

Moti Lal Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-09-2010

Judge : Ferdino Inacio Rebello; Amreshwar Pratap Sahi, JJ.

Appeal No. : SPECIAL APPEAL DEFECTIVE No. 697 of 2003

Appellant : Moti Lal

Respondent : State of U.P. and Others

Judgement :

1. The appellant, a Constable of the Provincial Armed Constabulary, was terminated from service on 8th of July, 1973 after giving him one month's notice. The appellant had been terminated in the background that he had participated in the PAC revolt which had occurred in the year 1973. A large number of such Constables who were similarly situate, had approached this Court and certain directions were issued by the High Court to decide their representations and some writ petitions were also disposed of with a direction to reinstate such terminated employees.

2. The Constables fell into two categories, one who were permanent in service and the others who were treated to be temporary and their services had been dispensed with after giving one month's notice. The matter had been engaging the attention of the State Government pursuant to the aforesaid litigation, which was being contested and ultimately the State Government on its own issued a

Government Order on 7th September 1998 for reinstatement. This policy decision was followed by another clarification on 13th November, 1998 extending the benefit to permanent as well as temporary Constables, whose services had been dispensed with after giving one month's notice.

3. This policy decision led to a spate of writ petitions being filed before this Court. In some matters, the writ petitions were allowed and the termination orders were quashed, against which the State went up in Special Appeal. A bunch of these matters came to be decided by a Division Bench of this Court in the State of U.P. and Others Versus Gajadhar Pandey, reported in 2003(1) Education and Service Cases Page 221 (supra). The Special Leave Petition filed against the said decision has also been dismissed by the Apex Court. In the said decision, the State Government had taken a stand that these Police Constables had approached the Court after a lapse of more than 24 years, and therefore, this Court should decline to exercise discretion on the ground of laches. The aforesaid contention of the State was rejected by the Division Bench which is as follows :

"15. Having heard the learned counsel for the parties, we find that the services of the respondent - writ petitioners were terminated in the year 1973 by giving one month's pay in lieu of notice. They had approached this Court for the first time in the year 1997. All those police constables whose names were mentioned in the FIR and whose services were terminated on account of taking part in the PAC revolt after their acquittal were reinstated in service on account of the decision taken by the Government in the year 1996-97. These respondent - writ petitioners immediately thereafter approached this Court. In the first instance this Court directed the respondent - writ petitioners to make a representation before the concerned authorities. The representations were rejected and thereafter they had approached this Court by filing writ petitions giving rise to the present special appeals. Thus, it cannot be said that the respondent - writ petitioners are guilty of laches. It is to be remembered that our State is a welfare State. If the services of

those constables, who took part in PAC revolt and indulged in criminal activities can be reinstated by the State Government without their termination order having been set aside on account of a policy decision, the cases of the respondent - writ petitioners, who did not indulge in any criminal activity and whose services were terminated by giving one month's pay in lieu of notice stood in a better footing. The State ought to have reinstated such persons also. Thus, we are of the view that the State has acted arbitrarily in not reinstating them while reinstating other set of persons whose services were terminated in specific charge, the cause being common i.e. PAC revolt, and they had to approach this Court. Thus, it cannot be said that the respondent - writ petitioners were guilty of laches. The decision of the Hon'ble Supreme Court as relied upon by the learned Standing Counsel would not be applicable in the peculiar facts of this case, as the Hon'ble Supreme Court had dismissed the special leave petition in respect of similarly situate employees, namely, Chhavi Nath Singh and Narottam Singh Tomar, who had filed the claim petition before the U.P. Public Service Tribunal where the order of discharge was simpliciter like the present one."

4. The appeals filed by the State were dismissed and as noted above, the said judgement has been affirmed by the Apex Court.

5. From the impugned judgment of the learned Single Judge, it is clear that the appellant filed Civil Misc. Writ Petition No.47192 of 1999 claiming parity of reinstatement and for setting aside the order of dismissal in view of the policy decision of the State Government as also the decisions of this Court in similar matters. The writ petition was disposed of on 28th November, 2000 with a direction to the competent authority to decide the representation of the appellant.

6. The representation was rejected by the Senior Superintendent of Police on 30th March, 2001 against which the appellant preferred Civil Misc. Writ Petition No.47080 of 2002, which has given rise to the present appeal. The writ petition

filed by the appellant was clubbed along with a batch of writ petitions, in relation to such termination orders as also other Constables and all the writ petitions were dismissed. The appellant's writ petition was also dismissed on the ground of laches for having approached this Court challenging his termination after a lapse of more than 26 years.

7. Learned counsel for the appellant submits that the learned Single Judge had erroneously proceeded to reject the claim of the appellant on account of laches inasmuch as the appellant was similarly situate to those Constables in whose favour the decision had been rendered by this Court and affirmed in special appeal in the case of State of U.P. and Others Versus Gajadhar Pandey (supra). He further submits that they were also Constables who had approached this Court after a lapse more than 23 years and the State Government itself had taken a policy decision of reinstatement. In this view of the matter, it is urged that the State Government itself having taken a decision to extend the benefit after more than 25 years, therefore, there was no occasion for the learned Single Judge to have dismissed the petition of the appellant on the ground of laches.

8. Learned counsel for the appellant further submitted that the appellant is liable to be reinstated and further in view of the judgment of this Court passed in Special Appeal No.406 of 2010 (State of U.P. and Another v. Gopal Yadav) (supra), decided on 05.10.2010 the appellant deserves to be granted the reliefs as extended therein.

