

State of U.P. and anr. Vs. Kaushal Hari Narain and ors.

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Court : Allahabad

Decided On : Apr-18-2006

Reported in : 2006(4)AWC3701

Judge : Pradeep Kant and ;K.S. Rakhra, JJ.

Appellant : State of U.P. and anr.

Respondent : Kaushal Hari Narain and ors.

Judgement :

Pradeep Kant and K.S. Rakhra, JJ.

1. This is an application with reference to a decided Writ Petition No. 1256 (S/B) of 1991 for further directions to release the amount deposited in the Court in the said writ petition, in favour of the applicant Kaushal Hari Narain along with interest accrued thereon.

2. The applicant was an employee of Ram Ganga Command Area Development Project, Kanpur. The appointment was initially for a period of six months but it was subsequently converted into a temporary ad hoc appointment. On 4.7.1985, when he had already put in about 10 years of service, his services were terminated by a simple discharge notice. He challenged the termination of his services by filing a claim petition before the U. P. State Public Service Tribunal. The Tribunal allowed the claim petition and set aside the termination order dated 4.7.1985. The State of

U. P. then preferred Writ Petition No. 1256 (S/B) of 1991 before this Court. This Court on 1.4.2004, dismissed the writ petition on the ground that the termination of services of the applicant was arbitrary and without sufficient cause.

3. During the pendency of the aforesaid writ petition, this Court on Civil Misc. Application No. 4743 (W) of 1991, had passed an interim order on 5.3.1991 as follows:

Sri P.K. Srivastava has put in appearance on behalf of opposite party No. 1.

I have heard the Chief Standing Counsel as also Sri P.K. Srivastava on the question of interim relief. It is provided as interim measure that in case the entire arrears of salary with effect from 4.7.1985 till 31.10.1990, is deposited in this Court within 3 months and thereafter arrears of salary with effect from 1.11.1990 till 28.2.1991 is paid directly to the opposite party No. 1 to whom the salary with effect from 1.3.1991, shall also be paid directly regularly every month until further orders operation of the impugned judgment shall remain stayed.

4. Pursuant to the above order, the State of U. P. deposited a sum of Rs. 2,08,754.35 P in this Court. After the aforesaid deposit, the applicant made an application that the amount so deposited by the State of U. P., be deposited in some interest bearing investment scheme. Allowing the application, this Court on 20.9.1993 directed that the amount so deposited, be invested in special term deposit initially for a period of one year in the name of the Additional Registrar of this Court subject to decision of this writ petition. In case the writ petition is not decided within this time period of one year, the said Investment be reinvested for another one year and so on.

5. This Court while disposing of this writ petition on 1.4.2004, directed that the amount deposited in the Court in the aforesaid manner, be released and allowed to be withdrawn by the present applicant Kaushal Hart Narain. When the applicant made an application for release of the amount in his favour, it was found that the concerned official had not invested the amount of the aforesaid deposit in fixed term as directed by this Court on 20.9.1993. When the applicant could not get the amount from the Office of the High Court and when he was informed that he

cannot get the interest on the amount deposited by the State, he made the present application.

6. Opposing the application, learned standing counsel for the State contended that the State had deposited the amount as per directions of the Court and since the writ petition has been finally disposed of, this application was not maintainable.

7. While leaving the question of maintainability of this application, to a later stage, this Court on 18.2.2005, directed the Registrar to submit a report that when the amount in question was deposited by the State within time in this Court, then why the same was not invested in interest bearing security, as per order dated 20.9.1993. The Registrar of this Court submitted report on 17.3.2005 to the effect that a departmental inquiry into the matter has already been conducted and it has been found that one Gaya Prasad Srivastava the then U.D.A. and Group Incharge of the relevant Writ Service Section of the High Court, was responsible for non-compliance of the order dated 20.9.1993. The Registrar further informed that the erring official Gaya Prasad Srivastava has already retired from service on 31.10.1998. It was also stated in the report by the Registrar that no proceeding against the erring official is now possible in view of the provisions of Article 351A of Civil Services Regulations which is applicable to the said official.

8. Article 351A of Civil Services Regulations provides as under:

The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it. whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or Judicial proceedings to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that:

(a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment:

- (i) shall not be Instituted save with the sanction of the Governor;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.
- (b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re- employment, shall have been instituted in accordance with Sub-clause (ii) of clause (a), and
- (c) The Public Service Commission, U. P., shall be consulted before final orders are passed.

