

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3859 OF 2009

LOKTAK HYDRO POWER PROJECT & ORS.

APPELLANT(S)

VERSUS

MD. SIRAJ AHMED & ANR.

RESPONDENT(S)

O R D E R

Heard learned counsel for the parties.

The question involved with respect to the payment of subsistence allowance within the period during which the respondent was removed and reinstated back in service. The respondent was in the service of National Hydro Electric Power Ltd. (in short 'the NHPC Ltd.')

in the capacity of Field Assistant. After holding an inquiry he was removed from the service on 4.7.1983. He was initially suspended on 4.9.1982 and remained suspended till the date of removal i.e. 04.07.1983. However, the appellant successfully challenged his removal and his reinstatement was ordered vide judgment and order dated 19.6.2003 in W.P. No.442 of 2002 following is the operation portion of the order passed by the Single Judge which is extracted as under:

"Considering the nature of the case, I am of the opinion that the order of removal cannot stand in the eye of law and the impugned order of removal dated 04.07.1983 (Annexure-A/10 to the writ petition) and the appellate order dated 10.11.1999 (Annexure-A/14) to the writ petition are quashed. Petitioner has to be taken back into service forthwith and thereafter if need be, enquiry may be proceeded if so advised, according to the provisions of law. And regarding backwages also the authority concerned shall determine according to the provisions of law."

The matter was taken to the Division Bench of the High Court. The Division Bench has passed in W.A.No.313 of 2003 decided on 5.9.2003 and the following order has been passed:

"Considering, therefore, the matter in its entirety, while upholding the impugned judgment and order of the learned Single Judge to the extent that the same quashes the order of removal, dated 4.7.1983, and the appellate order, dated 10.11.1999, we direct the appellants/authorities concerned to take back the respondent-writ petitioner in service and proceed with the enquiry after furnishing him with a copy of the enquiry report and do the needful in accordance with law. While taking back the respondent-writ petitioner in service, the appellants shall remain at liberty to keep the writ petitioner under suspension, if so advised, and proceed with the enquiry."

Thereafter, the respondent was again removed from the service on 20.10.2003. He has questioned his removal respondent filed Writ Appeal No.42 of 2004 for payment of after exhausting departmental remedy. However, the subsistence allowances during the period 1983 till 2003. The High Court vide the impugned order has allowed the same and has directed the payment of the subsistence allowance for the period 4.7.1983 till 28.9.2003. The Division Bench has held that the subsistence allowance is right and is necessary for right to live and the respondent could not have been deprived of the payment of the subsistence allowance during the aforesaid period.

After exhausting the departmental remedy Writ Petition No.80 of 2005 was filed by the respondent. However, as the High Court directed the production of the record of the departmental enquiry as it could not be placed before the High Court in the year 2013, vide order dated 8.08.2014 directed holding of the fresh enquiry, thereafter enquiry was held and services were terminated vide order dated 10.09.2015.

The High Court has passed the order dated 08.08.2014 in W.P.(C) No.80 of 2005. The operative part of the order reads as follows:

“For the reasons discussed above, we allow the writ application and set aside the orders at Annexure-A/13 and Annexure-A/15 respectively and direct the respondents to take back the petitioner into service immediately in accordance with law. The respondents shall be at liberty to hold a *denovo* enquiry if so advised by appointing an enquiry officer in accordance with the Rule and giving an opportunity of being heard to the petitioner. In the event the respondents decided to hold *denovo* enquiry, an order shall be passed as to how the period of suspension is to be treated. In the event, the *denovo* enquiry is not initiated, the respondents shall treat the period of suspension as on duty.”

The employee would have attained the age of superannuation from service in the year 2016.

After the aforesaid order passed by the High Court, *denovo* enquiry was held and services of the respondent were terminated vide order dated 12.10.2015. The termination order was questioned by the employee in the Writ Petition (C) No.446 of 2016 and the same is said to be pending before the High Court at Manipur.

After hearing learned counsel for the parties, payment of pay allowance from 1983 till 2003 period between first dismissal and reinstatement ultimately culminated in the order of dismissal would depend upon the outcome of the pending writ application in the High Court.

The High Court shall hear aforesaid question in said proceedings and pass appropriate orders in accordance with law unfettered by any previous order. However, the High Court has to take into consideration the entire period and order has to be passed with effect from the date of dismissal in 1983 till reinstatement was made by the High Court on 08.08.2014.

It was submitted before us that after reinstatement was made by the High Court on 08.08.2014, services have been again terminated. The High Court shall take care of the entire period from 1983 to the date of reinstatement made pursuant to the aforesaid order passed on 08.08.2014 unfettered by the previous order that was passed on 05.09.2003 that question shall be gone into afresh and the aforesaid order shall not bar the adjudication of the matter on the aforesaid aspect in the pending writ application.

The appeal stand disposed of and the order passed by the High Court is accordingly modified.

.....J.
[ARUN MISHRA]

.....J.
[INDU MALHOTRA]

NEW DELHI
MAY 3, 2018

ITEM NO.102

COURT NO.10

SECTION XIV

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 SCivil Appeal No(s).3859/2009

LOKTAK HYDRO POWER PROJECT & ORS.

Appellant(s)

VERSUS

MD. SIRAJ AHMED & ANR.

Respondent(s)

Date : 03-05-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MS. JUSTICE INDU MALHOTRA

For Appellant(s)

Mr.K.Vijah, Adv.
Mr.Ajeet Singh Varma, Adv.
Mr.Ajit Pudussery, AOR

For Respondent(s)

Mrs.Punam Kumari, Adv.
Mrs.Sapana Biswajit Meitei, Adv.
Mr.Naresh Kumar Gaur, Adv.
Mr.Ashok Kumar Singh, AORUPON hearing the counsel the Court made the following
O R D E RThe appeal is disposed of in terms of the
signed order.

Pending applications, if any, stand disposed of.

(Ashok Raj Singh)
Court Master(Jagdish Chander)
Court Master

(Signed Order is placed in the file)