

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3535 OF 2010

State of U.P. and others

...Appellants

Versus

C.M. Anand

...Respondent

O R D E R

The respondent, a Senior Clerk, of the Trade Tax Department was proceeded in a departmental proceeding on the allegation that he was involved in certain irregularities in issuance of certain forms to gain benefits from the assesses. A charge-sheet was served on him on 28.5.2000 and thereafter he was placed under suspension on 26.9.2000. As the factual matrix would reveal without proceeding with the first charge-sheet, a second amended charge-sheet dated 4.10.2001 containing four charges was served on 5.11.2001. The Inquiry Officer, who was appointed to conduct the inquiry, submitted his report on 25.2.2002 recording that the charges had been proven. The Disciplinary Authority called for an explanation and thereafter by order dated 15.4.2002 removed him from service with immediate effect.

2. Being grieved by the order of removal, he submitted a representation dated 30.5.2002 to the Additional Commissioner (Administration) Trade Tax, Lucknow, who, vide order dated 28.1.2003, rejected the same.

3. Being dissatisfied with the aforesaid order, the respondent preferred a claim petition No. 633 of 2003 before the State Public Services Tribunal, Lucknow. The tribunal analyzing every aspect of the matter directed the opposite parties therein to reinstate the respondent and to pay him salary from the date of his suspension. It also directed that he would be entitled to all consequential service benefits including continuity in service, seniority, etc. A further direction was issued that the opposite party shall take a decision with regard to the back wages of the respondent within a period of three months from that date. Liberty was granted to proceed afresh against the respondent, if so required, from the stage of service of second amended charge-sheet after providing opportunity to the employee within a reasonable time.

4. At this juncture, it is seemly to note that during the period the respondent was put under suspension for some time, he was not getting the subsistence allowance. The tribunal considered the said aspect and came to hold that as the employee did not produce the requisite certificate in the prescribed format that he was not engaged in any profession/employment of business, he was not entitled to get the subsistence allowance for the period of suspension.

5. The order passed by the tribunal was not challenged by the respondent-employee.

6. We have been apprised that after the order passed by the tribunal the respondent-employee has been reinstated. Thus, the only grievance that remains alive relates to grant of back wages. The same

was required to be determined by the appellants as per the direction of the tribunal. The same has not yet been done. The learned counsel for the appellants has submitted that the tribunal should not have granted continuity of service. We are not inclined to accept the said submission as there is no justification not to grant continuity of service when the punishment was set aside. As regards the back wages, we do not intend to remit the matter to the employer to determine. We are disposed to think especially in the obtaining factual matrix the cause of justice would be subserved if we determine the same. Having heard the learned counsel for the parties and keeping in view the totality of circumstances we determine that grant of 25% of the salary for the period he was kept out of service barring the period of suspension would be adequate, and accordingly we direct that the same to be paid within three months.

7. In the aforesaid terms the appeal stands disposed of. There shall be no order as to costs.

.....J.
[Dr. B.S. Chauhan]

.....J.
[Dipak Misra]

New Delhi;
May 24, 2013.

ITEM NO.101-PH

COURT NO.2

SECTION XI

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). 3535 OF 2010

STATE OF U.P.& ORS.

Appellant (s)

VERSUS

C.M.ANAND

Respondent(s)

(With prayer for interim relief)

Date: 24/05/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
(VACATION BENCH)

For Appellant(s) Mr. Ravi Prakash Mehrotra,Adv.
Mr. Mukesh Verma,Adv.
Mr. Gunnam Venkateswara Rao,Adv.

For Respondent(s)

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

The appeal stands disposed of, in terms of the signed order.

(O.P. Sharma)
Court Master

(M.S. Negi)
Court Master

(Signed order is placed on the file)