

Neutral Citation No. - 2024:AHC-LKO:26727

Court No. - 6

Case :- WRIT - A No. - 24836 of 2016

Petitioner :- Ramendra Kumar Sharma

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Home Civil
Sectt.Andors.

Counsel for Petitioner :- Ramesh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard Sri Anand Singh Pawar holding brief of Sri Ramesh Singh, learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.

2. Instant writ petition has been filed praying for the following reliefs:-

"I. Issue a writ, direction or order in the nature of Mandamus commanding the opposite parties to make payment of salary and other consequential service benefits to the petitioner for the dismissal period i.e. w.e.f. 8.3.2007 to 19.4.2009.

II. Issue a writ, direction or order in the nature of Mandamus commanding the opposite parties to pay prevalent rate of interest on the unpaid amount, till it is actually paid to the petitioner.

III. Issue any other writ, direction or order as this Hon'ble court deems fit and proper in the circumstances of the case in the favour of the petitioner.

IV. Award the cost of the petition in favour of the petitioner."

3. The case set forth by the learned counsel for the petitioner is that while the petitioner was working as Sub Inspector, he had been dismissed from service vide order dated 08.03.2007, a copy of which is Annexure-1 to the writ petition. The appeal filed by the petitioner against the said order was also rejected vide order dated 21.05.2007, a copy of which is Annexure-2 to the writ petition.

4. Being aggrieved, the petitioner filed Writ Petition no.6203 (SS) of 2007 in re: Ramendra Kumar Sharma vs. State of U.P. and others. This Court vide judgment and order dated 16.01.2009, a copy of which is Annexure-3 to the writ petition, set aside the dismissal order and the appellate order and remanded the matter to the disciplinary authority to reconsider the petitioner's case with regard to the quantum of punishment. Incidentally, while allowing the writ petition, the writ Court had specifically held that the department has failed to prove illicit relationship or second marriage with Anuradha Kaushik during subsistence of first wife which was the basis of dismissal of petitioner from service.

5. In compliance to the order passed by the writ Court the respondents reinstated the petitioner vide order dated 20.04.2009, a copy of which is Annexure-4 to the writ petition.

6. Subsequent thereto, a show cause notice was issued to the petitioner on 23.01.2013. The petitioner submitted his reply to the same. The competent authority vide order dated 26.06.2013, a copy of which is Annexure-5 to the writ petition, was of the view that no case for award of any punishment to the petitioner is made out and accordingly the show cause notice as issued to the petitioner was also cancelled.

7. When the petitioner was not paid salary for the period of his dismissal i.e. from 08.03.2007 till his reinstatement on 20.04.2009, he submitted a representation to the competent authority but to no avail.

8. Being aggrieved, the instant writ petition has been filed.

9. The contention of learned counsel for the petitioner is that when the dismissal order of the petitioner dated 08.03.2007 as well as the appellate order dated 21.05.2007 has been quashed and set-aside by the writ Court vide judgment and order dated 16.01.2009 and even the quantum of punishment which was required to be considered by the department did not result in any penalty against the petitioner rather the respondents on their own accord have also not found the case to be of such nature as to award any

penalty against the petitioner consequently the petitioner would be entitled for full salary and other consequential benefits for the period for which he remained out of service i.e. 08.03.2007 till his reinstatement on 20.04.2009.

10. In this regard, reliance has been placed on the judgment of the Apex Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others** reported in **(2013) 10 SCC 324** as well as Fundamental Rule 54 A.

11. Placing reliance on the judgment of the Apex Court in the case of **Deepali Gundu Surwase (supra)**, the argument of learned counsel for the petitioner is that the Apex Court has categorically held that in case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

12. Placing reliance on the provisions of Fundamental Rule 54 A (3) the argument of learned counsel for the petitioner is that 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 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 or removed from service.

13. Placing reliance on the aforesaid judgment as well as the provisions of Fundamental Rules, the argument of learned counsel for the petitioner is that once the respondents themselves have not found the conduct of the petitioner to be of such nature as to award any punishment despite a liberty granted by the writ Court vide judgment and order dated 16.01.2009 consequently the petitioner would be entitled for all consequential benefits including the arrears of pay for the period of dismissal till his reinstatement.

14. On the other hand, learned Standing Counsel on the basis of averments contained in the counter affidavit argues that the period from 08.03.2007 till 19.04.2009, the petitioner having been reinstated in service on 20.04.2009,

would be treated as no work no pay as the petitioner did not render any service during the said period and thus no error has been committed by the respondents in not granting any salary and other allowances for the period of his dismissal.

15. Heard learned counsels for the contesting parties and perused the records.

16. From perusal of record, it emerges that while the petitioner was working as Sub Inspector he had been dismissed from service vide order dated 08.03.2007 which order was upheld with the dismissal of appeal vide order dated 21.05.2007. Upon a challenge being raised to both the orders, the writ Court vide judgment and order dated 16.01.2009 set-aside the dismissal order and the appellate order by recording that the department has failed to prove illicit relationship or second marriage with a lady on the basis of which the petitioner had been dismissed from service. However, the writ Court remanded the matter to the competent authority to reconsider the petitioner's case with regard to quantum of punishment.

17. In pursuance to the order of the writ Court, initially a show cause notice was issued to the petitioner on 23.01.2013 but the competent authority after considering the explanation of the petitioner vide order dated 26.06.2013 was of the view that as the High Court itself has gone into the merits of the case and has not found the charges proved against the petitioner consequently no case for award of even any lesser punishment is made out and hence the show cause notice was also withdrawn.

18. The instant petition has been filed contending that as the dismissal order of the petitioner has been set aside and even the show cause notice which was required to be given to the petitioner in pursuance to the order of the writ Court with regard to a lesser punishment has also been set aside by the respondents themselves consequently following the proposition of law laid down by the Apex Court in the case of **Deepali Gundu Surwase (supra)** and the provisions of 54 A (3) of the Fundamental Rules the petitioner would

be entitled for full salary and other allowance for the period of his dismissal till his reinstatement.

19. The Apex Court in the case of **Deepali Gundu Surwase (supra)** has categorically held that the normal rule in cases of wrongful termination of service being set-aside is reinstatement with continuity of service and back wages.

20. Even otherwise, Fundamental Rule 54 A (3) categorically provides that if the dismissal of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal and the date of reinstatement shall be treated as duty for all purposes and the employee shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been dismissed or removed or compulsorily retired.

21. Accordingly, considering that the writ Court itself had set aside the dismissal of the petitioner on merits and even the quantum of punishment which was required to be considered by the competent authority upon a remand of the case by the writ Court also did not find favour with the competent authority who was of the opinion that no case for award of any punishment is made out against the petitioner as emerges from perusal of the order dated 26.06.2013 consequently following the judgment of the Apex Court in the case of **Deepali Gundu Surwase (supra)** as well as the provisions of 54 A (3) of the Fundamental Rules, it is apparent that the petitioner would be entitled for payment of full salary and other allowance for the period of his dismissal till reinstatement i.e. from 08.03.2007 till 19.04.2009.

22. Keeping in view the aforesaid discussion, the writ petition is **allowed**. A writ of mandamus is issued commanding the respondents to pay the full salary and other allowance to the petitioner along with other consequential benefits for the period from 08.03.2007 till 19.04.2009.

23. Let such payment be made within a period of eight weeks from the date of receipt of a certified copy of this order.

Order Date :- 1.4.2024

A. Katiyar