

PRINCIPAL, AYURVEDIC COLLEGE AND ORS.

v.

SUSHIL CHANDRA MISRA AND ANR.

MAY 23, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

*Service law :*

*Termination of Services—Claim for reinstatement—On facts, held, since the employee has already superannuated, question of reinstatement does not arise—The delay involved in the litigation cannot be attributed to either the employer or the employee—Ends of justice would be met if the employee is paid 50% of the salary from 30.11.1987 till date of Superannuation.*

Respondent No.1 was appointed as a lecturer in 'Science subject' in an Ayurvedic College. In 1971-72, the Science section was closed down and the post of lecturer in science was abolished, and the services of respondent No.1 were terminated vide order dated 6.6.1972. Against the termination order, Respondent No.1 made a representation on 28.8.1972. On 10.10.1974, the college was taken over by the Government and employees of the college were asked to submit option within 3 months for continuing in Government service. On 2.7.1977, Government terminated the services of respondent No.1 from 10.1.1975 as he had not given any option to join the Government service and further directed appellants to pay salary to respondent No.1 for the period starting from 6.6.1972 to 9.1.1975. Respondent No.1 made a claim petition to the Tribunal in 1981 against the order of termination communicated to him on 2.7.1977. Vide Order dated 30.11.1987, Tribunal allowed the claim petition. Appellants unsuccessfully filed writ petition before High Court. Hence the present appeal.

Disposing of the appeal, the Court

HELD: 1.1. Respondent no.1 is not entitled for reinstatement as directed by the Tribunal or the High Court since he has already retired on superannuation. [867-G]

A 1.2. Both the parties are litigating in court for all these years. Therefore, the delay cannot be attributed to either parties. Therefore, applying the principle of 'no work no pay', 50% of the salary is ordered to be paid to respondent no.1 which would meet the ends of justice. Therefore, Appellants are directed to pay to respondent no.1 the salary from 30.11.1987 till the date of superannuation. It is clarified that he would not be entitled to make a claim by way of salary etc. for any further promotion etc. The Government may also consider whether any pension is payable to respondent no.1 because the college is now taken over by the State Government. The Government is directed to consider the same and pass appropriate orders accordingly. The Government shall pay the salary to the respondent within three months from today. The Government may also consider the question of payment of pension within the above said period. [867-C-F]

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D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6527 of 2005.

From the Judgment and Order dated 7.4.2004 of the High Court of Judicature at Allahabad Lucknow Bench in W.P. No. 3920 (S/B) of 1989.

E Pramod Swarup for Jatinder Kumar Bhatia Adv., for the Appellants.

Sudhir Kulshreshtha Adv., for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : Heard both sides.

F The appeal is directed against the final judgment and order dt. 07.04.2004 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No.3920 of 1989 whereby the High Court has dismissed the Writ Petition filed by the appellants herein. The first appellant is the Principal, Ayurvedic College, District Pilibhit (U.P.) and the second appellant is the Director of Ayurvedic and Unani Services, Lucknow (U.P.). The third appellant is the State of U.P. through Collector, Pilibhit, District Pilibhit (U.P.). The respondent No.1 was appointed as Science demonstrator in Lalit Hari Ayurvedic college, Pilibhit (U.P.). In the year 1966, the District Magistrate was appointed as a Receiver in the College. Thereafter, all the appointments and removal of teacher was required to be

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done by the Receiver, i.e., the District Magistrate. On 19.11.1967, respondent No.1 was subsequently appointed as lecturer in science subject by the District Magistrate. He completed his probation of two years and was confirmed as a lecturer in science subject. The science section in the college was closed down in the year 1971-1972 and, thereafter, the post of lecturer in science in the college was also abolished and the respondent No.1 was declared surplus.

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The services of respondent No.1 was terminated vide order dt. 06.06.1972. The order of termination was communicated to the respondent No.1 by the District Magistrate who was the Chairman of the college at that time. The termination order was issued on 06.06.1972. Against the termination order dt. 06.06.1972, the respondent No.1 made a representation on 28.08.1972 and the same was allowed on that date by the Vice-Chancellor. Thereafter, the order dt.28.08.1972 of the Vice-Chancellor along with all the papers were sent to the Government for consideration on 10.10.1974.

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The said college was taken over by the Government vide Notification No. 5915-Sec-9/Five 470/72. The said Notification contained a clause 7A for obtaining option from the teacher and the staff to join government services and if the option is not received within the time, their services will stand terminated. In para 7B, the responsibility to fulfil the condition is on the employee otherwise the services of the previous employment will not be counted towards pension etc. In the instant case, according to the appellants, no such option was given by the respondent No.1 within the stipulated time. The services of respondent No.1 was again terminated as he had not given any option to join the government service.

