

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

C I V I L A P P E A L N O (s) . 2 1 7 9 O F 2 0 0 7

S T A T E O F W E S T B E N G A L & O R S .

A p p e l l a n t (s)

V E R S U S

M A D H U S U D A N C H O W D H U R Y

R e s p o n d e n t (s)

D a t e : 3 1 / 0 7 / 2 0 0 8 T h i s A p p e a l w a s c a l l e d o n f o r h e a r i n g t o d a y .

C O R A M :

H O N ' B L E M R . J U S T I C E A . K . M A T H U R

H O N ' B L E M R . J U S T I C E D A L V E E R B H A N D A R I

F o r A p p e l l a n t (s)

Mr. Avijit Bhattach arjee, Adv.

F o r R e s p o n d e n t (s)

Mr. Naresh K a u s h i k , A d v .

Mrs Lalita K a u s h i k , A d v .

Mr. Satish Dayan and, Adv.

U P O N h e a r i n g c o u n s e l t h e C o u r t m a d e t h e f o l l o w i n g
O R D E R

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

(Sukhbir P a u l K a u r)
C o u r t M a s t e r

(Vijay Dhawan)
C o u r t M a s t e r

(Signed Order is placed on the file)
I N T H E S U P R E M E C O U R T O F I N D I A
C I V I L A P P E L L A T E J U R I S D I C T I O N
C I V I L A P P E A L N O . 2 1 7 9 O F 2 0 0 7

S T A T E O F W E S T B E N G A L & O R S .

A p p e l l a n t (s)

V e r s u s

M A D H U S U D A N C H O W D H U R Y

R e s p o n d e n t (s)

O R D E R

We have heard learned counsel for the parties.

This appeal by special leave is directed against the judgment and order dated 12th December, 2005 passed by the High Court of Calcutta whereby the Division Bench of the High Court directed to reinstate the writ petitioner in service with 50% back wages.

The respondent was a constable and he remained absent from 19th March, 2000 to 21st June, 2000 for which he was charge sheeted and found guilty for his absence and dismissed from service. The order of dismissal was passed on taking into consideration various factors including his past record and availing of leave as also the record of major and minor punishment but this was not a part of the charge sheet. Therefore, the High Court felt persuaded in

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setting aside the order of dismissal from service and granted reinstatement of service with 50% back wages. The order was complied with and the incumbent was reinstated and now he is in service. No interim order was passed staying his reinstatement.

It is true that in police force to remain absent without any explanation certainly warrants disciplinary action. However, since the respondent is continuing for the last three years and nothing adverse has been found against him, therefore, we think that it will not be proper to interfere with the finding recorded by the High Court except that of payment of 50% backwages. The non payment of wages for his absence shall be an adequate punishment in the present situation.

Accordingly, we modify the order of the High Court to the extent of setting aside the order of back wages. The incumbent is already working and he is allowed to continue in service.

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In case the respondent repeats such absence then it will be open for the department to take action and pass appropriate orders and also take a resort to this order.

This appeal is accordingly, disposed of.

.....J .
(A.K.M A T H U R)

.....J .
(DALV E E R BHA N D A R I)

New Delhi,
July 31, 2008