

Someshwar Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-24-2005

Reported in : [2005(107)FLR1124]

Judge : N.K. Modi, J.

Appellant : Someshwar Singh

Respondent : State of M.P.

Disposition : Petition allowed

Judgement :

N.K. Modi, J.

1. Prayer in the petition is to quash the order dated 28.2.1998 (Annexure A-7) whereby the order dated 29-3-1994 (Annexure A-3) has been amended.

Prayer in the petition is to quash the orders dated 28.2.1998 and 16.3.1998, whereby the order dated 29.3.1994 has, been amended and the order dated 2-1.3.1998 whereby the petitioner has been reinstated be quashed.

2. Facts of the case are that petitioner was appointed on 19.8.1987 on the post of Extra Temporary Warder (Praha). The services of the petitioner were terminated vide order dated 22.3.1990. This order was challenged before the 'State Administrative Tribunal in OA No. 2011/90. Vide order dated 17.2.1994 passed by

State Administrative Tribunal, the order dated 22.3.1990, whereby the services of the petitioner have been terminated, was quashed with a further direction to reinstate the petitioner with full backwages. This order was challenged by the State Government. In compliance of this order, the order of appointment was issued on 29.3.1994, wherein it was mentioned that the petitioner is appointed for the period of 89 days. Thereafter, on 9.1.1995, back wages amounting to Rs. 93,306/- along with costs of the petition, were paid to the petitioner. Since, the appointment order was for 89 days, therefore, treating it that the order passed by the Tribunal on 17.2.1994 has not been complied with, petitioner filed the contempt petition which was registered as MA No. 136/94 before State Administrative Tribunal. During pendency of the contempt proceedings, again the services of the petitioner were terminated on 4.10.1996. In appeal filed by the petitioner before the departmental authorities, the services of the petitioner were reinstated with effect from 18.3.1997. Again on 27.3.1997, the petitioner was suspended. Vide order dated 1-10-1997, it was directed to pay the subsistence allowance to the petitioner. Vide order dated 16.9.1997 the petitioner was charge sheeted. Vide order dated 28.2.1998 when the contempt proceedings were pending, the order dated 29.3.1994, whereby the petitioner was appointed for a period of 89 days, was amended and appointment was substituted with reinstatement on the post of Permanent Prahri. Again on 16.3.1998, order dated 29.3.1994 was further amended and the word 'Permanent Prahri' was substituted by 'Additional Temporary Prahri' and it was also amended that the petitioner be taken back on service with effect from 22.3.1990, the first date when the petitioner was terminated. Vide order dated 31.12.1997, it was ordered that since subsistence allowance cannot be paid to the petitioner, therefore, his services be reinstated. Vide order dated 24.3.1998, suspension order was revoked and the petitioner was reinstated. On 22.12.1998 petitioner filed the present petition which is pending. Petitioner also challenged the order of suspension dated 27.3.1997 in OA No. 1267/97, which was dismissed on 7.3.2001 by SAT. Otherwise also, the aforesaid OA was infructuous because the order of suspension was withdrawn by the Government itself as the petitioner was reinstated on 24.3.1998. Prayer in the petition is that orders of amendment dated 28.2.1998 and 16.3.1998, whereby order dated 29.3.1994 was amended, be quashed and also the order dated

24.3.1998, whereby the petitioner was reinstated for 89 days, be quashed.

3. Learned Counsel submits that the other employees were regularized with effect from 28.6.1990 vide order Annexure A-13. Since the order of termination dated 22.3.1990 was quashed by SAT vide order dated 17.2.1994, therefore, petitioner is also entitled for reinstatement with backwages with effect from 28.6.1990. Learned Counsel submits that petitioner has not been paid salary from 4.10.1996. It was further submitted that from 27.3.1997, petitioner remained under suspension till 24.3.1998, but no subsistence allowance was paid and from 24.3.1998 though services of the petitioner were reinstated, but no salary has been paid.

4. Learned Counsel for the respondents Shri L.R. Bhatnagar was considered by the Selection Committee on 19.3.1990 and it was found that the petitioner is not fit for regularization. Learned Counsel submits that the present petition is filed on 22.12.1998 and the petitioner is claiming the benefits which were given to other employees vide order dated 28.6.1990 hence, the petition filed by the petitioner is hopelessly barred by limitation. Further submission of the learned Counsel is that conduct of the petitioner is not good as serious charges were levelled against the petitioner.

5. Contention of the petitioner is that question of consideration of case of petitioner could not arise (Sic)

State Administrative Tribunal and the petitioner was reinstated with full back wages. This order has not been complied with. In spite of issuing charge-sheet neither enquiry has taken place nor during suspension, subsistence allowance has been paid nor after reinstatement wages has been paid, while the petitioner is pursuing the matter regularly. In the circumstances, it cannot be said that petition is hopelessly barred by limitation.

7. In the circumstances, this petition stands allowed with the following directions:

1. Petitioner shall be treated as regular employee with effect from 28.6.1990 when similarly situated employees were regularised.

2. Petitioner will be entitled for payment of salary with effect from 4.10.1996 as regular employee. The amount payable to the petitioner will be paid within two months failing which it shall carry interest @ 12% per annum for which the dealing authority will be responsible.

3. Respondents shall pay costs of the petition which is quantified as Rs. 3,000/-.

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