

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

Civil Appeal No(s). 3041/2010

STATE OF U.P. & ORS.

Appellant(s)

VERSUS

B.B.S.RATHORE

Respondent(s)

WITH

C.A. No. 3042/2010

(With Office Report)

C.A. No. 3044/2010

(With appln.(s) for Office Report)

C.A. No. 3045/2010

(With appln.(s) for Interim Relief and Office Report)

C.A. No. 3046/2010

(With appln.(s) for Office Report)

C.A. No. 3043/2010

(With appln.(s) for Office Report)

SLP(C) No. 12879/2010

(With appln.(s) for Interim Relief and Office Report)

Date : 24/07/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s)

Ms. Niranjana Singh ,Adv.

Dr. Surat Singh, Adv.

Mr. Brajesh Kumar Singh, Adv.

Mr. M. C. Dhingra ,Adv.

Mr. Piyush Kant Roy, Adv.

Mr. Naresh Kaushik, Adv.

Ms. Amita Singh Kalkal, Adv.

Mr. Irom Denning, Adv.

Signature Not Verified

Digitally signed by

Mr P.N. Misra, Sr. Adv.

Neeta Sapra

Date: 2014.08.20

16:52:27 IST

Mr. Irshad Ahmed, AAG

Reason:

Mr. Abhishth Kumar, Adv.

Ms. Archana Singh, Adv.

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For Respondent(s)

Mr. Brijesh Kumar Shukla, Adv.

Mr. Arvind Kumar Shukla, Adv.

Mr. Alok Shukla ,Adv.

Mr. Amit Shukla, Adv.

Mr. Pradeep Misra ,Adv.

Dr. Manmohan Sharma, Adv.

Mr. M. C. Dhingra ,Adv.

Mr. K.K. Mohan, Adv.  
Ms. Geetanjali Mohan ,Adv.

Ms. Aarohi Bhalla, Adv.  
Ms. Sujata Kurdukar ,Adv.

Ms. Mridula Ray Bharadwaj ,Adv.  
Dr. Sumant Bhardwaj, Adv.  
Ms. Renuka Jumrani, Adv.  
Ms. Ankita Chowdhari, Adv.

Mr. Irshad Ahmad ,Adv.

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

Civil Appeal No(s). 3041, 3043 and 3045 of 2010

The appeals are dismissed in terms of signed order.

Civil Appeal No(s). 3042 of 2010

The appeal is allowed in terms of signed order.

Civil Appeal No(s). 3044 and 3046 of 2010

The appeals have become infructuous in terms of signed  
order.

Civil Appeal No(s). 7841 of 2014 @ SLP (C) No. 12879/2010

Leave granted.

The appeal stands disposed of in terms of signed order.

(Neeta)  
Sr. P.A.  
(Signed order is placed on the file)

(Usha Sharma)  
Court Master

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3041 OF 2010

STATE OF U.P. & ORS.

Appellants

VERSUS

DR.B.B.S.RATHORE

Respondent

WITH

CIVIL APPEAL NO. 3042 OF 2010

CIVIL APPEAL NO. 3043 OF 2010

CIVIL APPEAL NO. 3044 OF 2010

CIVIL APPEAL NO. 3045 OF 2010

CIVIL APPEAL NO. 3046 OF 2010

C.A. No. 7841 of 2014 (@SLP (C) No.12879 OF 2010

O R D E R

The dispute in these appeals relates to entitlement of salary on notional promotion from retrospective date.

The factual matrix of the case is that there was a dispute relating to seniority in the cadre, which was resolved pursuant to orders passed by the Tribunal, High Court and this Court. In the meantime, officers junior to the respondents in Civil Appeal Nos. 3041, 3043, 3044, 3045, 3046 of 2010 and the appellant in C.A. No. 3042/2010 were promoted to the higher posts. After determination of seniority, the High Court directed to grant consequential benefits of promotion. In some cases, arrears of salary on such notional promotion were allowed by the High Court but in one case it has been denied.

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The learned senior counsel appearing on behalf of the State of U.P. submitted that in the case of grant of notional promotion from retrospective date the employee is not entitled for arrears of salary, as the incumbent has not worked against the higher post during the said period.

