

(1997) 09 AHC CK 0085

Allahabad High Court

Case No: C.M.W.P. No. 17938 of 1985

Kashmir Singh

APPELLANT

Vs

VIIIth Additional District Judge,
Meerut and another

RESPONDENT

Date of Decision: Sept. 23, 1997

Acts Referred:

- Civil Procedure Code Amendment Act, 1973 - Section 47
- Constitution of India, 1950 - Article 311

Citation: (1998) 1 AWC 701 : (1998) 2 UPLBEC 1028

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: Kr. Ram Chandra Singh, for the Appellant;

Final Decision: Dismissed

Judgement

D.K. Seth, J.

Against an order of dismissal an appeal was filed before the Commissioner which stood rejected. Against the said order a Civil Suit No. 535 of 1969 was filed. During the pendency of the suit, U. P. Public Service Tribunal Act came into force. The said suit was there upon transferred to the Tribunal which found that the order of dismissal was void and illegal and had set aside the order of dismissal. In the said suit, the learned tribunal had couched the order in the following manner :

"Suit No. 535 of 1969 of the Court of the Munsif city, Meerut is decreed with costs which we assess at Rs. 150. The order dated 5.7.67 of the Collector, Meerut removing the plaintiff from service is declared to be void and illegal and the plaintiff is declared to continue in service and he shall get all its benefits according to rules. However, the punishing authority shall be free to take disciplinary action against him from the stage of filing reply to the charge-sheet if so advised."

The respondents proposed to calculate the benefits payable to the petitioner pursuant to the said decree on the basis of proviso to Rule 54 of the Financial Hand Book Volume II, Part II (hereinafter called as the Rules). The petitioner disputed the same and claimed fully salary for the whole period. Accordingly, he lodged an execution proceeding which was allowed by the learned Munsif by an order dated 5.3.1984 overruling the objection u/s 47 of the CPC filed by the State of U. P. through Collector, Meerut. Thereupon the State of U. P. through Collector, Meerut filed a civil revision being Civil Revision No. 416 of 1984. The said revision has been allowed by an order dated 5.9.1985. It is this order which has since been challenged by means of this writ petition.

2. I have heard the learned counsel for the respective parties at length. In order to appreciate the respective contentions, it would be useful to refer to Rule 54A (2) (i) of the said Rules.

3. Sub-rule 2 (i) of Rule 54A provides as follows :

"Where the dismissal, removal of compulsory retirement of a Government Servant is set aside by the Court solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and where he is not exonerated on merits and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowance to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice :

Provided that any payment under this sub-rule to a Government servant shall be restricted to a period of three years immediately proceeding the date on which the judgment of the Court was passed or the date of retirement on superannuation of such Government servant, as the case may be."

4. Sub-rule (3) of Rule 54A deals with the cases where the dismissal is set aside by the Court on merit.

The said sub-rule provides as follows :

"If the dismissal removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension proceeding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowance for the period to which he would have been entitled had he not been dismissed, removed or compulsorily retired or

suspended prior to such dismissal, removal or compulsory retirement, as the case may be."

5. In the facts and circumstances of the case, it appears that the petitioner was not exonerated of the departmental proceeding altogether and that departmental proceeding was directed from the stage of reply of the petitioner. Therefore, the petitioner cannot come within the purview of sub-rule (3) of Rule 54A. He also does not come within the purview of sub-rule (2) of Rule 54A. Inasmuch as the said rule applies to a case where no enquiry is proposed. Whereas in the present case, the enquiry is proposed. Therefore, in such cases, the question stands altogether on a different footing. It is open to the Government to treat the petitioner to be continuing under suspension for the whole period unless the suspension was recalled or revoked. If the dismissal order having been set aside, the situation as was continuing immediately before the dismissal is restored and the enquiry having been pending, the same situation shall continue till the enquiry is over. Unless there is specific pleading that the suspension is recalled or revoked, it cannot be said that the order of suspension stood recalled. Reinstatement could be effected in the same situation in which the petitioner was positioned immediately before the order of dismissal. Because the enquiry is pending, therefore, this period is subject to the result of the enquiry and appropriate orders may be passed In respect of such period. The petitioner cannot claim either the benefit of sub-rule (2) or sub-rule (3) of Rule 54A. It has been rightly held in the impugned- order that even if the petitioner is not paid the full benefit subject to the enquiry, the whole period can be treated and dealt with according to the decision in the enquiry itself. The order passed by the Tribunal does not indicate anything as to the situation that would arise out of the said order. In the absence of any indication in the order itself, it is to be presumed that the situation as prevailed on the date immediately preceding the order of dismissal is continuing. If the petitioner was under suspension before his dismissal, he shall remain under suspension unless the same is revoked. If he was not under suspension, then he is entitled to the benefit which he was otherwise eligible. The said order of Tribunal specifically indicated that the petitioner would continue in service and he shall get all its benefits according to rules. If the rule permits continuation of suspension, in that event no other benefit outside the scope and ambit of the rule can be claimed.

6. In that view of the matter, I do not find any infirmity with regard to the order dated 5.9.1985 passed in revision. Therefore, I do not find any merit in this petition. Therefore, this petition falls and is accordingly dismissed. However. In case the respondents had paid full benefits in terms of sub-rule (2), the same shall not be disturbed, and if not, he should be paid subsistence allowance for the period. This period shall be treated according to the decision in the enquiry that might be held against the petitioner. In case no enquiry is held within six months from communication of this order, in that event, the petitioner shall be entitled to the benefits in terms of sub-rule (2) of Rule 54A as held by the revisional court.

7. There will, however, be no order as to cost.