



2025:AHC:169288

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Reserved on : 15.09.2025

Delivered on : 23.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 62565 of 2010

Sujeet Kumar Moitra

.....Petitioner

Versus

State of U.P. and Others

.....Respondents

Counsel for Petitioner : J.K. Mishra, Parveen Kumar Shukla, Pradeep Kumar Tiwari, Ranjeet Kumar Mishra, Ranjit Saxena, Vijay Gautam

Counsel for Respondents : Anubhav Singh, Dr. Suman Yadav, Komal Mehrotra, Pankaj Kumar Shukla

Court No.- 5

HON'BLE SAURABH SHYAM SHAMMSHERY, J.

1. Heard Sri Pradeep Kumar Tiwari, learned counsel for petitioner and Ms. Usha Kiran, learned counsel for respondents.
2. The petitioner, a Meter Inspector in Electricity Distribution Division, Govind Nagar, Kanpur, has approached earlier this Court when his services were dispensed with by way of a Civil Misc. Writ Petition No. 12018 of 2003. The said Writ Petition was allowed by an order dated 21.02.2009, whereby he was reinstated, however, issue of fresh inquiry and of back wages was kept open and for reference its relevant part is reproduced hereinafter :-

“The position which emerges in the present case is that after earlier order of punishment had been passed on 21.11.2002,

petitioner joined his duties on 07.12.2002 and thereafter, petitioner disappeared, qua which complaint was made on 15.01.2003 and 25.02.2003, mentioning therein that petitioner was not taking interest in his work. After said complaint had been made taking into account the past conduct of the petitioner, the Managing Director of KESA proceeded to pass the impugned order on 28.02.2003. Said order cannot be sustained, inasmuch as once services of petitioner were being dispensed with on charges that he was not taking interest in his work, then holding of inquiry was condition precedent, instead of proceeding to pass order dispensing with his services, as such order dated 28.02.2003 cannot be sustained.

Consequently, present writ petition succeeds and the same is allowed. Impugned order dated 28.02.2003 is quashed. However, passing of this order will not prevent the respondents from undertaking disciplinary proceedings in accordance with law, and in respect of back wages as well as in respect of subsistence allowance payable to the petitioner, decision shall be taken by the authorities concerned in accordance with law. “

3. In aforesaid circumstances, the respondents have passed an order dated 06.05.2010, whereby petitioner was reinstated but claim for back wages and subsistence allowance was rejected on principle of ‘No Work No Pay’, taking note that he has already crossed age of superannuation. For reference the said order is reproduced hereinafter :-

“श्री सुजीत कुमार मोइत्रा, मीटर इन्स्पेक्टर विद्युत वितरण खण्ड गोविन्दनगर, केस्को कानपुर के द्वारा अपने कार्यों में रुचि न लिये जाने तथा कार्य से अनुपस्थित रहने के कारण उनकी सेवायें केस्को के कार्यालय ज्ञाप सं० 184/एम० डी०/कैम्प/03 दिनांक 28.02.03 के द्वारा तत्काल प्रभाव से समाप्त कर दी गयी थी। श्री मोइत्रा ने अपनी सेवासमाप्ति के उक्त आदेश को मा० उच्च न्यायालय में याचिका सं० 12018/03 निवेशित कर चुनौती दी। मा० उच्च न्यायालय द्वारा याचिका सं० 12018/03 में पारित आदेश दिनांक 21.12.09 के अनुपालन में श्री एस०के० मोइत्रा, मीटर इन्स्पेक्टर को दिनांक 28.02.03 से सेवा में निम्नलिखित शर्तों के प्रतिबन्धाधीन पुनर्स्थापित किया जाता है:-

1- श्री एस० के० मोइत्रा, मीटर इन्स्पेक्टर द्वारा 58 वर्ष की अधिवर्षता आयु पूर्ण कर लेने पर उन्हें दिनांक 30.06.06 से सेवानिवृत्त हुआ माना जाए।

2- श्री एस० के० मोइत्रा, मीटर इन्स्पेक्टर ने अपनी सेवासमाप्ति की तिथि से सेवानिवृत्ति की तिथि 30.06.06 तक कोई विभागीय कार्य सम्पादित नहीं किया है, अतः उन्हें "काम नहीं, तो वेतन नहीं", के सिद्धान्त के आधार पर उक्त अवधि के वेतनादि का भुगतान अनुमन्य नहीं होगा।

