

Yogesh Kumar
v.
The State of Uttar Pradesh and Others
(Civil Appeal No. 3823 of 2025)
18 March 2025
[B.R. Gavai* and Augustine George Masih, JJ.]

Issue for Consideration

Whether the High Court was justified in non-suiting the appellant and others on the ground that an appropriate civil action would mean the proceedings only before a Civil Court and not Writ Court.

Headnotes[†]

Constitution of India – Art.226 – Writ Court – Appropriate Civil action – Civil Court – Hyper-technical view – Payment of salary for service rendered – In an earlier SLP, petitioners including appellant had sought liberty to claim payment of salary for the period they have worked – While dismissing the SLP, the Supreme Court granted liberty to the petitioners for any such relief in an appropriate civil action – Appellant and others made representation for payment of salary – Representation was rejected – Writ Petition – The appellant was non-suited, since the writ Court was not a civil Court – Correctness:

Held: The High Court has non-suited the appellant and others on the ground that an appropriate civil action would mean the proceedings only before a Civil Court – While exercising the jurisdiction u/Art.226 of the Constitution of India, the Court is not expected to be hypertactical – The position that the appellant and others had, in fact, put in eight years of service is not disputed by anyone – It is settled that even in cases where there are disputed questions of fact, where such disputes can be decided on the basis of an affidavit evidence and no elaborate evidence is required to be led, the High Court would be justified in granting a relief u/Art.226 of the Constitution of India – In any case, the State as well as the High Courts are expected to be model litigants – The High Court is not expected to take a hyper-technical view, when dealing with the case of payment of salary of the employees of the District

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Judiciary, who have actually put in eight years of service – In that view of the matter, the judgment passed by the Single Judge as well as the impugned judgment and order passed by the Division Bench are not at all sustainable in law – The respondents are directed to pay salary of the appellant herein and other similarly circumstances persons for the period during which they have actually worked in the District Court. [Paras 10, 11, 12, 13, 14]

Case Law Cited

ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others (2004) 3 SCC 553; *Zonal Manager, Central Bank of India v. Devi Ispat Limited and Others*, 2010 INSC 462 : [2010] 9 SCR 417 : (2010) 11 SCC 186; *Real Estate Agencies v. State of Goa and Others*, 2012 INSC 387 : [2012] 8 SCR 278 : (2012) 12 SCC 170; *Popatrao Vyankatram Patil v. State of Maharashtra and Others*, 2020 INSC 183 : [2020] 3 SCR 789 : (2020) 19 SCC 241; *Unitech Limited and Others v. Telangana State Industrial Infrastructure Corporation (TSIIC) and Others*, 2021 INSC 96 : [2021] 1 SCR 1064 : (2021) 16 SCC 35; *National Company represented by its Managing Partner v. Territory Manager, Bharat Petroleum Corporation Limited and Another*, 2021 INSC 714 : [2021] 11 SCR 75 : (2021) 13 SCC 121; *State of Uttar Pradesh v. Sudhir Kumar Singh and Others*, 2020 INSC 603 : [2020] 13 SCR 571 : (2021) 19 SCC 706 – referred to.

List of Acts

Constitution of India.

List of Keywords

Service Law; Termination; Payment of salary for service rendered; Jurisdiction; Jurisdiction of the High Court; Writ Court; Question of fact; Hyper-technical view; Salary; Article 226 of the Constitution of India; Model litigant; Appropriate civil action; Civil Court; Writ Jurisdiction.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3823 of 2025

From the Judgment and Order dated 16.05.2019 of the High Court of Judicature at Allahabad in SAD No. 456 of 2019

Supreme Court Reports**Appearances for Parties***Advs. for the Appellant:*

Dr. L.S. Chaudhary, Ashwani Kumar Dubey, Dr. Ajay Chaudhary, Ds Chaudhary, Vishesh Kumar, Ms. Vinita, Ms. Monika Chaudhary, Bharat Chaudhary, Ms. Vikram Singh, S. Parambir Singh.

Advs. for the Respondents:

Vishal Meghwali, Ms. Charu Mathur.