On behalf of learned counsel for the respondent in Civil Appeal Nos. 3041, 3043-3046/2010 and appellant in C.A. 3042/2010, it was argued that when a retrospective promotion is given, normally the employee is entitled to all benefits flowing therefrom, including arrears of salary.

The question of payment of salary on notional promotion was considered by this Court from time to time. In State of Haryana & Ors. Vs. O.P.Gupta & Ors., (1996) 7 SCC 533, the Court observed and held as follows:

"6. Having regard to the above contentions, the question arises: whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had

agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instructions issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof

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prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and postings were made accordingly on December 1, 1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1.1.1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis.

7. This Court in Paluru Ramakrishnaiah & Ors. vs. Union of India & Anr. [(1989) 2 SCC 541, at P. 556, para 19] considered the direction issued by the High Court and upheld that there has to be "no pay for no work" a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar, G.M.N. Rlys. vs. Avinash Chandra Chadha [(1990) 3 SCC 472 at p. 482, para 16]

8. It is true, as pointed out by Sri Hooda, that in Union of India vs. K.V. Jankiraman [AIR 1991 SC 2010] this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

Thereafter, the said issue was considered by three Judges

Bench of this Court in A.K.Soumini Vs. State Bank of Travancore & Anr., (2003) 7 SCC 238. In this said case, this Court held :

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"8. In State of Haryana & Others vs. O.P. Gupta & Others [1996(7) SCC 533], this Court had an occasion to deal with a claim for arrears, in a case where in adjudicating a dispute relating to seniority this Court directed the department concerned to prepare a fresh seniority list strictly

in accordance with rules ignoring inconsistent administrative instructions and in compliance thereof a fresh seniority list came to be prepared and eligible persons were even given notional promotion by the department from a deemed date. When such promotees claimed for payment of arrears of salary as well, this Court rejected the claim applying the principle of 'No work, No pay' and set aside the orders of the High Court, countenancing such claims, to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusions this Court followed the earlier decisions reported in Paluru Ramakrishnaiah vs. Union of India, (1989) 2 SCC 541 and Virender Kumar, G.M., N. Rlys. Vs. Avinash Chandra Chadha. [(1990) 3 SCC 472]

9. So far as the case on hand is concerned, the appellant was denied promotion in terms of the promotion policy under which it was necessary for a candidate to secure at least a minimum eligibility mark of 6 1/2 at the interview and the learned Single Judge, allowed the claim only on the ground that such prescription of a minimum mark was not valid. Though, the Division Bench also affirmed the same, this Court overruled the said decision and upheld such prescription. But taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fact that her non-promotion was legal and there has been no unlawful interference with her right to promotion or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scales itself is more than

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sufficient to meet the requirements, be it either in law or in equity. The further claim for payment of arrears as well, is far fetched and can have no basis in law. The Division Bench, in our view, properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law to warrant of our interference.

In case of Union of India Vs. B.M.Jha (2007) 11 SCC 632, this

Court took a similar view which is as follows:

"5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent normally he is entitled to all benefits flowing therefrom. However, this Court in the case of State of Haryana & Ors. v. D.P. Gupta & Ors., [1996] 7 SCC 533 and followed in A.K. Soumini v. State Bank of Travancore (2003) 7 SCC 238 has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the

employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay". The learned Division Bench in the impugned judgment has placed reliance on the case of State of Andhra Pradesh v. K.V.L. Narasimha Rao & Ors., (1999) 4 SCC 181. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17.5.2000 passed by the Division Bench of the High Court as also the order dated 11.1.2000 passed by the Central Administrative Tribunal, Principal Bench."

The Court in the case of State of Haryana & Another vs. S.K.

Khosla & Others, (2007) 15 SCC 777 held that:

"2. Heard the learned counsel for the appellants. He brought to our notice a

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decision of this Court in State of Haryana v. O.P. Gupta whereunder in respect of an identical matter arising out of similar proceedings of even date this Court while setting aside the decision of the High Court allowed the appeal at the instance of the State and held that in the circumstances noticed in that case which are identical as well in the cases before us, the question of payment of arrears of salary with retrospective effect from the notional dates does not arise since, indisputably the respondents had never worked during that period in the promotional post, the settled principle in such cases being, "no work, no pay". The said principle applies with equal force to the cases before us too. Applying the ratio of the said decision these appeals are also allowed and the orders of the High Court are set aside and the writ petitions before the High Court shall stand dismissed. No costs."