9. Learned Standing Counsel on the other hand submitted that the laches as indicated by the learned Single Judge in the impugned judgment leave no room for doubt that the delay was inordinate and remained unexplained and hence the appellant did not deserve any relief. He further submits that the impugned judgment does not call for any interference and the appeal deserves to be dismissed.

10. Having heard learned counsel for the parties, it is evident that the State Government itself came up with a policy to reinstate all such Constables. This policy decision was taken and accordingly those Constables who had not been given the benefit of the same, approached this Court by filing writ petitions. The

writ petitions were allowed but the question of back wages was left open as the State Government came up with a plea that a decision shall be taken separately with regard to back wages. Later on, the State Government took a policy decision on 15th April, 2004 not to give back wages to those Constables who had been reinstated. This policy decision dated 15th April, 2004 was set aside in the case of Ayodhya Rai Versus State of U.P. and Another, passed in Civil Misc. Writ Petition No.60949 of 2005, decided on 29th July, 2009. The issue with regard to payment of back wages and reinstatement was considered by us in the case of State of U.P. and Another v. Gopal Yadav (supra) decided on 5th of October, 2010. The order passed by us is quoted hereinbelow :

"The learned Single Judge by the impugned order 9.1.2003 noted that the respondent's services were terminated for his involvement in the PAC revolt which took place in May, 1973. The learned Judge then ordered that in the event the petitioner was not involved in criminal cases and no departmental enquiry was pending against him he shall be reinstated on his original post of Constable in PAC and will be taken back in service if he had not attained the age of superannuation and also the arrears of back wages shall be paid preferably within six months from the date of the order so recorded by the learned Judge.

The Court with regard to the back wages and retiral benefits was fully pleased to observe as under:

"Learned Standing Counsel has pointed out that the reference has been made to the State Government for taking the policy decision. The petitioner has to wait for the decision taken by the State Government. The advantage of back wages and other benefits of the petitioner shall depend upon the ultimate policy decision which may be taken by the State Government. "

11. The writ petition was ultimately disposed of on that basis.

12. Thus, it is clear that though in the earlier part of the order the learned Single Judge directing payment of back wages, yet in the later part of the order stated that the same shall be depend upon the policy decision. After that judgment during the pendency of this appeal, the State Government has taken a policy decision by its G.O. dated 15th April 2004.

13. Considering the above, in our opinion, the State cannot be aggrieved by the order of the learned Single Judge, as the State itself by its G.O. dated 7th September 1998 and 13th November 1998 had took a policy decision to reinstate all those (permanent and temporary both) whose services were terminated under Article 311(2)(c) of the Constitution of India.

14. If the respondent was not reinstated he shall be reinstated from the date of the order and he will be paid back wages from that date.

15. If the order of this Court has not been complied with on the date of the judgment dated 9.1.2003 the same will be treated for the purpose of payment of back wages and also for calculating other service benefits including post retiral benefits.

With the above observations the appeal is accordingly dismissed."

16. A perusal of the aforesaid order indicates that reinstatement has been allowed with effect from the date of the judgment as referred to therein namely 9th of January, 2003. Further the question of back wages has also been considered and the same date has been treated for the purpose of payment of back wages and calculation thereon.

17. The question relating to laches, in our opinion, would not arise inasmuch as the State Government itself took a policy decision in the year 1998 for the reinstatement of such Constables. This issue was raised and reinstatement was claimed, which culminated in the decision of State of U.P. and Others Versus Gajadhar Pandey (supra) and a number of Constables were reinstated. The Division Bench took notice of this fact that the Constables therein had approached immediately after there was an order of acquittal in respect of those who were

involved in the criminal cases and a policy decision was taken by the Government. In the instant case, the appellant approached this Court immediately after the declaration of the policy by the State Government in the year 1998 by filing his writ petition in the year 1999. In such a situation, the cause of action which arose to claim the benefit according to the State Government itself was in the year 1998. The appellant, therefore, cannot be said to have committed any delay in approaching this Court claiming reinstatement. The writ petition filed by the appellant was disposed of for deciding his representation. The observation made by the learned Single Judge that delay and laches had not been condoned by this Court in the judgment dated 28.11.2000, therefore, became immaterial inasmuch as the direction of this Court was complied with by deciding the representation of the appellant. The said decision was taken on 30th March, 2001 which was promptly assailed by the appellant in the writ petition giving rise to the present appeal.

18. Such being the facts of this case, the ground taken by the learned Single Judge to dismiss the writ petition on the point of laches and inordinate delay cannot be sustained.

19. Apart from this similarly situate Constables have been extended the benefit of reinstatement and back wages as noted above. Accordingly, in our opinion, the same relief deserves to be granted to the appellant. In that view of the matter, the impugned judgement insofar as it relates to the appellant Moti Lal passed in Civil Misc. Writ Petition No.47080 of 2002 dated 24.10.2003 is set aside. The termination of the appellant shall stand set aside. The appellant shall be entitled for reinstatement with effect from 9th of January, 2003, which is the date indicated in the judgment of State of U.P. and Another Versus Gopal Yadav (supra) and will also be entitled for payment of back wages to the aforesaid extent. The appellant, is stated to have attained the age of superannuation and therefore he shall be entitled to other emoluments in case the same is available in accordance with law, which shall be calculated accordingly within three months.

20. With the aforesaid observations, appeal is allowed.