Explanation. -- For the purposes of this article:

- (a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to have been instituted:
 - (i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court; and
 - (ii) in the case of civil ' proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note.--As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned.

9. Since more than 4 years have lapsed since the retirement of Gaya Prasad Srivastava, no action in view of Article 351A of Civil Services Regulations against said Gaya Prasad Srivastava is possible.

10. Having come across with such a situation, this Court thought it proper that the High Court be impleaded as one of the respondents in this application for affording an opportunity to explain in what manner the loss occasioned to the applicant can be made good. The High Court and the State was required to show cause as to why the amount of interest from the date of deposit till the date of actual payment at the rate of interest accrued from time to time, be not charged and be paid by the State Government. Accordingly, the High Court was impleaded as a party.

11. Clearly, direction of the Court to keep the money in fixed term deposit was given with a view to protect the interest of the applicant; in case he is ultimately held entitled to get the same. Now by final decision in the writ petition, the applicant has been held entitled to the deposited amount. In view of this, the objection of the State counsel that the application is not maintainable as the writ petition has already been decided, has no force. It is true that the writ petition has been decided but, there was a direction of this Court while deciding the writ petition that the amount in deposit, has to be paid to the applicant. The entitlement of the applicant in this regard, as per order of this Court was, therefore, not only for the amount deposited by the State but also was for the interest which could have accrued on this amount if it had been put in fixed deposit as per order of this Court. That being the position, this Court could have given further direction even suo motu. Making an application by the applicant, therefore, cannot be a ground for rejection of his prayer.

13. Technically, the objection of the learned standing counsel that the State cannot be held responsible for making good this loss to the applicant. is correct because, the State Government had deposited the amount within time and the duty of putting the same in fixed term deposit was that of the Office of the High Court. But we have already found that since Gaya Prasad Srivastava the Group Incharge of the relevant section, has retired more than 4 years ago, proceedings on administrative side are not maintainable now. In view of the circumstances of the case, we do not consider it proper to saddle him with liability to pay.

14. The fact, however, remains that loss has accrued to the applicant on account of negligence on the part of an official of the Court. Interest of justice demands that

he must be compensated. We have, therefore, considered if the High Court can vicariously be held responsible for the negligence of its official and be directed to pay to compensate for the loss of interest to the applicant or it can claim sovereign immunity.

15. In our considered view although High Court as wing of the State can claim sovereign immunity in the matter of administration of justice but this immunity cannot be extended to such functions and activities which are not of judicial nature but are administrative or ministerial nature. The Judges and the Courts exercise sovereign judicial power but High Court employees entrusted with ministerial function cannot be protected under this umbrella of sovereign immunity.

16. In this regard, we would like to quote a passage from the Apex Court judgment in *N. Nagendra Rao and Co. v. State of A. P.* : AIR 1994 SC2663 :

25. But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept, of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in nineteenth century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other Juristic legal entity. Any watertight compartmentalisation of the functions of the State as 'sovereign and non-sovereign' or 'Governmental and Non-Governmental' is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for the sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligent. Needs of the State, duty of its officials and right of the

citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the 'financial instability of the infant American States rather than to the stability of the doctrine's theoretical foundation', or because of 'logical and practical ground', or that 'there could be no legal right as against the State which made the law' gradually gave way to the movement from 'State irresponsibility to State responsibility'. In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even material. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.

17. In the case of Achutrao Hart Bhau Khodaua and Ors. v. State of Maharashtra : [1996]2SCR881 , the Apex Court held the State vicariously responsible for the negligence of the doctor of a Government hospital. The Court held that running of a hospital or maintaining a hospital by Government is not an exercise of sovereign power so as to enable it to claim immunity from liability for tortuous act of its hospital employees.

18. On the basis of the discussions made above, we are also of the opinion, that the High Court in the instant case, is vicariously responsible for the negligence of its employees and consequently responsible to compensate the loss occurred to the applicant.

19. We are accordingly direct the Registrar of this Court to make payment of the original deposit with accrued interest of Rs. 3,70,906 to the applicant within 15 days of this order. We make it clear that the delinquent employee having retired since more than four years, shall not be proceeded against. Since the High Court has no financial autonomy and depends on the State Government for grant of funds, we further direct that the amount of interest being paid by the High Court to

the applicant shall be reimbursed by the State Government to the High Court within one month.

20. We further expect that adequate steps shall be taken by the Registry to prevent such lapses in future.

21. The application is accordingly disposed of finally.

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