The following principles emerge from the aforesaid judgments:

(i) When a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom.

(ii) In case of a notional promotion with retrospective effect, in normal course the incumbent is not automatically entitled to arrears of salary as he/she has not worked in the promotional post.

(iii) The principle of "no work, no pay" is not applicable in

case of retrospective promotion where the incumbent was willing to work but was denied the opportunity to work for no fault of him. For example, if the employee is kept under suspension during departmental enquiry and sealed cover procedure is adopted. In such cases if notional promotion is granted after completion of the proceeding the employee is

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entitled to the arrears of salary.

This principle has no application to the cases where the claims for promotion are considered in accordance with the rules and the promotions are made pursuant thereto.

C.A. No. 3044 of 2010 (State of U.P. & Anr. vs. Dr. Krishna Kumar Caroli) and C.A. No. 3046 of 2010 (State of U.P. & Anr. vs. Dr. Om Prakash Rai)

These appeals have been preferred by State of U.P. against the judgments dated 24th July, 2007 passed by the High Court of Judicature at Allahabad, Lucknow in Writ Petition No. 1782(S/B) of 2005 and 12th July, 2007 passed by High Court of Judicature at Allahabad, Lucknow in Writ Petition No. 1727(S/B) of 2005. By the

impugned judgment, the High Court allowed the notional promotion but without arrears of wages. It is informed that the Court's orders have been complied with and notional promotions have been granted to the respondents. These cases have become infructuous.

C.A. No. 3041 of 2010 (State of U.P. & Ors. vs. Dr. B.B.S. Rathore)

This appeal has been preferred by the State of U.P. against the judgment dated 24th October, 2008 passed by the High Court of Judicature at Allahabad, Lucknow in Writ Petition No. 1591(S/B) of 2008. By the impugned judgment the High Court allowed the benefit of retrospective promotion and also the consequential benefit of arrears of salary. The court also imposed cost of Rs.1,00,000/-

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on the State for payment of Rs.75,000/- in favour of the

respondent and Rs.25,000/- to the medication centre of the High Court.

Learned counsel appearing for the appellant referring to the decisions rendered by this Court as noticed above submitted that the respondent-Dr. B.B.S. Rathore was not entitled for arrears of salary and consequential benefits. Per contra, according to learned counsel for the respondent- Dr. B.B.S. Rathore, the Court rightly allowed the arrears of salary.

It is not in dispute that the respondent- Dr. B.B.S. Rathore was in the Indian Army and working as Medical Officer from 21 st August, 1972 to 28th February, 1978. He was released from the Army while holding the post of Captain. Subsequently, he was appointed on 17th November, 1979 in the Medical & Health Services of the U.P. as Medical Officer. The respondent had filed Claim Petition No. 79/1/90 before the State Public Services Tribunal, Lucknow for counting his services rendered in the Army for his seniority purpose. The claim petition was allowed by State Public Services Tribunal, Lucknow by judgment and order dated 10th May, 2000. The appellants were directed to treat respondent as a Medical Officer of Class-II rank of Provincial Medical and Health Services, 1972 after assigning him seniority and giving him benefit of service rendered during the period 21st August, 1972 to 28th February, 1978 in the Indian Army as Medical Officer and consequently to pay him all consequential benefits emanating there from. The appellants were also directed to consider the case of respondent - Dr. B.B.S.

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Rathore for promotion to the next higher grade to which he would be entitled after fixation of seniority within a period of three months.

However, the aforesaid order was not complied by the appellant due to which respondent had to file a Contempt Petition No. 203 of 2001 against which the State moved before the High Court. The High Court set aside the contempt petition and allowed the respondent to move before the appropriate forum afresh. In this background, the respondent again filed claim petition, which was

again allowed by the Trial Court and on appeal upheld by the High Court by the impugned judgment.

