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Court : Rajasthan

Decided On : May-04-1992

Reported in : 1992(1)WLN354

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Writ Petition No. 2145 of 1988

Appellant : Kishan Singh

Respondent : State and ors.

Judgement :

Rajesh Balia, J.

1. The petitioner raised a very short issue.

The petitioner was dismissed by the Governor of Rajasthan, from the Rajasthan State Police Force services, by way of exercising powers conferred by the second proviso to Article 311(2) of the Constitution of India. Some of the dismissal orders were upheld by Rajasthan High Court, when challenged. In a bunch of civil appeals (Nos.1302, 1291 -1301 and 1303-25A of 1982) Amar Singh and Ors. v. State of Rajasthan Hon'ble Supreme Court disposed off the appeals with following directions:

The counsel for the State has agreed that an appellate authority not below the rank of a Deputy Inspector General of Police shall be constituted for with, and at any rate not later than one month from today, to entertain appeals from each of the appellants before us and to factually examine the justification of the orders of dismissal. Such appeals shall if presented within 30 days shall be taken to have been filed within limitation. As particulars of the designated appellate authority are not yet known, such appeals may be presented in the office of the Inspector General of Police, Headquarters and as soon as the designated authority is appointed, the papers may be sent to him. The appellants shall be given full opportunity to place the material in support of their respective cases with inference to records and unless the appellate authority desires oral evidence to be adduced, no appellant shall be entitled to adduce such evidence. We hope and trust that the appellate authority will look into the material with an open mind for coming to his decision. In these cases, if any, where the appellate authority decides to restore the dismissed police officer to service, he shall also decide as to how for the job period (date of dismissal to restoration) the appellant would be compensated. Such officer should at any rate have the benefit of condonation of break in service for purpose of pension and other retiral benefits, (emphasis supplied). In such cases where restoration to service is not granted each one of them would ordinarily be entitled to such compensation as the appellate authority would consider reasonable. Length of service, past performance and the record maintained in respect of each of the incumbents are relevant aspects to be taken into consideration in holding either way viz., whether the officer is to be restored to service of what the quantum of compensation should be.

2. In pursuance of the aforesaid directions, the petitioner filed appeal in terms of aforesaid directions. The appeal of the petitioner was considered by the Director General of Police, Rajasthan, who restored the petitioner in service and passed specific order and also decided the compensation to be paid to the petitioner, for the job period, that is, from the date of dismissal to the date of restoration. However, since the petitioner job period, that is, from the date of dismissal to the date of restoration. However, since the petitioner was not fully exonerated, further order was made in terms of Rule 54(4),[5] of the Rajasthan Service Rules, declaring that the period between the date of dismissal to the date of restoration to

service will not be treated on duty.

3. The petitioner apprehends that this order is likely to be construed to be contrary to the directions issued by Hon'ble Supreme Court, which, in un-equivocal terms state that those who have been restored to service, such officials shall, at any rate, have the benefit of condonation of break in service for purpose of pension and other retrial benefits.

4. Having considered the matter in entire perspective, I am of the opinion that the apprehension held by the petitioner is not well-founded. The directions of the Apex Court are in this regard very clear. It has been left to the authorities deciding appeals to fix what emoluments are to be paid operation of dismissal order and in that regard the order of the authority is final. It has also made clear directives that on the official being restored in service, such period during which the official remained out of job, will not be considered as break in service for the purpose of pension and other retrial benefits. The impugned order appears to have been passed only to comply with the provisions of Rule 54. In one of the matters which come up for consideration, the respondents themselves passed an order subsequently clarifying this position. Reference in this connection may be made to order passed in the case of Ranveersingh, which has been passed clarifying the position that the period during which the incumbent remained out of employment on account dismissal, shall be counted for the purpose of continuity in service, for pension, gratuity, annual grade increments and leave. This clarificatory order issued on 1.5.1989 in Ranveer Singh's case, in my opinion, is in consonance with the directions of Hon'ble Supreme Court and, this clarification applies to all such cases.

5. The writ petition, therefore, is disposed off with following observations that the period of absence from duty with effect from the date of dismissal to the date of restoration in the case of petitioner, will be counted for the purpose of pension, gratuity, grade increments and leave, in terms of the decision of Hon'ble Supreme Court dated July 30, 1987 referred to hereinabove and remain un-affected by the order passed under Rule 54 of the Rajasthan Service Rules.

