

Const. Manvir Singh Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Feb-22-2006

Reported in : 2006(87)DRJ710

Judge : Mukul Mudgal and; H.R. Malhotra, JJ.

Appeal No. : W.P. (C) 8821/2005

Appellant : Const. Manvir Singh

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Barkha Babbar, Adv.

Advocate for Pet/Ap. : S.P. Sharma, Adv

Judgement :

Mukul Mudgal, J.

1. Rule DB. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. The petitioner's services were terminated by the order of dismissal dated 19th August, 1996 which was the subject matter of a decision of this Court rendered in WP(C) No.3663 of 1998 which was decided on 25th September, 2002. The operative portion of the said judgment dated 25th September, 2002 reads as

follows:-

20. For the reasons aforementioned, the impugned order cannot be sustained, which is set aside accordingly. The respondents herein are directed to re-instate the petitioner with all consequential benefits. This order, however, shall not preclude the respondents from taking appropriate action in accordance with law.

This writ petition is allowed with cost quantified at Rs.5,000/-.

3. Since the impugned order dated 19th August, 1996 was set aside and reinstatement of the petitioner with all consequential benefits was directed, the respondents were under an obligation in law to treat the petitioner as if he was on duty. However, it seems that apparently on 1st March, 2004 the petitioner was only paid a sum of Rs.33,863/- and costs of Rs.5,000/- was also paid. The rationale for such minimal payment to the petitioner is to be found in the respondents' counter affidavit wherein it has been stated that the petitioner was dismissed from service on 19th August, 1996 and consequent to his reinstatement he joined the duty in 72 Bn BSF with effect from 22nd December, 2002(which was pursuant to the judgment dated 25th September, 2002) which had become final and this period of absence without leave was regularized by commuting it to Extra Ordinary Leave(EOL) and this period of EOL was held not to be counted towards qualifying service for the purpose of pension, increment and EL which was however to be counted for the purpose of seniority. Accordingly the period subsequent to the order of dismissal dated 19th August, 1996 to 23rd November, 2003 has been wrongly treated as EOL period. Thus the petitioner has not been paid for the period which is covered by the judgment dated 25th September, 2002. In doing so the respondents have sat over in appeal over a Division Bench judgment of this Court which directed the reinstatement of the petitioner with all consequential benefits . Since the judgment dated 25th September, 2002 has become final the respondents were duty-bound to implement the said judgment without curtailing the rights available to the petitioner consequent to such judgment.

4. Accordingly we issue a writ of mandamus directing the respondents to treat the petitioner in service with all consequential benefits as if the order of termination did

not exist which was a mandate of the judgment of this Court dated 25th September, 2002. In paying this amount to the petitioner, the sum of Rs.33,863/- already paid to him on 1st March, 2002 shall be deducted. Accordingly the amount computed in pursuance of the full effect of the judgment dated 25th September, 2002 shall be paid to the petitioner on or before 7th May, 2006. In case the amount is not paid to the petitioner within the said stipulated period, the said amount will carry interest @ 6% per annum.

5. With the aforesaid directions, the writ petition stands disposed of accordingly. A copy of this order be given dusty to the counsel for the parties.

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