Judgment / Order of the Supreme Court**Judgment****B.R. Gavai, J.**

1. Leave granted.
2. The appeal is taken up for hearing.
3. This appeal challenges the judgment and order dated 16th May 2019 passed by the Division Bench of the High Court of Judicature at Allahabad (hereinafter, "High Court") in Special Appeal Defective No.456 of 2019, vide which the appeal filed by the appellant herein challenging the order passed by the learned Single Judge of the High Court dated 23rd May 2018 came to be dismissed.
4. The facts, shorn of unnecessary details, giving rise to the present appeal are as under:
 - 4.1 The appellant, in response to the advertisement issued by the District Court, Saharanpur, had applied for the post of Stenographer. The appellant along with the other six persons, who were found suitable in the selection process were appointed to the post of Stenographer and assumed their charge on 16th April 2002. However, subsequently it was found that the number of posts advertised was only three and four additional persons including the appellant herein were appointed in excess. They were, therefore, issued show cause notices, calling upon them to show cause as to why their appointment should not be terminated. On 28th February 2005, the District Judge passed an order terminating the services of the appellant herein and three others.

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- 4.2 Being aggrieved by the termination, the appellant herein and three others approached the learned Single Judge of the High Court, by way of Writ Petition No.43168 of 2005. Vide order dated 17th May 2012, the said writ petition came to be dismissed. An intra court appeal being Special Appeal No.1180 of 2012 was also dismissed. Being aggrieved thereby, the appellant herein approached this Court by way of a Special Leave Petition(C) No.26959 of 2012.
- 4.3 This Court vide order dated 21st September 2012 dismissed the special leave petition filed by the appellant herein and others, in the following terms:-

"Heard.

We do not see any reason to interfere with the impugned order. The Special Leave Petition is dismissed.

Learned counsel for the petitioners at this stage submits that the petitioners were not paid salary for a period of 8 years even though they had worked as stenographers. He seeks liberty for the petitioners to claim payment of salary for the period they have worked. We make it clear that the dismissal of this special leave petition shall not prevent the petitioners from seeking any such relief in an appropriate civil action. We express no opinion as to the maintainability of any such action, or the tenability of the proposed claim."

- 4.4 It appears that thereafter the appellant and others made representation before the District Judge, Saharanpur for payment of their salary for the period during which they had worked. The said representation came to be rejected. Being aggrieved thereby, the appellant and others preferred Writ Petition No.26698 of 2015 before the learned Single Judge. The said petition was dismissed vide order dated 23rd May 2018. An intra court appeal being Special Appeal Defective No.456 of 2019 was carried thereagainst, which was also dismissed. Being aggrieved thereby, the present appeal by way of special leave has been filed. Vide order dated 28th February 2020, notice was issued by this Court.

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5. We have heard Dr. L.S. Chaudhary, learned counsel for the appellant and Shri Vishal Meghwal for respondent No.2/High Court of Judicature at Allahabad.
6. Dr. L.S. Chaudhary, learned counsel for the appellant, submits that the learned Single Judge of the High Court as well as the Division Bench have taken a totally erroneous approach in rejecting the claim of the appellant. It is submitted that it is not disputed that the appellant and others had actually put in their services for eight years. It is also submitted that even the learned Single Judge of the High Court has accepted the position that the appellant and others had actually worked for eight years. However, the relief is denied to the appellant and others on the ground that this Court had observed that insofar as the payment of salary is concerned, the appellant and others were entitled to take recourse to an appropriate civil action. It is submitted that the approach of the learned Single Judge in non-suiting the appellant, since the writ court was not a civil court, is totally erroneous.
7. Shri Vishal Meghwal, learned counsel appearing on behalf of the High Court, vehemently opposes this appeal. He submits that the appellant and others have lost up to this Court in the first round of litigation. It is submitted that the liberty that was granted by this Court was to take recourse to an appropriate civil action. Since the appellant and others rather than filing an appropriate action before a Civil Court had made a representation to the learned District Judge. The learned District Judge had rightly rejected the said claim. For the very same reasons, it is submitted that the High Court was justified in rejecting the petition as well as the appeal of the appellant herein and others.
8. The facts in the present case are not in dispute. The appellant and others had applied in pursuance to the advertisement issued by the District Court, Saharanpur. However, it appears that though at the relevant time, there were only three regular vacancies, since the Fast Track Courts were functioning, the appellant and others were appointed to work in the Fast Track Courts. Subsequently, after the Fast Track Courts seized to function, the services of the appellant and others appeared to have been terminated.
9. No doubt that the termination of the appellant has been upheld by the learned Single Judge and the Division Bench of the High Court as well as by this Court in the first round. However, this Court has

