

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

+ **Writ Petition (Civil) No.8119/2008**

% **Date of Decision: 09.10.2009**

UOI & Another Petitioners
Through Ms.Geetanjali Mohan, Advocate.

Versus

Shri Latoor Singh Respondent
Through Mr.H.P. Chakravarty, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners have challenged the order dated 23rd July, 2008 in OA No.443 of 2008 titled Latoor Singh v. Union of India and another directing the petitioners herein to consider the grant of full wages during the suspension period and interest on the amount of provident fund to the respondent in accordance with the rules and legal instructions by a speaking order. While issuing the said direction the Tribunal has held that once the Court had exonerated the employee, the same is deemed to be a clean exoneration and the intervening period

from the date of dismissal to the date of reinstatement is to be treated as spent on duty. The Tribunal held that the legal implication of the above is the grant of wages to the employee and the grant of interest on the provident fund of the employee.

2. Initially, the respondent was dismissed from service vide order dated 1.8.1995 after being departmentally chargesheeted on 22.7.1994. He challenged his dismissal by filing O.A No.51/1996. The order of dismissal was set aside vide order dated 18.11.2002. While disposing of the said O.A the Tribunal passed the following operative order:-

“.....Impugned order of dismissal and the appellate order are quashed and set aside. Respondents are directed to reinstate the applicant forthwith and treat him as deemed suspended from the date of his dismissal. They are also at liberty, if so desired, to take up the proceedings from the stage of examination of the concerned Doctor, give an opportunity to cross-examine him and thereafter to finalise the proceedings within a period of six months from the date of receipt of a copy of this order. The intervening period shall be decided by the respondents after the conclusion of the proceedings in accordance with the extant rules and instructions.....”

In terms of order dated 18.11.2002, the petitioners reopened the enquiry and after concluding the same, passed a fresh penalty order dated 19.5.2003 compulsorily retiring him from service. This order was challenged by the respondent by filing O.A No.2234/2003 before the Tribunal, which was disposed of on 28.7.2004. The Tribunal on this occasion set aside the penalty of compulsory retirement. The

respondent was granted consequential benefits including consideration of payment of subsistence allowance by deeming the respondent under suspension from the date of passing of the initial dismissal order dated 1st August, 1995. While the petitioners challenged the order dated 22.7.2004 before this Court by filing W.P(C) No.15945/2004 unsuccessfully, the respondent accepted the said order dated 28.7.2004 and, therefore, the same attained finality.

3. The petitioners have contended that they have already paid a total amount of Rs.10,50,446/- as the subsistence allowance for the period the respondent remained out of job. The petitioners further contended that since this Tribunal had directed consideration of payment of subsistence allowance by deeming the respondent under suspension from the date of the initial order of dismissal dated 1.8.1995 till the date of the order of the Tribunal i.e 28th July, 2004, the same could not be challenged or got re-adjudicated by the respondent by filing another petition before the Central Administrative Tribunal to claim full salary for the said period. It is asserted that in case the respondent was aggrieved by the order dated 28th July, 2004 against denial of full wages or any other relief, the respondent ought to have either sought review of said order or he should have filed a writ petition or should have taken such other legal remedies as were available to him. The respondent

having accepted the said order dated 28.7.2004, the same has attained finality.

4. In the circumstances, it is contended that the Tribunal in a fresh application could not have re-adjudicated on the earlier order dated 28th July, 2004 pertaining to grant of full back wages to the respondent.

5. The petitioners have also impugned the award of interest on the amount of provident fund to the respondent on the ground that the respondent had been duly informed by letter dated 20th December, 2006 that after the compulsory retirement of the respondent, his provident fund had been released to him and he was at liberty to withdraw the same. It is contended that since the respondent chose not to withdraw the same and it remained lying in a dead account, the petitioner is not liable to pay any interest upon the same.

6. The petition is contested by the respondent contending *inter alia* that Rule 1344 in Volume II of IREC provides that where the dismissal, removal or compulsory retirement of a railway servant is set aside by court of law and the government servant is reinstated without holding any further inquiry, the period of absence from duty is to be regularized and the government servant is entitled for the pay and allowance in

accordance with the provisions of sub Rule (2) or (3) subject to other directions. In the circumstances, it is contended that since by order dated 28th July, 2004, the order dated 19th May, 2003 imposing the punishment of compulsory retirement was set aside, the respondent became entitled for full back wages in terms of Rule 1344 (FR 54-A) and the period of absence from duty had to be regularized and he became entitled for all the pay and allowances.

7. The respondent contended that he had filed a contempt petition before the Tribunal which was disposed of by order dated 11th July, 2005 directing the petitioners to make all consequential payment to the respondent within four weeks in terms of order dated 28th July, 2004 in O.A no. 2234 of 2003 failing which the respondent was granted liberty to revive the contempt petition.

8. The respondent further contended that the order dated 28th July, 2004 is in two folds contemplating payment of consequential benefits and consideration of payment of subsistence allowance by deeming the respondent under suspension from initial dismissal order dated 1st August, 1995.

9. We have heard the learned counsel for the parties. This cannot be disputed that the respondent was charge sheeted for turning on duty in a state of intoxication and a penalty of dismissal was imposed which was set aside by order dated 11th November, 2002 and liberty was given to the petitioners to initiate the disciplinary proceedings from the stage of cross-examination of the witnesses. Consequent to the inquiry taken from the stage of examination of concerned witness, inquiry was again concluded and inquiry report was submitted holding the respondent guilty of the charges and thereafter disciplinary authority had imposed the punishment of compulsory retirement on the respondent. The appeal filed by the respondent against the penalty of compulsory retirement by order dated 19th May, 2003 was also dismissed by the appellate authority by order dated 30th July, 2003.

