

Deepak Kumar vs Principal Secretary Home Govt. Of U.P ... on 10 October, 2017

Equivalent citations: AIRONLINE 2018 SC 481, AIRONLINE 2017 SC 737

Author: Kurian Joseph

Bench: R. Banumathi, Kurian Joseph

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 16355 OF 2017
[@ SPECIAL LEAVE PETITION (C) NOS. 10004 OF 2016]

DEEPAK KUMAR & ORS.

Appel

VERSUS

PRINCIPAL SECRETARY HOME, GOVT.
OF U.P LUCKNOW (U.P) & ORS.

Responden

WITH

CIVIL APPEAL NO. 16356 OF 2017
[@ SPECIAL LEAVE PETITION (C) NOS. 10006 OF 2016]

CIVIL APPEAL NO. 16357 OF 2017
[@ SPECIAL LEAVE PETITION (C) NOS. 10008 OF 2016]

CIVIL APPEAL NO. 16358 OF 2017
[@ SPECIAL LEAVE PETITION (C) NOS. 10005 OF 2016]

J U D G M E N T

KURIAN, J.

1. As requested by Mr. V. Giri, learned senior counsel, the appellants are at liberty to amend the cause title.

2. Leave granted.

3. The appellants are before this Court, aggrieved by an order dated 27.10.2015 passed by the High Court of Judicature at Allahabad in Special Appeal (Defective) No. 707 of 2015. They moved the High Court, invoking its contempt jurisdiction, praying for appropriate direction for payment of the entire salary for the period from the date of termination to the date of reinstatement. Having regard to the various orders passed by the Court, the High Court was not inclined to exercise its jurisdiction in contempt proceedings and, therefore, dismissed the Special Appeal with liberty to the appellants to work out their remedy for appropriate proceedings.

4. When the matter came up before this Court, after having heard the learned counsel on both sides, this Court passed the following order on 17.08.2017 :-

“Application for impleadment, filed in SLP(C) No.10006/2016, is taken on Board and is allowed.

These are the cases where in the State of Uttar Pradesh the police constables recruited and appointed during 2005-06 were terminated in September, 2007. That termination has been held to be wrong by the learned Single Judge and confirmed thereafter by the Division Bench. Since the declaration regarding the termination to be bad in law stands even as on today, in any case the constables who were terminated during 2005-06 are entitled to continuity of service from their respective date of termination to the date of reinstatement. According to the State it is a fresh appointment, which we find difficult to appreciate in view of the judgment of the High Court.

We agree with the learned Additional Advocate General appearing for the State of Uttar Pradesh that in the peculiar facts of these cases, in any case they will not be entitled to backwages from the date of termination till the date of judgment of the learned Single Judge. The remaining question is only with regard to the backwages from the date of judgment by the learned Single Judge i.e. 8.12.2008 to 27.05.2009, the date of reinstatement.

Learned Additional Advocate General invited our reference to the judgment dated 4.3.2009, wherein the Division Bench, after agreeing with the learned Single Judge in the matter of cancellation of the appointment as bad, has granted liberty to the State to conduct a fresh exercise and, therefore, it is submitted that the constables may not be entitled to any backwages from the date of the judgment of the learned Single Judge to the actual date of fresh appointment/ reinstatement.

We find it difficult to wholly agree with the learned Additional Advocate General. As far as the people who are before this Court, we are tentatively of the view that they must be entitled to some equitable relief in the matter of backwages for the period from 8.12.2008 to 27.05.2009.

We make it clear that this equitable relief would be confined only to the people who are before this Court either as petitioners or as impleaders, as on today.

The Registry is directed not to entertain any impleadment or fresh petition in respect of the subject matter involved in these petitions. Learned Additional Advocate General of the State of U.P. seeks some time to get instruction.

Post on 12.09.2017.”

5. The State of U.P. has filed a detailed additional affidavit in response to the order extracted above. In the nature of the order we propose to pass, it is not necessary to refer to the stand of the State except to take note of the fact that the case has a chequered history. Despite the liberty granted by the High Court to weed out the allegedly tainted candidates, it appears that no such exercise was undertaken and all of them have been taken back into service. That liberty was granted by the Division Bench of the High Court in the order dated 04.03.2009. The reinstatement was made on 27.05.2009. Therefore, as rightly pointed out by the learned senior counsel appearing for the State that if at all, any exercise could have been done by the State, it would have been only pursuant to the order dated 04.03.2009. Mr. V. Giri, learned senior counsel appearing for the appellants, would contend that the High Court, in the original jurisdiction, having held that the termination was otherwise illegal, the only corollary to the declaration is that the appellants should be deemed to be ‘in service’ for all purposes.

