

## U.P. Government vs S. Tabarakh Husain on 9 September, 1955

**Equivalent citations: AIR1956ALL151, AIR 1956 ALLAHABAD 151**

### JUDGMENT

Randhir Singh, J.

1. This is a defendant's first appeal arising out of a suit for a declaration that the plaintiff continued to be in the service of the defendant and for arrears of salary. The claim for declaration of the plaintiff's continuance in service was, however, given up subsequently taut the claim for arrears was followed up.

2. The facts of the case briefly are that the plaintiff was a sub-inspector of police in the employ of the defendant-appellant; he was suspended pending enquiry into certain charges by an order dated 13-4-1942, and was, ultimately dismissed by an order dated 30-10-1943. The plaintiff then filed a departmental appeal and as a result of that appeal the order of dismissal was set aside on 18-10-1946.

3. The suit which has given rise to the present appeal was, however, instituted on 8-10-1946, for a declaration that the order of dismissal, which had not till then been set aside in appeal, was invalid and void and for recovery of arrears of salary. The suit for declaration became in-fructuous as the order of dismissal was set aside during the pendency of the suit. The plaintiff claimed salary at the rates given in the plaint along with station allowance and dearness allowance.

4. The suit was contested by the defendant on various grounds. It was contended that the plaintiff was not entitled to his full salary inasmuch as he was under suspension from 13-4-1942, till 30-10-1943, when he was dismissed and that this order of suspension was revived when the order of dismissal was set aside in appeal on 13-10-1946. In effect it was pleaded that the plaintiff had all along been under suspension and was entitled only to subsistence allowance which he had already received.

5. The lower Court found that the plaintiff was entitled to his salary from 13-4-1942, up to 17-10-1946, when his dismissal was set aside, as the plaintiff could not be deprived of his salary during the period of suspension after he had been reinstated. The claim was ultimately decreed for the recovery of Rs. 6,028/5/- with proportionate costs. The defendant has now come up in appeal.

6. The short point involved in this appeal is if the plaintiff should be deemed to be under suspension after the order of dismissal was pass-ed on 30-10-1943, till he was ordered to be reinstated on 18-10-4946. The leiarned counsel for the respondent has conceded that the plaintiff does not now claim any salary for the period when he was under suspension up to the 30-10-1943.

In view of this statement made by the learned counsel for the respondent it is not necessary to decide whether the plaintiff was or was not entitled to his full salary for the period during which he was under suspension pending an enquiry and before his dismissal.

7. The order of dismissal of the plaintiff was passed on 30-10-1943, and it is contended on behalf of the respondent that the order of dismissal passed on 30-10-1943, terminated the order of suspension which had been passed earlier on 13-4-1942, and could not be revived by any subsequent order passed at the time of the re-instatement on 18-10-1946.

The learned counsel for the appellant, on the other hand, has argued that the dismissal having been set aside in a departmental appeal on 18-10-1946, the 'status quo' was restored and the order of suspension which operated before the order of dismissal was passed became operative when the order of dismissal was set aside.

Two points now arise for consideration out of these arguments. Firstly, it has to be seen whether the order of reinstatement passed on 18-10-1946, contained any direction for the revival of the order of suspension which came to an end when the order of dismissal was passed on 30-10-1943. Secondly, even if such an order reviving the suspension was made, whether it was open to the defendant to pass an order reviving a suspension retrospectively.

The order dated 18-10-1946, has been filed. It was signed by the Inspector General of Police and bears the date, 18-10-1946. The relevant part of the order reads as follows :

"You will, therefore, be considered as reinstated under suspension pending further proceedings and you should report to S.P. Shahjahanpur without delay. During the period, of suspension you will receive subsistence allowance at Rs. 20/-p.m. which is equivalent to one-fourth of your pay at the time you were originally placed under suspension".