3- श्री एस० के० मोइत्रा, मीटर इन्स्पेक्टर की सेवायें जिस आधार पर समाप्त की गयी थी उसकी जाँच श्री अरुण कुमार, अधीक्षण अभियन्ता (वि०) द्वितीय, फजलगंज, केस्को के माध्यम से कराकर आवश्यक कार्यवाही की जाए।”

4. Undisputedly, the petitioner instead to challenge the aforesaid order and without disclosing said order, has approached this Court by way of filing a Writ Petition No.43415 of 2010. The Writ Petition was disposed of by an order dated 27.07.2010 with a direction to consider the issue of back wages. For reference, said order is reproduced hereinafter :-

“It is stated on behalf of the petitioner that the services of the petitioner were terminated under the order of the Managing Director, Kanpur Electricity Supply Company Ltd., Kanpur Nagar dated 28th February, 2003. The order was challenged by means of Civil Misc. Writ Petition No. 12018 of 2003. The writ petition was allowed under the order dated 21st December, 2009 and the order of termination has been set aside. However, it has been provided that respondents would be at liberty to undertake the disciplinary proceedings in accordance with law and in respect of back wages as well as in respect of subsistence allowance payable to the petitioner, decision shall be taken by the authorities concerned in accordance with law. It appears that the petitioner did not inform the Court that on the date the writ petition was decided, he had already retired from service i.e. in the year 2006 and it is in this background that the employer was permitted to conclude the departmental proceedings. However, nothing further is required to be added on that score, inasmuch as the Court left it open to the authorities to examine the issue with regard to the permanent of back wages and the other benefits as well as in respect of subsistence allowance in accordance with law. Accordingly, the present writ petition is disposed of with a direction upon the respondent no.2 to take appropriate decision in the matter of petitioner as per the directions issued by this Court under order dated 21st December, 2009 referred to above at the earliest possible preferably within eight weeks from the date a certified copy of this order is filed before him. ”

5. In pursuance of above order, claim of petitioner was again considered and was again rejected by an order dated 21.09.2010 that issue of back wages and subsistence allowance

was already considered and rejected when petitioner was reinstated by an order dated 06.05.2010, which remained unchallenged and therefore, there was no occasion for the respondent to review it. For reference relevant part of aforesaid order dated 21.09.2010 is reproduced hereinafter :-