6. Having regard to the background of the allegations pursuant to which the termination was effected, we are of the view that the State, having resolved to take back all employees into service without further inquiry, has itself shown sufficient grace to the appellants. The respondents, having acted within three months from the final order passed by the Division Bench of the High Court, we find that the tentative view taken by this Court in the order dated 17.08.2017 needs to be revisited.

7. Having said that, in case these appeals are dismissed, there would still be scope for further litigation between the parties in view of the liberty granted by the High Court in the impugned order. The learned senior counsel appearing on both sides have submitted that there should not be any further litigation on this count.

8. Having regard to the entire facts and circumstances of the case, we are of the view that the interest of justice would be met in case the appellants before this Court are granted litigation expenses, which would be in full and final settlement of all their claims, which they have been pursuing before the High Court. This benefit will be available only to those Constables who have chosen to pursue their grievance before this Court upto 17.08.2017, when this Court passed the order referred to in Paragraph 4 above. The litigation expenses are quantified to Rs. 35,000/- (Rupees Thirty Five Thousand). This amount shall be paid to each of those Constables covered by this order on or before 20.12.2017. It is made clear that in case the appellants are not paid the above amount within the stipulated time, they shall be entitled to interest at the rate of 18% from the date of termination.

9. We also make it clear that this Judgment is passed in the peculiar facts and circumstances of this case and this benefit shall not be available to any other similarly situated employee(s) who had been reinstated pursuant to the order dated 04.03.2009 passed by the High Court.

10. Since the entire litigation has been given a quietus, we make it clear that for all other purposes, the Constables concerned who had been terminated in 2006-2007, will be treated to be 'in continuous service' except for the Assured Career Progression (ACP), for which the actual service, when they discharged the duties, will be counted.

11. With the above observations and directions, the appeals are disposed of.

.....J. [KURIAN JOSEPH]J. [R. BANUMATHI] New Delhi;

October 10, 2017.

ITEM NO.7

COURT NO.4

SECTION XI

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

Petition(s) for Special Leave to Appeal (C) No(s). 10004/2016

(Arising out of impugned final judgment and order dated 27-10-2015 in SAD No. 707/2015 passed by the High Court Of Judicature At Allahabad) DEEPAK KUMAR & ORS. Petitioner(s) VERSUS PRINCIPAL SECRETARY HOME, GOVT. OF U.P LUCKNOW (U.P) & ORS. Respondent(s) (IA No.70474/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.70476/2017-EXEMPTION FROM FILING O.T.) WITH SLP(C) No. 10006/2016 (XI) (IA No.69737/2017-impleading party and IA No.70477/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.70478/2017-EXEMPTION FROM FILING O.T.) SLP(C) No. 10005/2016 (XI) (IA No.70466/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.70468/2017-EXEMPTION FROM FILING O.T.) SLP(C) No. 10008/2016 (XI) (IA No.70481/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.70482/2017-EXEMPTION FROM FILING O.T.) Date : 10-10-2017 This petition was called on for hearing today. CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH HON'BLE MRS. JUSTICE R. BANUMATHI Counsel for the parties Mr. V. Giri, Sr. Adv.

Mr. Krishna M. Singh, Adv.

Mr. S. R. Setia, AOR Mr. Danish Zubair Khan, AOR Mr. V. Shekhar, Sr. Adv.

Ms. Aishwarya Bhati, AAG, UP Mr. Rajeev Kumar Dubey, Adv.

Mr. Kamalendra Mishra, Adv.

Mr. Ravi Prakash Mehrotra, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeals are disposed of in terms of the non-reportable Judgment.

Pending Interlocutory Applications, if any, stand disposed of. (JAYANT KUMAR ARORA) (RENU DIWAN) COURT MASTER ASSISTANT REGISTRAR (Signed non-reportable Judgment is placed on the file)