the respondent having retired from service on 20.06.2012, no order terminating his services could have been passed on 26.06.2012. The relevant discussion and order of the learned Single Judge with regard to order dated 26.06.2012 is as follows:-

"There is nothing on record to show that the chargesheet was ever sought to be served upon the petitioner through registered post and it is not known as to from where this endorsement has come and to who wrote the remark "GHAR BAND RAHTA HAI" or "not met". Even, if it is assumed that the petitioner was not at his house and therefore the house was closed, it was expected of the respondents to have taken steps to notify the petitioner about the chargesheet through newspaper publication. Nothing has been mentioned in the counter affidavit as to whether this procedure was adopted. Therefore, it is quite clear that the chargesheet was never served upon the petitioner till 20.06.2012 and thereafter the order of removal from service was passed on 26.06.2012. In this view of the matter, the petitioner cannot be said to have had notice of the enquiry proceedings and therefore if the respondents proceeded to hold enquiry ex parte, such proceedings are clearly

vitiated and it must be held that the petitioner has been denied reasonable and adequate opportunity of hearing. There is another aspect of the matter. The petitioner's case is that he retired from service on 20.06.2012 and the order of termination was passed on 26.06.2012. The averments in paragraph 39 of the counter affidavit are also to the effect that the petitioner retired from service and even on the date of retirement he had refused to accept the chargesheet and absconded from office. This being so once the petitioner retired from service on 20.06.2012 no order terminating his services could have been passed on 26.06.2012 as he ceased to be in service of the respondents w.e.f. 20.06.2012. A person cannot be removed from service after he has already retired from service. In this view of the matter, the impugned orders dated 26.06.2012 and 18.07.2014 cannot survive and are accordingly quashed. The writ petition is allowed."

10. As noted above, learned Single Judge dismissed the writ petition insofar as order dated 14.05.2009 is concerned, challenge to which order stood accepted by Division Bench in Special Appeal No. 87 of 2016, where Division Bench has set aside the order dated 14.05.2009 and directed for payment with consequential benefits. In pursuance of the order of the Division Bench dated 15.02.2016, the respondent is entitled to receive salary from 02.02.2007 to 14.05.2009 with regard to which we have not entertained the appeal.

11. Now, the issue, which has to be answered by us is as to whether by setting aside of the order dated 26.06.2012, the respondent was automatically entitled for back wages. A perusal of the judgment of learned Single Judge dated 29.05.2015 indicates that although learned Single Judge has set aside the order dated 26.06.2012, but there was no order for payment of back wages or consequential benefits. Learned Single Judge has set aside the order dated 26.06.2012 and has left the matter there.

12. It is further relevant to notice that when contempt application was filed by the respondent being Contempt Application No. 2680 of 2016, the High Court observed that there has been no adjudication by the Writ Court on the question as to whether the respondent was entitled to payment of salary for the period 2007 to 2012. The observations of the Contempt Court in last two paragraphs is as follows:-

"From the materials brought on record, it transpires that there is no adjudication by the writ court on the question as to whether the applicant is entitled to payment of salary for the period 2007 to 2012, particularly as he had not worked during that period. There is also no adjudication of his right to claim promotion or to receive medical bills. The issues therefore as are being raised by the applicant in this petition need not be entertained by this Court, at this stage. It transpires that on account of setting aside of the dismissal order the petitioner has been paid all his retiral dues. Leaving it open for the applicant to seek appropriate adjudication in respect of his entitlement to receive salary for the period 2007 to 2012 as well as other benefits including promotional pay scale, medical bills and re-fixation of his pension, in appropriate proceedings, this contempt petition is consigned to records."

13. It was after 15.11.2017 that Writ Petition No.61102 of 2017 was filed by the respondent. Thus, in the Writ Petition No.61102 of 2017, the learned Single Judge was required to adjudicate on the entitlement of respondent for payment of salary. Learned Single Judge has adjudicated with regard to entitlement of salary from 02.02.2007 to 14.05.2009 and issued directions thereunder. We may notice that the Division Bench while setting aside the order dated 14.05.2009 has directed for payment of consequential benefits. It is useful to extract the operative portion of the said Appellate Court judgment dated 15.02.2016, which is to the following effect:-

"We accordingly allow the special appeal. The judgment and order of the learned Single Judge dated 29 May,2015 and 2 December, 2015 insofar as it rejects the challenge laid by the appellant to the order dated 14 May, 2009 is hereby set aside. Consequently, the order dated 14 May, 2009 is also quashed. The appellant shall be entitled to all consequential benefits."