“श्री सुजीत कुमार मोइत्रा, मीटर इन्स्पेक्टर, विद्युत वितरण खण्ड तथा कार्य से गोविन्दनगर, केस्को द्वारा अपने कार्य में रुचि न लिये जाने तथा कार्य से अनुपस्थित रहने के कारण उनकी सेवायें केस्को के कार्यालय ज्ञाप सं० 184/एम०डी०/कैम्प / 03 दिनांक 29.02.03 द्वारा तत्काल प्रभाव से समाप्त कर दी गयी थी। श्री मोइत्रा ने अपनी सेवा समाप्ति के उक्त आदेश के विरुद्ध मा० उच्च न्यायालय, इलाहाबाद के समक्ष याचिका सं० 12018/03 निवेशित कर चुनौती दी। मा० उच्च न्यायालय में वादी द्वारा योजित याचिका सं० 12018/03 में पारित आदेश दिनांक 21.12.09 के अनुपालन में केस्को मुख्यालय के कार्यालय ज्ञाप सं० 12018/03/391 दिनांक 06.05.10 द्वारा इसका अनुपालन किया गया एवं मा० उच्च न्यायालय, इलाहाबाद के निर्देशानुसार विभागीय जाँच किये जाने का निर्णय लिया गया एवं कार्यालय ज्ञाप सं० याचिका सं० 12018/03/421 दिनांक 13.05.10 द्वारा श्री अरुण कुमार, अधीक्षण अभियन्ता (वि०), द्वितीय, फजलगंज, केस्को को जाँच अधिकारी नामित किया गया। कार्यालय ज्ञाप सं० 12018/03/391 दिनांक 06.05.10 एवं कार्यालय ज्ञाप सं० याचिका सं० 12018/03/421 दिनांक 13.05.10 की प्रति उनके आवासीय पते पर भेजी गई जो इस टिप्पणी के साथ वापिस आ गई कि "घर में ताला बन्द" है। उक्त कार्यालय ज्ञाप की प्रतियाँ विशेष पत्रवाहक के साथ उनके आवास पर भेजे गये तब भी ताला बन्द मिला। अतः दैनिक जागरण एवं अमर उजाला में क्रमशः दिनांक 08.07.10 एवं दिनांक 08.07.10 को सूचना प्रकाशित की गयी। इसी मध्य श्री मोइत्रा ने पुनः मा० उच्च न्यायालय इलाहाबाद के समक्ष याचिका सं० 43415/10 योजित की एवं वेतन भत्तो की माँग की। मा० उच्च न्यायालय के संज्ञान में वादी द्वारा यह तथ्य नहीं लाया गया था कि वह सेवानिवृत्त हो चुका है जिस कारण मा० उच्च न्यायालय में सेवायोजकों को जाँच सम्पादित करने हेतु स्वतंत्र छोड़ा था। इस सम्बन्ध में मा० उच्च न्यायालय की भावनाओं का आदर करते हुए सेवायोजकों ने श्री मोइत्रा के विरुद्ध केस्को के कार्यालय ज्ञाप सं० याचिका सं० 12018/03/421 दिनांक 13.05.10 द्वारा आदेशित जाँच वापस लेते हुए कार्यालय ज्ञाप सं० 12018/03/391 दिनांक 06.05.10 के बिन्दु 03 पर आदेशित जाँच के निर्णय को निरस्त करने का निर्णय लिया है किन्तु उक्त कार्यालय ज्ञाप के बिन्दु 01 एवं 02 पर लिये गये निर्णय पर सेवायोजक अडिग है क्योंकि श्री मोइत्रा ने जिस अवधि में कोई कार्य सम्पादित नहीं किया है उस अवधि में उन्हें कार्य नहीं तो वेतन नहीं के सिद्धान्त पर कोई वेतनादि का भुगतान अनुमन्य नहीं होगा। मा० उच्च न्यायालय द्वारा याचिका सं. 43415/10 में पारित निर्णय दिनांक 27.07.10 के अनुपालन में श्री मोइत्रा मीटर इन्स्पेक्टर के प्रतिवेदन दिनांक 02.08.2010 का तदुसार निस्तारण किया जाता है।”

6. The aforesaid order dated 21.09.2010 is now being challenged before this Court by way of present writ petition.

7. Learned counsel for petitioner has not able to dispute that order dated 06.05.2010 were never challenged, wherein claim of petitioner was already rejected on ground of 'No Work No Pay'. The petitioner has not come up with the clean hands in earlier round of litigation as well as in present round of litigation that claim of petitioner was already rejected.

8. The respondents have also not disclosed the said order in first round of litigation, therefore, a direction was passed by this Court by an order dated 27.07.2010 to consider the claim of petitioner as referred above in impugned order dated 21.09.2010.

9. The respondents took note of earlier order dated 06.05.2010 and that claim for back wages was already rejected, therefore, it was not reviewed. The judgments placed by learned counsel for petitioner are not applicable in the facts and circumstances of present case due to above legal impediment and that petitioner is not a bonafide litigant.

10. In the aforesaid circumstances, since basic order dated 06.05.2010, whereby petitioner was reinstated and claim for back wages was rejected was never challenged and, therefore, has attained finality, therefore, the subsequent order dated 27.07.2010, which is impugned in present Writ Petition cannot be set aside or interfered.

11. The Court also takes note of a judgment passed by the Supreme Court in Maharashtra State Road Transport Corporation Vs. Mahadeo Krishna Bank :2025 INSC 218, that *“ordering back wages to be paid to a dismissal employee upon*

*his dismissal being set aside by a Court of law is not an automatic relief, grant of full or partial back has to be preceded by a minor fact finding exercise by the Industrial adjudication/court seized of the proceedings” i.e. whether during investigation employee was gainful employed or not and in present case, no such pleading is pleaded, therefore, also no case of payment of back wages is made out. Accordingly writ petition is **dismissed**.*

(Saurabh Shyam Shamshery, J.)

September 23, 2025

P. Pandey