From the aforesaid fact it will be evident that dispute of seniority viz-a-viz, the respondent- Dr. B.B.S. Rathore reached the finality as back as on 10 th May, 2000. In spite of the same, the appellant-State neither acted upon the same nor granted the consequential benefit promotion as ordered by the Tribunal. It

was only when the Tribunal reiterated the order and the High Court affirmed the same, they have moved before this court with the plea that the respondent is not entitled for consequential benefit of arrears of salary. From the order dated 10th May, 2000 passed by the Tribunal it is clear that the Tribunal directed to pay the respondent all consequential benefit emanating pursuant to the order passed by the Tribunal. The Tribunal also directed to grant promotion. The said order reached finality as the appellant-State never challenged the order passed by Tribunal before any Court of competent jurisdiction. We find no infirmity in the impugned

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judgment by which the High Court allowed the consequential benefit of arrears of pay in favour of the respondent- Dr. B.B.S. Rathore.

However, in the facts and circumstances of the case, we are of the view that it was not a fit case for the High Court to impose the cost of Rs.1,00,000/- against the appellant. Therefore, we interfere with the part of the impugned order dated 24th October, 2008 passed by the High Court of Judicature at Allahabad, Lucknow in Writ Petition No. 1591(S/B) of 2008 in so far as it relates to cost to the respondent and the Mediation Centre of the High Court.

The appeal is dismissed but with aforesaid observation.

C.A. No. 3042 of 2010 (Dr. Chandra Prakash & Etc.. Vs. State of U.P.)

In this case the appellant has challenged the judgment and order dated 10th November, 2005 passed by the High Court in CMWP No.7742/2004. By the impugned order, the High Court though allowed the prayer for grant of the notional promotion but refused to grant arrears of salary on such promotion.

Learned counsel for the appellant submits that in view of earlier judgment passed by this Court with respect to the same appellant dated 4th December, 2002 in Dr. Chandra Prakash & Ors. Vs. State of U.P. & Anr., 2002(10) SCC 710, the appellant is entitled for consequential benefit of arrears of salary. On the other hand according to learned senior counsel for the State, there is no specific direction issued by this Court to pay arrears of salary in favour of the appellant.

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We find that the dispute relating to seniority of Dr. Chandra Prakash was determined by this Court by the abovesaid judgment dated 4th December, 2002. While allowing the writ petition preferred by appellant and others, the Court observed as follows:

"We accordingly allow the writ petitions and declare that (1) the writ petitioners are not within the purview of the 1979 Rules; (2) the State Government will fix the seniority of all doctors in the PMHS cadre from the date of the orders of their initial appointment within a period of six weeks from the date of this order and give all consequential benefits including promotions and positions on the basis of such seniority list; and (3) those doctors who were selected in 1972 and 1977-78-79 by PSC and who were not issued any orders of appointment and joined the service on the basis of Tandon case will be treated as having been appointed on the date that they actually joined the service and their seniority will be counted from that date. There will be no order as to costs."

In view of the fact that this Court directed the State to fix the seniority of all doctors in the PMHS cadre including the appellant from the date of order of their initial appointment and to give all consequential benefit including promotion and the said judgment being reached finality we hold that the appellant is entitled for consequential benefits of arrears of salary on notional promotion.

In view of the observation made above, we have no option but to set aside the part of the impugned order dated 10 th November, 2005 passed by the High Court of Judicature at Allahabad in CMWP in 7742/2004 whereby High Court refused to grant arrears of salary in favour of the appellant.

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The respondents- are directed to pay the appellant the consequential benefits of arrears of pay pursuant to the said order in view of the notional promotion granted in favour of the appellant.

Impugned order passed by the High Court stands modified to the extent above.

The appeal is allowed with direction to the State to pay arrears of salary if it not yet paid, within three months. On failure, the State of U.P. will be liable to pay interest @ 6% from the date of judgment of this Court.

C.A. No. 3043 of 2010 (State of U.P. & Ors. Vs. Dr. Raghubeer Prasad Dixit & Ors.)

This appeal has been preferred by the State of U.P. & Ors. against the judgment and order dated 18th September, 2007 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in W.P. No. 1543(SB) of 2004.

The High Court by impugned judgment directed the State to grant notional promotion and consequential benefit of notional promotion in favour of the respondent from the date from whom his juniors were promoted. But no direction as to payment of arrears of salary was made in the impugned judgment.

Having heard learned counsel for the parties, we find no ground made out to interfere with the impugned order as the respondent-State has already implemented similar order in respect of similar situated persons and granted them notional promotion.