14. There is clear difference between the direction of the High Court insofar as setting aside the order dated 14.05.2009 is concerned and insofar as setting aside the order dated 26.06.2012 is concerned, whereas there is a clear direction for payment of consequential reliefs while setting aside the order dated 14.05.2009 there is no direction with regard to payment of salary while setting aside the order dated 26.06.2012, hence the question was required to be gone into by learned Single Judge while deciding the Writ Petition No.61102 of 2017. We may also notice the consideration of learned Single Judge while noticing the claim of the respondent for quashing and setting aside the order dated 26.06.2012. In paragraph Nos. 20 and 21, entire discussion regarding setting aside the order dated 26.06.2012 is contained, which is to the following effect:-

"20. With regard to the absence of the petitioner thereafter, the petitioner was subjected to disciplinary proceeding and a charge sheet was issued to him alleging the absence of 663 days. The inquiry proceeded ex-parte against him and ultimately the dismissal order was passed on the ground of unauthorised absence on 26.06.2012. The petitioner had in the meantime been retired on 20.06.2012 and this Court in its judgment and order dated 29.05.2015 in Writ - A No. 59041 of 2014 set aside the dismissal order and the appellate order. This judgment of this Court was challenged by the respondent in Special Leave Petition which was dismissed on 18.09.2015 and the judgment and order dated 29.05.2015 attained finality.

21. The respondent cannot therefore say that the petitioner was unauthorisedly absent for the said period now at this late stage. The petitioner is entitled to the arrears of salary w.e.f. 14.05.2009 up to 20.06.2012, the date of his retirement, along with interest at the rate of 18% per annum from the date when it became due till the date of its actual payment."

15. There is no adjudication regarding claim of salary or back wages to the respondent in the impugned judgment of learned Single Judge for the period 15.05.2009 to 20.06.2012. Learned Single Judge was of the opinion that in view of the setting aside of the order dated 26.06.2012, payment of salary is automatic, which view of the Single Judge is not correct.

The present is not a case where the respondent was dismissed from the service and consequent to dismissal, he could not work and when dismissal was set aside, he will be automatically entitled for back wages.

16. We may notice some of the judgments of this Court where issue of back wages has been considered by this Court. This Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mhavidyalaya (D.Ed.) And Others*<sup>2</sup>, was considering a case where the question was considered as to whether the appellant was entitled to wages for the period she was kept out of service forcibly by the management of school. In paragraph No. 22, following was laid down:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the Employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

17. We may hasten to add that present is not a case where respondent was kept away from the work on account of dismissal. Admittedly, the respondent attained the age of retirement on 20.06.2012 and order terminating his services was passed only on 26.06.2012, which was rightly held to be ineffective.

18. We may notice another judgment of this Court in *Airports Authority of India and Others Vs. Shambhu Nath Das alias S.N. Das*<sup>3</sup>,. In the above case, the respondent did not join after expiry of the leave. The respondent was issued a warning that unless he joins on or before 30.10.1985, failing which it would be presumed that he had voluntarily abandoned his service with the consequence that his name would be struck off the rolls with effect from 01.11.1985. The said order was challenged by the respondent and learned

Single Judge on 10.11.1995 directed the Airports Authority of India to allow the respondent to join duty but it was held that he shall not be entitled for the arrears of pay for the period he was absent. The order of learned Single Judge was again challenged by the respondent without joining. The Division Bench set aside the order of the learned Single Judge and remanded the matter back to the learned Single Judge. Learned Single Judge directed the appellant to reinstate the respondent and further directed that insofar as the salary of the writ petitioner is concerned, during the period he stayed away from the work, Airports Authority of India, is directed to consider the matter sympathetically and, if it is permissible under its rules, allow to him half of the salary and other benefits during the period from 17.10.1985 till 10.11.1995. The Airports Authority of India accepted the judgment and allowed him to join w.e.f. 01.11.1999 and passed an order on 14.05.2002 holding that the period of unauthorised absence was to be treated as dies-non and the claim for back wages was accordingly disallowed on the principle of "no work no pay". The order dated 14.05.2002 was once again challenged by the respondent claiming back wages, which was allowed by the learned Single Judge. On further denial of claim, matter was taken by respondent to learned Single Judge to issue certain directions. Against the learned Single Judge's Order, matter was taken in appeal before Division Bench, where direction to pay 50% of back wages was issued. Allowing the appeal, this Court stated following in paragraph Nos. 8 to 11:-

"8. This order of the learned Single Judge has been set aside by the Division Bench vide the impugned order dated 21-3-2007 with the observations that the order of the High Court in CR (W) No. 5715 of 1986 which had directed that the respondent be paid 50% of the back wages for the period from 17-10-1985 to 10-11-1995 should be complied with.

