

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.3493 OF 2012

STATE OF U.P. & ORS.

APPELLANT(S)

VERSUS

GIRJA SHANKER GUPTA

RESPONDENT(S)

O R D E R

1. The appellant-Department is aggrieved by the order dated 02nd August, 2010, passed by the High Court of Judicature at Allahabad whereby, the judgement dated 26th November, 1997 passed by the State Public Services Tribunal, Lucknow¹ dismissing the claim petition of the respondent-employee, has been over turned and the writ petition filed by him has been allowed.

2. The High Court held that the disciplinary enquiry conducted by the appellant-Department stood vitiated on several counts including the fact that suspension allowance was not paid to the respondent for six long years, the appellant-Department relied on documents that were not furnished to the respondent-employee and it failed to produce any evidence/witnesses to establish the charges framed against the respondent-

1 For short 'the Tribunal'

employee. As a result, the order dated 18th February, 1982, terminating the services of the respondent-employee was quashed and the judgement of the Tribunal was set aside by the High Court.

3. Further, noticing the fact that the respondent-employee had since retired and having regard to the fact that the subject matter of the charge sheet related to stocks for the period between 1964 to 1977, the High Court opined that it was not feasible to remand the matter for conducting a fresh enquiry. It was therefore directed that the respondent-employee would be entitled to 50% of the back wages inclusive of the subsistence allowance till the date of his retirement along with full pension in accordance with the rules.

4. Learned counsel for the appellant-Department has sought to rely on the findings returned by the Tribunal to urge that the Tribunal had brought out the fact that the departmental enquiry had been conducted in accordance with law and submits that there was no justification for the High Court to have interfered and quashed the dismissal order.

5. On a perusal of the enquiry report dated 05th October, 1977 conducted in respect of the respondent-

employee we find that it nowhere reflects that the enquiry officer had taken any steps to call upon the appellant-Department to produce the relevant records and summon the witnesses. In fact, the said enquiry report reveals that the enquiry officer had proceeded to conduct personal inspections of various records including the cash books, cash registers, stores receipts etc. and even visited various places in District Gorakhpur so as to satisfy himself about the issues raised in the enquiry. In other words, the enquiry officer has conducted a roving and fishing enquiry at the behest of the appellant-Department which is absolutely impermissible and unacceptable. He ought to have left it to the Department to prove the charges framed against the respondent-employee in accordance with law.

6. It is also pertinent to note that the respondent-employee was acquitted in both the criminal cases filed against him on the ground of absence of any evidence.

7. Another aspect for agreeing with the impugned judgement and not remanding the matter for a fresh enquiry is the fact that by now, the respondent is 80 years old, having retired over two decades ago, on 30th June, 2000.

8. In view of the aforesaid position, we are not inclined to interfere in the impugned judgement. The appellant-Department shall release the retiral dues to the respondent-employee as admissible in law, within eight weeks from today.

9. The appeal is dismissed along with pending application(s), if any. Parties shall bear their own costs.

.....J.
(HIMA KOHLI)

.....J.
(RAJESH BINDAL)

NEW DELHI
09th AUGUST, 2023

ITEM NO.106

COURT NO.11

SECTION III-A

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(s). 3493/2012

STATE OF U.P. & ORS.

Appellant(s)

VERSUS

GIRJA SHANKER GUPTA

Respondent(s)

Date : 09-08-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s) Mr. Garvesh Kabra, AOR
Mr. Abhishek Jaju, Adv.
Mrs. Pooja Kabra, Adv.
Mr. Ahmer Shaikh, Adv.

For Respondent(s) Mr. Bharat Sangal, Sr. Adv.
Ms. Babita Kushwaha, Adv.
Mr. Nagarkatti Kartik Uday, AOR

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

The appeal is dismissed along with pending
application(s), if any, in terms of the signed
order.

(Geeta Ahuja)
Assistant Registrar-cum-PS
(Signed Order is placed on the file)

(Nand Kishor)
Court Master (NSH)