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specifically clarified that the dismissal of the special leave petition shall not prevent the appellant and others from seeking any such relief in an appropriate civil action.

10. The High Court has non-suited the appellant and others on the ground that an appropriate civil action would mean the proceedings only before a Civil Court. The learned Single Judge has elaborated on as to what would amount to a ‘civil action’ by referring to the Advanced Law Lexicon.
11. No doubt that the learned Single Judge has correctly considered the definition of a ‘civil action’; but, in our view, while exercising the jurisdiction under Article 226 of the Constitution of India, the Court is not expected to be hyper-technical.
12. The position that the appellant and others had, in fact, put in eight years of service is not disputed by anyone at all. Much before the judgment of the learned Single Judge was delivered on 23rd May 2018, this Court in the case of ***ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others***¹ has held that even in case of disputed questions of fact, the High Court would be justified in entertaining a petition under Article 226 of the Constitution of India. It has been held that even in cases where there are disputed questions of fact, where such disputes can be decided on the basis of an affidavit evidence and no elaborate evidence is required to be led, the High Court would be justified in granting a relief under Article 226 of the Constitution of India.
13. In any case, the State as well as the High Courts are expected to be model litigants. The High Court is not expected to take a hyper-technical view, when dealing with the case of payment of salary of the employees of the District Judiciary, who have actually put in eight years of service. The law laid down by this Court in the case of ***ABL International*** (supra) has been subsequently followed by this Court in the cases of ***Zonal Manager, Central Bank of India v. Devi Ispat Limited and Others***², ***Real Estate Agencies v. State of Goa and Others***³, ***Popatrao Vyankatrao Patil v. State of Maharashtra***

¹ (2004) 3 SCC 553

² 2010 INSC 462 : (2010) 11 SCC 186

³ 2012 INSC 387 : (2012) 12 SCC 170

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and Others⁴, Unitech Limited and Others v. Telangana State Industrial Infrastructure Corporation (TSIIC) and Others⁵, National Company represented by its Managing Partner v. Territory Manager, Bharat Petroleum Corporation Limited and Another⁶ and State of Uttar Pradesh v. Sudhir Kumar Singh and Others⁷.

14. In that view of the matter, we find that the judgment passed by the learned Single Judge as well as the impugned judgment and order passed by the learned Division Bench are not at all sustainable in law.
15. The appeal is, therefore, allowed. The impugned judgment and order dated 16th May 2019 passed by the Division Bench of the High Court and the judgment and order dated 23rd May 2018 passed by the learned Single Judge of the High Court are set aside.
16. The respondents are directed to pay the salary of the appellant herein and other similarly circumstances persons for the period during which they have actually worked in the District Court. The same shall be paid within a period of three months from today, along with interest at the rate of 6% per annum from the date on which the salaries ought to have been paid to them.
17. We further find that since the appellant herein and others who were made to run from one Court to another, specifically after 2012 i.e. the date on which the order was passed by this Court, the appellant would also be entitled to costs quantified at Rs.1 lakh, to be paid within three months from today.
18. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

Headnotes prepared by: Ankit Gyan

4 2020 INSC 183 : (2020) 19 SCC 241

5 2021 INSC 96 : (2021) 16 SCC 35

6 2021 INSC 714 : (2021) 13 SCC 121

7 2020 INSC 603 : (2021) 19 SCC 706