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Vide order dt. 02.07.1977, the Government terminated the service of the respondent No. 1 as he did not give his option and further directed the appellants to pay the respondent No.1 for the period starting from 06.06.1972 to 09.01.1975. The termination order was set aside and the respondent No.1 was paid the arrears of salary from 06.06.1972 to 09.01.1975 amounting to Rs. 14,901.50 on 19.02.1979.

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The respondent No. 1 made a claim petition to the Tribunal in the year 1981 against the order of termination communicated to him on 02.07.1977. The appellants filed written statement denying the claim. The Tribunal by order dt. 30.11.1987 allowed the claim petition as prayed for, Aggrieved by

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A the judgment, the appellant-State of U.P. filed a Writ Petition No.3920/1989 which was contested by the respondent No.1. The Writ Petition was allowed by the High Court on 04.04.1997. The respondent No.1 filed SLP(C) No.1668/1989 and this Court remanded the matter back for reconsideration on 16.10.1998. The concluding portion of the Order passed by this Court is reproduced as under :-

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“The order of the High Court is cryptic and states no reason. In fact, the matter has been dealt with in a cursory manner which is not retrospective of the judicial approach expected of the High Court. Consequently, the appeals are allowed, the judgment and the order dated 04.04.1997 passed in writ petition (C) No.3920/89 as well as the order dated 13.10.1997 passed in C.M. Application No.11204(W) in W.P.(C) No.3920/89 are set aside and the cases are remitted to the High Court for a fresh consideration in accordance with the law. It is, however, made clear that the salary for the period reckoned from the date on which services were terminated till the date of Tribunal’s judgment, shall be paid to the appellant, within three months. There will be no order as to costs.”

E After remand, the High Court again dismissed the Writ Petition filed by the appellants herein on 07.04.2004. Aggrieved by the said order, the appellants have come to this Court by filing the Special Leave Petition. Leave was granted on 24.10.2005. This Court has also stayed the judgment of the High Court until further orders.

F We have heard learned counsel appearing on behalf of the appellants and the respondents.

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H Mr. Pramod Swarup, learned counsel appearing on behalf of the appellant submitted that the pendency of the representation is not a valid ground to condone the delay of four to five years in filing the claim petition before the Tribunal and that the High Court also did not consider that the college was taken over by the Government on 10.10.1974 and that the information was published in the official gazette and, therefore, the respondent No.1 shall be deemed to have knowledge of taking over of the college by the Government as well as requirement of exercising option. He further submits that the High Court has committed an error in holding that the claim was filed within time although the fact on record was that the cause of action had accrued to the respondent No.1 as far back as on 02.07.1977

when his services were terminated with effect from 10.10.1975. However, it is pertinent to notice that the plea of limitation has not been urged before the High Court. This apart, there is no finding on the issue of limitation recorded by the High Court. Concluding his argument, Mr. Pramod Swarup submitted that the respondent No.1 has already received the salary for the entire period from the date of termination till the date of the Tribunal's order dt.30.11.1987 without doing any work and, therefore, if the order of the Tribunal and as affirmed by the High Court has now to be implemented, the appellant/the State Government has to pay lakhs of rupees by way of salary to the respondent without extracting any work from the respondent herein.

It is true that both the parties are litigating in court for all these years. Therefore, the delay cannot be attributed to either parties. Therefore, applying the principle of 'no work no pay', we are of the opinion that 50% of the salary if ordered to be paid to the respondent No.1 it would meet the ends of justice. We, therefore, direct the appellant to pay to respondent No.1 the salary from 30.11.1987 till the date of superannuation (the exact date is not known).

We also make it clear that the respondent No.1 would be entitled for the salary of lecturer during the relevant period in question. We also however make it clear that he would not be entitled to make a claim by way of salary etc. for any further promotion etc. The Government may also consider whether any pension is payable to the respondent No.1 because the college is now taken over by the State Government. The Government is directed to consider the same and pass appropriate orders accordingly.

The Government shall pay the salary to the respondent within three months from today. The Government may also consider the question of payment of pension within the above said period. He is not entitled for reinstatement as directed by the Tribunal or the High Court since he has already retired on superannuation.

The appeal stands disposed of in the above terms. There shall be no order as to costs. The order passed by the Tribunal as affirmed by the High Court is modified accordingly.

D.G.

Appeal disposed of.