

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s).2369/2008

CHIEF GENERAL MANAGER TELECOMMUNICATIONS & ORS. Appellant(s)

VERSUS

RABINARAYAN DAS (DEAD) THROUGH LRS. & ANR. Respondent(s)

O R D E R

Heard learned counsel for the parties.

The employer has questioned the order passed by the Central Administrative Tribunal and modified by the High Court of Orissa. Late Rabinarayan Das procured appointment on the basis of forged marksheet. He was prosecuted and convicted by the trial court on appeal in spite of finding that marksheet did not depict correct marks the acquittal was ordered on technical ground of not summoning original record. Later on departmental inquiry was ordered and the employee was removed due to conviction on 11.08.1986 and was reinstated on 21.03.1991. The Central Administrative Tribunal in O.A. filed by deceased employee set aside inquiry as to charge No.1 and allowed the payment of salary for the aforesaid period. Prayer for promotion was declined. The appellants filed writ petition in the High Court. The following order has been passed by the High Court of Orissa:

"17. In view of the facts and circumstances of the instant case, this court is of the conclusion that initiation of the departmental proceedings against opposite party no.1 under the CCS (CCA) Rules is not barred by any statute. However his suspension could not have been ordered with retrospective

effect i.e. with effect from the date of his suspension on criminal charges. It should have been with prospective effect. Therefore, the order of suspension of opposite party no.1 is liable to be treated as prospective. Consequently, he is entitled to the normal salary till the date of passing the impugned order of suspension. This Court is also of the opinion that the Tribunal committed manifest error of law in allowing O.A. No.244/1994 and directing the instant petitioners not to further proceed against opposite party no.1 in the disciplinary proceedings under CCS (CCA) Rules in respect of charge no.1.

18. Though, learned counsel for the opposite party no.1 has submitted that in the meantime opposite party no.1 has been promoted, but it is irrelevant for the purposes of this case as the promotion does not nullify the disciplinary proceedings. However, it indicates that the instant petitioner at the time of making promotion of opposite party no.1 has not ruled out his innocence.

19. In view of the above mentioned facts and circumstances, OJC No.14013/1999 is dismissed, as we have found no infirmity in the impugned order passed by the Tribunal. However, the impugned order passed by the Tribunal in OA No.244/1994 is quashed and OJC No.14014/1999 stands allowed.

There shall be no order as to costs."

The employee has died, therefore, no useful purpose will be served by holding the departmental inquiry any further. The fact remains that the respondent/deceased employee was out of employment as he was convicted, he was later on acquitted in appeal. The criminal case was filed by CBI under Sections 420, 468 and 471 of IPC. He was out of employment with effect from 11.08.1986 to 21.03.1991. He was reinstated on 21.03.1991. During the said period the deceased employee did not render services as such in the facts and circumstances of the case, the claim for salary is not justified. However, as deceased employee was reinstated

by the employer, this period has to counted for continuity of his services for the purpose of fixation of his pension and other dues, if any, which may be admissible. No further inquiry to be held as employee has died in the year 2008.

In the circumstances, we set aside the order as to grant of salary for the period 11.08.1986 to 21.03.1991. The order to hold departmental inquiry is also set aside. We direct period of 11.08.1986 to 21.03.1991 shall be treated towards continuity of services for the purpose of grant of service benefits as may be available such as pension etc.

With the aforesaid modification in the decision of High Court, the appeal stands disposed of.

.....J.
(ARUN MISHRA)

.....J.
(VINEET SARAN)

.....J.
(M.R. SHAH)

New Delhi
December 12, 2018

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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VERSUS

RABINARAYAN DAS (DEAD) THROUGH LRS. & ANR. Respondent(s)

Date : 12-12-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s)

Mr. Ishan Sanghi, Adv.
Mr. Anil Kumar Tandale, AOR

For Respondent(s)

Mr. Shibashish Misra, AOR
Mr. Ashish Kumar Sinha, Adv.
Mr. Chandan Kumar Mandal, Adv.

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

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, stand disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(signed order is placed on the file)

(VIDYA NEGI)
COURT MASTER (NSH)