9. The learned counsel for the appellant has pointed out that as the respondent had not attended to his duties for almost 15 years despite having been called upon to do so repeatedly, the direction of the Division Bench to grant him back wages from 17-10-1985 to 10-11-1995 was clearly not justified on the principle of "no work no pay". She has pointed out that the appellant Authority would have been fully justified even if it had dismissed the respondent from service, but on the contrary, a huge benefit had already been given to him as he had been taken back in service despite having remained absent for almost fifteen years.

10. The learned counsel for the respondent has, however, supported the judgment of the Division Bench. We are of the opinion that in the light of the fact that the respondent did not report for duty for 15 years, there was no justification whatsoever to grant him any back wages on the general principle that nobody could be directed to claim wages for the period that he remained absent without leave or without justification. We also find that the judgment dated 13-8-1999 which had attained finality had directed as under:

"(a) Insofar as the salary of the writ petitioner is concerned during the period he stayed away from the work, the respondent Airports Authority of India, is directed to consider the matter sympathetically and, if it is permissible under

its rules, allow to him half of the salary and other benefits."

11. This claim was considered by the competent authority and rejected for valid reasons. We are, thus, unable to endorse the High Court's order for payment of 50% back wages for the period from 17-10-1985 to 10-11-1995 which are far in excess of the directions in the order dated 13-8-1999. We accordingly allow this appeal, set aside the order of the Division Bench and restore the order of the learned Single Judge dated 15-4-2004."

19. This Court held that there was no justification whatsoever to grant any back wages to the respondent on the general principle that nobody could be directed to claim wages for the period that he remained absent without leave or without justification.

20. We may further notice the judgment of this Court, which has also been relied on by the respondent in his counter affidavit, i.e., judgment of this Court in *Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and Others* (supra). In the above case, the appellant was retired from service on 31.12.2002, even though he would have, in the ordinary course, attained his date of retirement on superannuation, only on 31.12.2005. The appellant assailed the order of retirement, which was allowed by learned Single Judge. Learned Single Judge has denied the back wages to the appellant on the principle of "no work no pay". The order of learned Single Judge was assailed by the appellant by filing a Letters Patent Appeal, which too was dismissed. This Court allowed the appeal of the appellant and made following observations in paragraph Nos. 3 and 4:-

"3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31-12-2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1-1-2003 to 31-12-2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1-1-2003 to 31-12-2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay".

4. For the reasons recorded hereinabove, we are satisfied, that the impugned order passed by the High Court, to the limited extent of denying wages to the appellant, for the period from 1-1-2003 to 31-12-2005 deserves to be set aside. The same is accordingly hereby set aside."

21. This Court held in the above case that; having restrained the appellant from rendering his services with effect from 1-1-2003 to 31-12-2005, the respondent cannot be allowed to press the plea of the principle of "no work no pay" for denying the wages. In the above case, the appellant was restrained from working due to order of retirement dated 31.12.2002, due to which he could not work till his normal retirement. When the order dated 31.12.2002 was set aside, automatically, he became entitled for back wages and the principle of "no work no pay" was not attracted.

22. In the present case, as noted above, the respondent was not kept away from work by any order of the appellant. The order of termination of his services/dismissal was passed on 26.06.2012, after his retirement on 20.06.2012, which in no manner prohibited the respondent from working. The respondent during submission has submitted that he was illegally transferred to Branch Office, Jaunpur from Allahabad. He was suffering from a disability of more than 40% and he could not have been transferred to another place. There is nothing on record to indicate that transfer of respondent from Branch Office, Allahabad to Branch Office, Jaunpur was at any time set aside or withdrawn. The salary upto 14.05.2009 was allowed to the respondent on account of setting aside of the order dated 14.05.2009, which was with all consequential benefits but with regard to entitlement of salary after 14.05.2009 to 20.06.2012, there has been no adjudication by the High Court, which is apparent from judgment of the High Court dated 03.07.2018, as extracted above.

23. Learned Single Judge having itself not determined the entitlement of respondent to receive salary after 14.05.2009 to 20.06.2012, it ought to have directed the appellant to consider the entitlement and take a decision thereon. We are of the view that ends of justice be served in setting aside the direction of the High Court directing the appellant to make payment of salary after 14.05.2009 till 20.06.2012, with a direction to the appellant to consider the claim of respondent for back wages after 14.05.2009 to 20.06.2012 and pass appropriate orders giving reasons within three months from today. It shall also be open for the respondent to submit an appropriate representation alongwith relevant materials regarding his entitlement for salary for the period 15.05.2009 to 20.06.2012 to the appellant within a period of one month from today.

24. The appeal is partly allowed to the extent as indicated above. The parties shall bear their own costs.

Judgment Referred.

<sup>1</sup>(2016) 16 SCC 0663

<sup>2</sup>(2013)10 SCC 0324

<sup>3</sup>(2008) 11 SCC 0498