

Vinod Kumar Vs. Executive Engineer, Electricity Distribution and anr.

Vinod Kumar Vs. Executive Engineer, Electricity Distribution and anr.

SooperKanoon Citation : sooperkanoon.com/463531

Court : Allahabad

Decided On : May-14-1992

Reported in : (1993)ILLJ292All

Judge : Vijay Bahuguna, J.

Acts : [Constitution of India](#) - Article 226; Indian Penal Code (IPC) - Sections 411

Appeal No. : C.M.W.P. No. 26228/1991

Appellant : Vinod Kumar

Respondent : Executive Engineer, Electricity Distribution and anr.

Advocate for Def. : A.S. Kapoor and ;Ranjit Saxena, Adv.

Advocate for Pet/Ap. : S.N. Babulkar, Adv.

Disposition : Petition allowed

Judgement :

Vijay Bahuguna, J.

1. The petitioner, who was working as a Lineman in the Electricity Distribution Sub-Division Muni Ki Reti, Rishikesh, District Tehri Garhwal, has by means of the present writ petition under Article 226 of the Constitution sought for a writ of mandamus from this Court commanding the respondents to allow the petitioner to

resume his duties and to pay him full salary which has accrued to him according to Rules.

2. The facts in a nut-shell are that on May 14, 1971 the petitioner was appointed as Coolie in the office of the Chief Engineer, Rural Electrification Division III North, Gandhi Nagar, Muzaffarnagar and after confirmation of his service he was transferred to the Electricity Distribution Division Tehri, District Tehri Garhwal. During the period the petitioner was working at Electricity Sub-Division Muni Ki Reti, District Tehri Garhwal he was involved in a criminal case of theft and as such by an order dated October 6, 1978 he was placed under suspension. In the suspension order the only ground for placing the petitioner under suspension was that the petitioner was involved in a case of theft of the Electricity Board's money and that a criminal case had been launched against him.

3. A case under Section 411 of the Indian Penal Code was proceeded against the petitioner in the Court of the Chief Judicial Magistrate Tehri, Tehri Garhwal and by a judgment dated May 7, 1984 the petitioner was acquitted. On his acquittal, the petitioner made a representation on May 26, 1984 to the respondents requesting them to reinstate him. By a letter dated December 3, 1984 the petitioner received a communication from the office of the respondent No. 1 that against the judgment and order of acquittal passed by the Chief Judicial Magistrate the State had preferred an appeal and as such till the appeal was decided the petitioner could not be reinstated. It is admitted by the parties that Criminal Appeal No. 2216 of 1984, which has been preferred by the State in this Court, is still pending for disposal.

4. On September 13, 1991 this Court directed the petitioner to make a representation to the respondent No. 1 and also directed the respondent No. 1 to decide the representation of the petitioner by a speaking order within a specified time. Pursuant to the direction of this Court the respondent No. 1 by an order dated October 6, 1991 rejected the representation of the petitioner. A copy of the order has been filed as Annexure CA-I to the counter-affidavit. In the order dated October 6, 1991 it stated that the petitioner continues under suspension and till the appeal was decided by the High Court it was not possible to reinstate him in

service.

5. In paragraph 16 of the writ petition the petitioner has specifically stated that this Court has not stayed the operation of the judgment of the Chief Judicial Magistrate dated May 7, 1984. This fact has not been denied in the counter-affidavit filed on behalf of the respondents. It is also not disputed that no departmental enquiry is either going on or is in contemplation against the petitioner and that the petitioner continues under suspension with effect from October 6, 1978.

6. It was open to the respondents to hold a departmental enquiry in regard to the incident alleged to have been committed by the petitioner even after his acquittal by the Chief Judicial Magistrate on May 7, 1984. However, in the counter-affidavit it has not been stated that any departmental enquiry has been initiated against the petitioner till date and it is only on account of the pendency of the Criminal Appeal in the High Court that the respondents are not reinstating the petitioner.

7. It is a settled position in law that inasmuch as the petitioner was suspended only on the ground of pendency of criminal proceedings against him, on being acquitted of the criminal charge he was entitled to be reinstated in service. The respondents have acted contrary to law by not reinstating the petitioner in service when he was acquitted by the Chief Judicial Magistrate on May 7, 1984. The mere filing of the appeal by the State Government in this Court does not entitle the respondents to refuse to reinstate the petitioner. It was open to the respondents to hold a departmental enquiry against the petitioner but they have not chosen to do so since 1984 and as such the petitioner should not be allowed to suffer even after his acquittal by a competent Criminal Court.

8. The decision of the Supreme Court in the case of Babu Lal v. State of Haryana and Ors. 1991-II-LLJ-327 clearly lays down the proposition that after acquittal the suspended employee is entitled to be reinstated.

9. For the reasons given above, the writ petition succeeds and is allowed. The respondents are directed to reinstate the petitioner on the post on which he was working and to pay to the petitioner his full salary for the entire period during which he remained under suspension.

10. There shall, however, be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com