A perusal of these words clearly shows that it was the intention of the Inspector General of Police to place the plaintiff under suspension once again as soon as he was reinstated. There are no words in this order to indicate that the order of suspension passed originally in 1942 was revived. If that had been the intention, it was not necessary to indicate the subsistence allowance which the plaintiff was to get during the period of suspension, as this subsistence allowance had already been fixed in the order of suspension passed on 13-4-1942,

8. Even if it had been specifically stated in the order that the order of suspension passed in April 1942 was revived such an order would not have been within the scope of authority of the Inspector General of Police. The learned Counsel for the respondent has relied on a recent judgment of the Supreme Court in which a somewhat similar question arose for determination (vide, -- 'Om Prakash Gupta v. State of U.P.', (S) AIR 1955 SC 600 (A).

In this reported case a servant of the State of Uttar Pradesh was dismissed. He brought a suit for a declaration that he was still in service and that the order of dismissal, was wrong. This suit was

decreed. He then sued for the recovery of the arrears of his salary. The arrears of salary which were ultimately claimed in this reported case were for the period from the date of dismissal to the date of re-instatement, ' It was held that the order of dismissal replaced the order of suspension which then ceased to exist. In the present case also an order of dismissal was passed on 30-10-1943, and with the passing of this order the suspension of the plaintiff came to an end. -During the period 30th October 1943, upto the date when the order of dismissal was set aside, there was no order of suspension which was operative.

It was for the first time on 18-10-1946, that an order for suspension after re-instatement was made and it could, therefore, be operative only with effect from 18-10-1946. An order which had already become non-existent could not be revived three years after by an order of re-instatement.

9. The learned Counsel for the appellant has further argued that the order allowing the appeal of the plaintiff and ordering his re-instatement was in the nature of an appellate order and it was open to the appellate authority to modify the order of dismissal in any manner that it liked. This argument, though plausible, does not appear to be sound.

The Inspector General of Police who had dismissed the plaintiff by an order dated 30-10-1943, was competent to pass an order of dismissal. He had not, however, observed the procedure prescribed for an enquiry preceding the order of dismissal and the notice to show cause why the punishment of dismissal should not be imposed upon the plaintiff was issued by the Superintendent of Police, who. was not the appointing authority or the person empowered to dismiss the plaintiff. The order of dismissal was, therefore, not a proper order. It could not be said to have been passed by a person having no authority to pass that order. Only the order was not a proper order inasmuch as the proceedings prescribed for the. enquiry had not been taken by the proper person.

The plaintiff having been dismissed from service could not claim to be in service, as he had been dismissed by the authority competent to dismiss him. It could not be said that the order passed by the Inspector-General of Police on 30-10-1943, was a nullity or was passed by a person not competent to pass that order which could be ignored by the plaintiff. It was only after this order was set aside that he was reinstated.

The learned Counsel for the appellant has not been able to show any rule under which the Government could pass an order of suspension retrospectively while setting aside an order of dismissal. It was not a modification of the order passed originally but was in fact the setting aside of the order of dismissal which had been passed. There is, therefore, no force in the contention that while setting aside the order of dismissal it was open to the Inspector General of Police or to the Government to revive the suspension as a part of the order in modification passed in appeal.

We are unable, therefore, to agree with either of the two contentions raised on behalf of the appellant that an order reviving the suspension had been passed or that the defendant was competent to revive a suspension which had already terminated by the dismissal of the plaintiff.

10. In view of what has been said above, the decree of the lower Court is modified to this extent that the plaintiff would be entitled to his salary from 31-10-1943, up to 17-10-1946 only when the dismissal was set aside. He has also claimed station allowance and dearness allowance which he has been found entitled to by the lower Court.

There appears to be no reason why dearness allowance and station allowance should not be allowed to him, as that would be more or less a part of his salary. The plaintiff would, therefore, be entitled to salary from 31-10-1943, to 17-10-1946, at the rates given in the judgment of the lower Court as also the station allowance at the flat rate of. Rs. 15/- per mensem for this period.

He is also entitled to the dearness allowance at the rates given in the judgment of the lower Court. The office will calculate the amount and the claim will stand decreed in favour of the plaintiff for this amount. The order passed by the lower Court in respect of payment of Court fee will stand.

11. The plaintiff shall get proportionate costs in both the Courts. The defendant-appellant will bear its own costs.