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UNION OF INDIA
v.
MADHUSUDAN PRASAD

OCTOBER 28, 2003

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[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Service Law :

Fundamental Rules :

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F.R. 54—Back wages on order of reinstatement—C.R.P.F.—Employee overstayed leave—He was treated as a deserter—Warrant of his arrest issued—Penalty of 15 days rigorous imprisonment awarded by Magistrate—Consequently Department ordered his dismissal from service—Appellate authority set aside the order and directed reinstatement—Period from the date of dismissal till reinstatement to be treated as dies-non—Writ petition by employee for salary for the period he remained out of service—Allowed by High Court—Held, the employee was removed from service without any inquiry and he was not even given show cause notice prior to his dismissal from service—There was fault on the part of the employer in not following the principle of natural justice—High Court ordered payment of back wages—This is not a fit case where the Fundamental Rule 54 could have been invoked by the authorities.

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Managing Director, ECIL v. S. Karunakar, [1993] 4 SCC 727, distinguished.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5909 of 2002.

From the Judgment and Order dated 28.6.2001 of the Patna High Court in L.P.A. No. 1354 of 1998.

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N.N. Goswami, A.K. Srivastava and Ms. Sushma Suri for the Appellant.

K.K. Gupta for the Respondent.

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The following Order of the Court was delivered :

Union of India challenges the order passed by the Division Bench of the High Court of Patna. Respondent Madhusudan Prasad was a Safai Karamchari in CRPF. In the year 1994 he proceeded on leave and he should have reported for duty on 31.3.1994. Even after the expiry of the leave, he did not report for duty and overstayed leave without giving any information. The authorities treated him a deserter and issued a warrant of arrest and he was produced before the Chief Judicial magistrate-cum-Commandant. The Magistrate imposed him a penalty of 15 days rigorous imprisonment. After the imposition of the penalty, the Commandant or CRPF issued an order of dismissal from service. Aggrieved by this order of dismissal, the respondent preferred an appeal and the appellate authority held that the disciplinary authority should have afforded reasonable opportunity to the respondent and as the respondent was not served with any show cause notice nor there was any enquiry preceding the dismissal, the order passed by the disciplinary authority was set aside and directed to reinstate the respondent in service. The appellate authority further observed that the period of absence from the date of dismissal from service i.e. 7.11.1994 till the reinstatement shall be treated as dies-non though there shall not be break in service for the purpose of pensionary benefits.

Pursuant to the order passed by the appellate authority, the respondent was reinstated in service on 15.2.1996. The respondent thereafter filed a Writ Petition before the High Court praying that he may be paid salary for the period 7.11.1994, that is the date of dismissal, to 15.2.1996, that is the date of reinstatement. The learned Single Judge held that the respondent was entitled to get salary for the period he was out of service.

Aggrieved by this order, Union of India preferred LPA before the Division Bench, but the Division Bench disposed of the matter affirming the order passed by the learned Single Judge and hence this appeal by way of SLP.

We heard the counsel for the Union of India and it was submitted that the respondent was not entitled to get salary for the period from 7.11.1994 to 15.2.1996 in view of the order passed by the appellate authority. It was submitted that the Fundamental Rule 54 enables the Government to pass such an order and it was argued in appropriate case the authorities can pass an order denying salary to the employee when reinstatement is ordered as

A a result of appeal or review. Fundamental Rule 54 reads as follows :

B “Where a Government servant who has been dismissed,
removed or compulsory retired is reinstated as a result of appeal
or review or would have been so reinstated but for his retirement
on superannuation while under suspension or not, the authority
competent to order reinstatement shall consider and make a
specific order – (a) regarding the pay and allowances to be paid
C to the Government servant for the period of his absence from
duty including the period of suspension preceding his dismissal,
removal or compulsory retirement, as the case may be and (b)
whether or not the said period shall be treated as the period spent
on duty.”

D It is true that when a reinstatement is ordered in appeal or review,
the authorities can pass specific order regarding the pay and allowances
to be paid to the Government servant for the period of his absence from
duty preceding the dismissal, removal or compulsory retirement, as the
case may be. This is an enabling provision and the authorities can consider
E the relevant facts as to whether the employee should be denied the salary
for the period he was kept under suspension preceding the removal,
dismissal or compulsory retirement. The counsel for the appellant has
placed a reliance on the decision of the Constitution Bench of this Court
in *Managing Director, ECIL v. B. Karunakar* reported in [1993] 4 SCC
727 this Court held that the question whether the employee would be
F entitled in the back wages and other benefits from the date of his dismissal
to the date of his reinstatement if ultimately ordered, should invariably be
left to be decided by the authority concerned according to law, after the
culmination of the proceeding and depending on the final outcome. If the
employee succeeds in the fresh enquiry and is directed to be reinstated, the
authority should be at liberty to decide according to law how it will treat
G the period from the date of dismissal till the reinstatement and to what
benefits, if any and the extent of the benefits, he will be entitled. The
reinstatement made as a result of the setting aside of the enquiry for failure
of holding the fresh enquiry from the stage of furnishing the report and
H no more, where such fresh inquiry is held.

The above case was concerning an employee, proceeded, who was **A**
found guilty in an enquiry but the report was not furnished to the employee
and show cause notice was not served on him. In view of the facts and
circumstances of the case, the Court directed appropriate order should be
passed regarding the back wages. In the instant case the appellate authority
directed reinstatement of the respondent and held that he was not entitled **B**
to get back wages for the period he was out of service. It may be noticed
that the respondent was removed from services without any enquiry and
he was not even given show cause notice prior to his dismissal from
service. There was fault on the part of the employer in not following the
principle of natural justice. These relevant facts were considered and the **C**
learned Single Judge and also the Division Bench ordered the payment of
back wages. We do not think this is a fit case where the Fundamental Rule
54 could have been invoked by the authorities. We find no merit in the
appeal. The appeal is accordingly dismissed.

R.P.

Appeal dismissed. **D**