The appeal is dismissed.

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C.A. No. 3045 of 2010 (State of U.P. & Anr. Vs. Dr. H.C. Mathur)

This appeal has been preferred by State of U.P. against the judgment and order dated 5th March, 2008 passed by the High Court of Judicature at Allahabad, at Lucknow in Writ Petition No. 299 (S/B) of 2008.

By the impugned judgment, the High Court affirmed the order passed by the Tribunal and allowed the benefit of notional

promotion and arrears of salary.

Before this Court also, the appellant has taken a similar plea that the respondent is not entitled for arrears of salary on grant of notional promotion. However, according to learned counsel for the respondent, the High Court rightly held that the respondent is entitled for arrears of salary.

From the record, we find that the dispute relating to seniority was pending. In the meantime, a number of persons who were junior to the respondent were promoted to the higher post. The respondent without getting the benefit of promotion superannuated on 31st July, 1994. Having not granted the benefit of promotion, the respondent after retirement moved before State Tribunal by filing Claim Petition No. 35 of 2001 which was decided on 9th May, 2003.

The Tribunal by judgment and order dated 9th May, 2003 allowed the prayer and directed the appellant to prepare a fresh seniority list and to grant the respondent consequential benefits of notional promotion and arrears of salary. Having not complied with

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the judgment dated 9th May, 2003, the respondent preferred a contempt petition no. 56 of 2005 which was disposed off on 8th August, 2007 reiterating the direction to the State of U.P. to grant seniority, consequential benefit of notional promotion and arrears of salary. The aforesaid order passed in the contempt

petition was challenged by the State of U.P. before the High Court, by filing a writ petition which was dismissed. However, the original order passed by the Tribunal on 9th May, 2003 was not challenged and the same reached finality.

Having regard to the fact that the order passed by Tribunal has reached finality and in absence of such challenge by the State we hold that the High Court rightly refused to grant relief to the State. The Tribunal's order being final, the respondent was entitled for consequential benefit and arrears of salary.

The appeal is, accordingly, dismissed.

However, we make it clear that with regard to others, who have not been granted arrears of salary and have not moved before any other Court of law or this Court, we have not expressed any opinion. They cannot claim benefit automatically in view of the order passed in these cases. Their case may be determined individually on the merit of each case.

Appeal Nos. 3044 and 3046 of 2010 are declared dismissed as infructuous. In Appeal No. 3044 of 2010 consequential benefits if due be granted.

The Appeal No.3041 of 2010 is dismissed with observation; the consequential benefits if not granted, the same be granted and the arrears be paid.

The Appeal No.3042 is allowed with direction to the State to pay arrears of salary, if yet not paid, within three months. On failure of payment, the State of U.P. will be liable to pay interest @ 6% from the date of judgment of this Court.

C.A. No. 7841 of 2014(@ SLP (C) No.12879/2010

Leave granted.

This appeal has been preferred by the appellants against the order dated 8th February, 2010 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in W.P No. 111 (S/B) of 2010. By the impugned order, the High Court while refused to interfere with the contempt proceedings initiated by the State Public Service Tribunal, Lucknow, directed the appellants to comply with the order subject to the decision of this Court in similar pending cases.

We have noticed that the dispute relating to seniority was continuing since long and finally the matter moved up to this

Court. When some of the civil appeals relating to notional  
al promotion and consequential benefits were pending for disposal

before this Court, the Tribunal initiated contempt proceedings for non-compliance of its order.

On hearing the counsel for the parties, we are of the view that when the matter was pending before this Court it was not proper for the Tribunal to initiate contempt proceedings, as there was no deliberate or willful violation of the Tribunal's order.

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For the reasons aforesaid, we set aside the impugned order dated 8th February, 2010 passed by the High Court in W.P No. 111 (S/B) of 2010 and the order dated 16th December, 2009 passed by the State Public Service Tribunal, Lucknow whereby the Tribunal intended to initiate a contempt proceeding. The said contempt proceeding is closed.

The appeal stands disposed of.

.....J  
[SUDHANSU JYOTI MUKHOPADHAYA)

.....J.  
[S.A. BOBDE]

NEW DELHI;  
JULY 24, 2014