

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 14349-51/04

Reserved on: 25th May, 2009.

% Pronounced on: 3rd July, 2009.

Union of India & Others Petitioner

Through: Mr. Subhash Chander, Advocate

VERSUS

Ex. SI Jeewan Lal & Others Respondents

Through: Mr. S.K. Sinha, Advocate

CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE V.K.JAIN

- 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes.**
- 2. To be referred to the Reporter or not? Yes.**
- 3. Whether the Judgment should be reported in the Digest? Yes.**

V.K.Jain, J.

1. The respondent No. 1 and 2 were working as Sub Inspector and Constable respectively in Delhi Police. Pursuant to the order passed by Disciplinary Authority, their services were terminated. The appeal filed by them was rejected. The allegation against them was that they had accepted Rs. 38,000/- from one N.K. Joshi to help the accused, in the case registered vide FIR No. 121/1989 of P.S. Shakarpur. They filed O.A. No. 1928/1999 challenging the order of the Disciplinary Authority as well as the order of the Appellate Authority. Vide its order dated 9th July, 2002, the Tribunal came to the conclusion that the order passed by the Disciplinary Authority as well as the Appellate Authority was based on no evidence and therefore liable to be quashed. The Tribunal directed reinstatement of the respondents with the rider that they would not be entitled to back wages for the intervening period till the date of reinstatement, on the principle of “No work no pay”. However, in M.A. No. 2060/2003 and 2340/2003 filed by them, the Tribunal modified its order, holding that F.R. 54 A (3) was attracted in their case and therefore they were entitled to all the consequential benefits. The Tribunal accordingly directed the payment of back wages for the intervening period. Aggrieved by the order of the Tribunal, the

petitioners have filed the present Writ Petition under Article 226 of the Constitution.

2. The order of the Tribunal dated 9th July, 2002 directing reinstatement of the respondents has not been challenged by the petitioners and they are challenging only the grant of back wages on reinstatement by the Tribunal vide order dated 19.11.2003. The order of the Tribunal has been challenged mainly on the ground that the settled law being “No work, no wages”, the Tribunal was not justified in granting back wages to the respondents.

3. The Ld. Counsel for the petitioners has referred to the decision of the Hon’ble Supreme Court in **Indian Railway Construction Co. Ltd Vs. Ajay Kumar; JT 2003 (2) SC 295**. In this case, the respondent employee was dismissed for assaulting a senior officer and ransacking the office. No inquiry was held before passing the order of termination of his services. The High Court quashed the order of termination of services on the ground that dispensation of inquiry was not sustainable. The Hon’ble Supreme Court, while restoring the dismissal of the respondent, directed the petitioner to pay a sum of Rs. 15.00 lakhs to him towards back wages, in full and final settlement of his claims. The judgment is not attracted to the facts of this case and is of no help to the petitioners.

4. The Ld. Counsel for the petitioners has next referred to **AIR 2002 SC 2676; Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and another;** wherein the Hon'ble Supreme Court referring to section 11A of Industrial Disputes Act (14 of 1947), held that it vested a wide discretion in the Tribunal, in the matter of awarding proper punishment, and also in the matter of terms and conditions on which reinstatement could be ordered. It was held that the Tribunal had to consider whether in the circumstances of the case, back wages had to be awarded and if so, to what extent. The next judgment relied upon by the petitioners is **P.G.I. of M.E. and Research, Chandigarh v. Raj Kumar etc.; JT 2001 (1) SC 336;** where the Labour Court ordered reinstatement of the respondent employees with continuity in services, but, restricted back wages to the extent of 60 per cent. The High Court, in the Writ Petition, ordered grant of full back wages on the ground that as the workers were ready to work, there was no justification for not awarding full back wages. The Hon'ble Supreme Court reversed the order of the High Court and in the course of the judgment observed as under :

“The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity of being erroneous or not in accordance with law shall have

to be recorded with reasons in order to assail the findings of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however, the finding of fact is based on any mis-appreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari.”

5. The Ld. Counsel has also relied upon **S.K. Giri V. Home Secretary, Ministry of Home Affairs & Ors; JT 1995(6) S.C. 154.**

In this case, one Security Guard, who was found absent from duty, was removed from service. The Security Guard was reinstated, but, he was not paid arrear of salary from the date of removal of service till 31.12.1994. The Ld. Counsel for the petitioners has also referred to **(1998) 2 Supreme Court Cases 291; Hukum Chand Vs. Jhabua Cooperative Central Bank Ltd.;** in this case, the services of the employee were deemed to have been automatically terminated on account of his conviction in a criminal case. However, in revision, he was acquitted by the High Court. Rule 49 (ii) of M.P. Cooperative Central Bank Employees Rule, 1977 which was applicable to his case, provided that when the sentence awarded by the Lower Court was set aside by the Superior Court and the employee was honourably acquitted, he might be reinstated in the service, albeit without back

wage, unless otherwise stated in the order. The employee was reinstated without back wages. The rule was challenged on the ground that it was arbitrary and was a fetter on the power of the employer to ward back wages. The Hon'ble Supreme Court held that there was no such fetter in the rule which only provided that unless the order specifically granted back wages, the reinstatement will not automatically entitle an employee to back wages. The Ld. Counsel has also relied upon **Bansi Dhar Vs. State of Rajasthan; 2006 (11) SCALE 199**; in this case the appellant, a Patwari was convicted by the trial court and dismissed from service. In appeal, he was acquitted by the High Court. After his superannuation, he filed a Writ Petition claiming back wages. He had not worked between the date of suspension and the date of superannuation. The Hon'ble Supreme Court noted that no hard and fast rule could be laid down in regard to grant of back wages and each case had to be determined on its own facts. The Writ Petition was disposed of with the direction that in the event of he filing a representation before the competent officer with regard to pension, the same would be considered within a stipulated period. On the representation filed by him, the pension was granted to him. His contention before the Hon'ble Supreme Court was that since he had remained in custody which prevented him from attending the

duty, he could not be denied the back wages. The Hon'ble Supreme Court, however, refused to interfere with the order.

6. The case of the petitioners is however entirely different and is squarely covered by FR-54A, which, to the extent it is relevant prescribes as under:

“F.R. 54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(3) 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 preceding 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 allowances for the period, to which he would have been entitled, had he not been dismissed, removal or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.”

7. In the present case, the removal of the respondents has, admittedly, been set aside by the Central Administrative Tribunal (CAT) on the ground that it was a case of no evidence and they have been reinstated without holding any further inquiry. The setting aside of removal of the respondents being no merit, the intervening period between the date of removal and the date of reinstatement has to be treated as on duty for all purpose and they have to be paid full salary and allowances for the said period, as would have been paid to them, had they not been removed from their services. The judgements relied upon by Ld. Counsel for the petitioners have no applicability in the face of statutory rule applicable to the respondents.

8. For the reasons mentioned above, we find no merit in the writ petition and the same is dismissed.

(V.K. JAIN)

JUDGE

(A.K. SIKRI)

JUDGE

July 3 , 2009.
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