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C.A.No. 6473 OF 1998

ITEM No.103

Court No. 9

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 6473 of 1998

U.P.S.E.B & ANR. Appellant (s)

VERSUS

RAM ASHRAY & ORS.Respondent (s)

Date : 11/02/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Mr. Pradeep Misra,Adv.

For Respondent (s)Mr. Syed Ali Ahmad,Adv.
Mr. Syed Tanweer Ahmad,Adv.
Mr. Mohan Pandey,Adv.
Mr. S.S. Bandhopadhyay,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 10.50 a.m. to 11.55 a.m.

The civil appeal is dismissed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6473 OF 1998

U.P.S.E.B. & Anr. ...Appellant(s)

Versus

O R D E R

The order dated 16th October, 1997 passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 4486 of 1997 is under challenge in this appeal.

The first respondent was working as Stenographer Grade-II at Panki Thermal Power Station, Kanpur. Certain adverse entries were made against him for the period 1st January, 1985 to 31st March, 1985. He raised an industrial dispute challenging the said entries and they were ordered to be expunged on 14th December, 1988. If the adverse entries had not been expunged, they would have come in the way of his promotion. He was promoted from Stenographer Grade-II to Stenographer Grade-I by the order dated 11th May, 1989 issued by the Chief Engineer of the Board.

Under the said order, the first respondent and few others were promoted subject to certain conditions mentioned in the said

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order. He was relieved on 15th May, 1989. On 17th May, 1989, the first respondent made a representation that he ought not to have been relieved hurriedly and forcibly; he had difficulties in joining on the promoted post at Dehradun. He raised an industrial dispute challenging the order relieving him on 15th May, 1989. Before the Labour Court, the appellants resisted the claim of the first respondent on various grounds, inter alia, contending that the reference made by the government was not at all tenable; no industrial dispute existed between the parties and the dispute could not have been raised on behalf of the first respondent by an unregistered union and that there was nothing illegal in issuing the relieving order on 15th May, 1989.

The Labour Court, having considered the material placed before it and looking to the facts and circumstances of the case, rejected all the contentions urged on behalf of the appellants and passed the Award setting aside the order of relieving the first respondent and declared that he shall be deemed to have been working at Panki Thermal Power Station, Kanpur, and also entitled to pay and allowances. The appellants, aggrieved by the Award, filed a writ petition before the High Court. The High Court, by the impugned order, modified the Award, of course, without deciding the points of dispute and without recording detailed reasons for so doing. The impugned order directed that the post-retirement benefits should be given to the first respondent within three months and as far as the wages are concerned for the period from 15th May, 1989 to 22nd December, 1994, direction was given to the effect that the first respondent should be paid half of the salary which was due to him during that period. Hence, this appeal.

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The learned counsel for the appellants, before us, reiterated the contentions that were raised before the Labour Court, including the grounds that no industrial dispute existed between the parties and that the order relieving the first respondent was neither illegal nor forcible.

According to the learned counsel, the Labour Court committed an error in allowing the claim of the first respondent. He made a grievance that the High Court, in the impugned order, did not deal with the merits of the contentions raised on behalf of the appellants but simply modified the Award.

In opposition, the learned counsel for the first respondent made submissions supporting the impugned order. He pointed out to the findings recorded by the Labour Court and tried to justify them. He also drew our attention to the order of promotion dated 11th May, 1989. He submitted that the High Court was not justified in ordering only half of the salary for the period 15th May, 1989 to 22nd December, 1994 but fairly submitted that the first respondent has not challenged the impugned order.

We are told that the first respondent was compulsorily retired on 22nd December, 1994 and this order of compulsory retirement is challenged in a writ petition before the High Court, which is pending. It is not necessary for us to deal with the validity of the compulsory retirement or otherwise as it does not arise for our consideration in this appeal. The facts that are not in dispute are that the promotion order relating to the first respondent and few others was issued on 11th May, 1989 by the Chief Engineer of the Board in which it is clearly stated that to enable the post holders to join at new posting of

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promotion, they should be relieved from present posting latest by 12th June, 1989 so that they should join on the promotion post latest by 19th June, 1989; those post holders who will not join within the prescribed period, their promotion order will be deemed to be cancelled. The order of promotion, it is said, was brought by special messenger to Kanpur and 13th and 14th M

ay, 1989 were holidays, being second Saturday and Sunday, relieving order was issued on 15th May, 1989. The Labour Court has recorded detailed reasons to come to the conclusion that the relieving order was issued to the first respondent in undue haste and illegally. Having perused the reasons recorded by the Labour Court, we do not find any good reason to take a different view. When the first respondent could be relieved latest by 12th June, 1989, there was no reason as to why the first respondent ought to have been relieved by 15th May, 1989 without making honest efforts to serve on him. Since the relieving order affected the condition of service of the first respondent inasmuch as he went out of job and there was serious dispute as to the very validity of the relieving order, it is not possible to accept the contention that no industrial dispute existed between the parties. The Labour Court was right in negating the contention urged on behalf of the appellants in this regard. The fact remained that the first respondent did not go and join as Stenographer Grade-I. There appears to be no representation made by the first respondent requesting the authorities to permit him to join in the promoted cadre either at Kanpur or at some other place. Since the first respondent did not join on the promoted post, he was entitled to get the salary and all

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other benefits available to the Stenographer Grade-II for the period 15th May, 1989 to 22nd December, 1994. The High Court, in the impugned order, taking note of the fact that the first respondent did not work during this period, directed to pay half of the salary for the said period. However, the High Court rightly directed the appellants herein to give all retirement benefits to the first respondent. Since the first respondent has not challenged the order of the High Court making any grievance in this regard, it is not possible for us to modify the order at the instance of the first respondent so as to give direction for payment of full salary for the period 15th May, 1989 to 22nd December, 1994. This being the position, we are not inclined to interfere with the impugned order. Consequently, the appeal is dismissed.

At this stage, the learned counsel for the appellants brought to our notice that as per the order dated 16th December, 1998, the appellants have deposited a sum of Rupees seventy five thousand in the High Court and while calculating the payment to be made to the first respondent pursuant to the impugned order passed by the High Court, this amount of Rupees seventy five thousand may be adjusted. We order accordingly. The Bank guarantee furnished by the first respondent pursuant to the order of this Court dated 16th December, 1998 stands discharged.

We, however, do not wish to say anything in regard to the dispute as to the compulsory retirement in these proceedings.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[Dr. AR. LAKSHMANAN]
New Delhi,
February 11, 2004.