10. Aggrieved by the order imposing the penalty of compulsory retirement, the respondent filed an OA bearing No.2234 of 2003 before the Principal Bench of Central Administrative Tribunal which was allowed by order dated 28th July, 2004 setting aside the order of compulsory retirement of the respondent and holding that the respondent shall be entitled for consequential benefits including consideration of payment of subsistence allowance by deeming him

under suspension from initial dismissal order dated 1st August, 1995 till 28.7.2004.

11. If the respondent considered himself entitled for any other relief then what was granted by order dated 28th July, 2004 in O.A No. 2234 of 2003, or if the respondent required any other clarification, then the respondent ought to have impugned the order dated 28th July, 2004 in appropriate proceedings. The respondent did not file any review application or any writ petition challenging the said order which became final. Rather the petitioners had filed a writ petition challenging the order dated 28th July, 2004 which was dismissed by the High Court in W.P.(C.) No.15945 of 2004. From a perusal of the operative portion of the order dated 28.7.2004 it is clear, and there is no ambiguity, that the Tribunal did not grant the relief of reinstatement of the respondent with full back wages. The Tribunal categorically directed "*consideration of payment of subsistence allowance by deeming him under suspension from initial dismissal order dated 1.8.1995 till the date of their orders from when he would be reinstated forthwith.*" The respondent could not have been under any mistaken impression about the purport of the order dated 28.7.2004. Yet he accepted the same and did not challenge the same on any ground, much less by relying upon Rule 1344 Vol. 11 of IREC.

12. The respondent had also filed a contempt petition before the Tribunal which was disposed of with a direction to make payment in terms of order dated 28th July, 2004 and it appears that an amount of Rs.10,50,446/- has been paid to the respondent as subsistence allowance. While disposing of the contempt petition, the respondent was also granted liberty to revive the contempt petition in case the amount in terms of order dated 28th July, 2004 was not paid by the petitioners.

13. It appears that only after receiving the aforesaid amount the respondent claimed more amounts on account of wages, which had not been paid by the petitioners and therefore, instead of reviving the contempt petition in terms of order dated 11th July, 2005 or executing the order dated 24th July, 2004, filed a fresh petition being O.A 443 of 2008 which could not be filed by the respondent. Since the rights of the respondent to claim amounts pursuant to setting aside of the order dated 19th May, 2003 compulsorily retiring the respondent had been adjudicated by order 28th July, 2004, no fresh petition could be filed by the respondent consequent to setting aside the order of compulsory retirement nor the Central Administrative Tribunal in a fresh petition could re-adjudicate as to what the respondent would be entitled to

consequent to quashing of penalty of compulsory retirement nor could the Tribunal modify the order dated 28th July, 2004 in any manner, nor could give directions as has been given by order dated 23rd July, 2008 impugned before us. The original application preferred by the respondent was barred by res judicata. The impugned order dated 23rd July, 2008, in the facts and circumstances in so far as it holds that the respondent is entitled to full back wages because he has been exonerated and reinstated in service, suffers from material illegality and cannot be sustained. The Tribunal, while passing the impugned order has failed to even notice the operative part of the order dated 28.7.2004, and the impugned order has been passed in ignorance of it.

14. The respondent had also sought interest on his provident fund amount which has also been allowed by the Tribunal by order dated 23rd July, 2008 which is being impugned before this Court. The plea of the petitioners is that the respondent had been duly informed by letter dated 20th December, 2006 that after the compulsory retirement of the respondent, his provident fund was released to him and the respondent was at liberty to withdraw the same. The plea of the petitioners is *ex facie* not sustainable as pursuant to the penalty of compulsorily retiring the respondent by order dated 19th May, 2003, no intimation was sent till 20th December, 2006. If the respondent did not have the intimation

about the release of his provident fund, how the respondent could withdraw or get the provident fund released has not been answered or explained by the petitioners. In any case, since the order of compulsory retirement dated 19th May, 2003 was challenged by the respondent by filing an appeal on 30th July, 2003 and thereafter OA bearing No.2234 of 2003 in August 2003, the respondent could not have proceeded to get his provident fund released. In the circumstances, alleged intimation alleged to have been given in 20th December, 2006 that the respondent could get the provident fund released, will not disentitle the respondent for the interest on the amount of his provident fund. As a matter of fact, the amount remained with the petitioner and was not pocketed by the respondent. Consequently, the direction of the Tribunal that the respondent is entitled to interest on his provident fund cannot be faulted.

15. For the foregoing reasons, the writ petition is partly allowed and the decisions of the Tribunal dated 23rd July, 2008 re-adjudicating as to what consequential benefits the respondent shall be entitled to despite adjudication of the same by order dated 24th July, 2004 in O.A. 2234 of 2003 is set aside. However, the order of the Tribunal directing the petitioners to award interest on the amount of provident fund of the

respondent is sustained. The writ petition is therefore, disposed of with these directions, however, the parties are left to bear their own costs.

ANIL KUMAR, J.

October 09, 2009
'rsd/Dev'

VIPIN SANGHI, J.