

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 376 of 2019

Appellant :- Arun Kumar Tiwari

Respondent :- State of U.P. Thru. Secy. Dept. of Revenue Lko. and ors.

Counsel for Appellant :- Anuj Kudesia, Vikas Kumar Agrawal

Counsel for Respondent :- C.S.C., Gopal Kumar Srivastava (S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. This appeal is directed against order dated 06.08.2019 passed in Service Single No. 1641 of 2010, whereby the writ petition filed by the petitioner/appellant has been dismissed.

2. The appellant was appointed as Collection Amin on 07.04.1984 and on complaints being made, his services were put to an end on 23.09.1985. Feeling aggrieved, the appellant filed writ petition No. 5359 (S/S) of 1985 seeking quashing of the termination order dated 23.09.1985. In the said writ petition, the order of termination dated 23.09.1985 was stayed by order dated 16.10.1985. The writ petition remained pending. During the pendency of the writ petition, the services of the appellant were regularized by order dated 25.05.2001.

3. It appears that when the writ petition came up before the Court for hearing, on account of non appearance, the same was dismissed on 12.08.2004. On account of passing of the said order, the order impugned dated 09.03.2010 was passed by the Authority, *inter alia*, holding that as the appellant was continuing in service based on the interim order, which came to an end with the dismissal of the writ petition on 12.08.2004, his services were put to an end. The Authority, while passing the

order, did not take into consideration that during the pendency of the writ petition, on 25.05.2001, services of the appellant had been regularized. On account of passing of the order dated 09.03.2010, appellant filed the present writ petition seeking to question the validity of the said order. The order dated 09.03.2010 was stayed by learned Single Judge on 23.03.2010. The appellant, apparently, thereafter moved an application seeking restoration of Service Single No. 5359 of 1985, which came to be restored on 23.04.2010. The interim order granted was also revived, whereafter on 04.05.2010, noticing that the services of the appellant have been regularized on 25.05.2001, the writ petition was dismissed as having become infructuous.

4. When the present writ petition being writ petition No. 1641 (S/S) of 2010 came up before the learned Single Judge, after noticing the sequence of events, learned Single Judge came to the conclusion that the order passed by the Sub Divisional Magistrate, Palia, Kheri dated 09.03.2010 did not require any interference as the interim order, granted in favour of the appellant, in the earlier writ petition had come to an end with its dismissal for non prosecution.

5. Learned counsel for the appellant made submissions that the fact of regularization of the services dated 25.05.2001 was neither noticed by the respondents while passing the order dated 09.03.2010 nor the said fact was considered by learned Single Judge while passing the order impugned.

6. Submissions have also been made that the fact of restoration of the writ petition, which was dismissed in default and its final disposal as having become infructuous, on account of regularization of service, was also brought to the notice of the learned Single Judge, however, the said aspect also was not taken into consideration while dismissing the writ petition.

Learned counsel points out that on account of the interim order dated 03.09.2019 passed in the present special appeal, the appellant continued to remain in service and has attained the age of superannuation and has been granted all the terminal benefits by the respondents. It is submitted that in view of the entire fact situation, the order dated 06.08.2019 passed by learned Single Judge as well as the order dated 09.03.2010 passed by the Sub Divisional Magistrate be set aside.

7. Learned counsel for the respondents supported the order impugned and submitted that as the appellant was continuing in service, on account of the interim order passed by this Court and on account of dismissal of the petition, the interim order had come to an end, the order impugned dated 09.03.2010 does not call for any interference. However, it is not denied that services of the appellant were regularized on 25.05.2001 and after attaining the age of superannuation, he has been granted all the terminal benefits.

8. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. The sequence of events, as noticed hereinbefore, clearly reflects that neither the Sub Divisional Magistrate, while passing the order dated 09.03.2010 nor the learned Single Judge took into consideration the fact that during the pendency of the earlier writ petition on 25.05.2001, the services of appellant had been regularized. Once the services stood regularized, merely on account of the dismissal of the writ petition, which pertained to his termination way back in the year 1985, would not affect the regularization made on 25.05.2001. Further, the fact that the writ petition again got restored and taking note of the fact of regularization, the same was disposed of as having become

infructuous, also necessarily means that the effect of the dismissal of the writ petition in default had come to an end.

10. In view of the over all fact situation of the matter, the order passed by the respondent - Sub Divisional Magistrate, Palia, Kheri dated 09.03.2010 as well as the order dated 06.08.2019 passed by learned Single Judge, cannot be sustained.

11. Consequently, the appeal is **allowed**. The orders dated 06.08.2019, passed by learned Single Judge and 09.03.2010, passed by the Sub Divisional Magistrate, Palia, Kheri are quashed and set aside.

Order Date :- 19.12.2024

Mukesh Pal/Harshita

(Jaspreet Singh, J) (Arun Bhansali, CJ)