

Raj Kumar Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-28-2010

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

Appeal No. : SPECIAL APPEAL No. - 764 of 2009

Appellant : Ravi Gaur at Ravindra Kumar Gaur

Respondent : State of U.P. and Another

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : P.N. Tripathi; Anurag Jauhari; Devendra Kumar; M.B. Saxena, Advs

Judgement :

1. Heard Sri N.C. Rajvanshi, learned Senior Counsel for the appellant and learned Standing Counsel for the respondent nos. 1, 2 and 3.

2. The appellant herein was one of the writ petitioners. The writ petition being Writ Petition No. 13503 of 1994 was filed praying for payment of salary on the ground that he had been appointed and his appointment was in accordance with law and an interim order was passed in the writ petition. Thereafter the writ petition appears to have been taken up on 16.9.1997 on which date the same was dismissed and the interim order was discharged. The order passed by the learned Single Judge is quoted below:-

"The writ petition requires a detailed finding of fact. This petition is not a suitable for this purpose. If the petitioner is so desired he may move before the Civil Court. The writ petition stands dismissed. The stay order is hereby discharged."

3. It appears that the dismissal of the writ petition was not known to the appellant. He continued to receive salary much thereafter as is evident from the document, which has been filed along with stay application in the present special appeal. The salary of the appellant was paid till as late as 2006. When the salary of the appellant came to be stopped, he made an inquiry and he came to know that the writ petition had been dismissed.

4. The contention raised is that the said dismissal order was an ex-parte order. A recall application was moved for setting aside the said order dated 16.9.1997 along with a delay condonation application.

5. Having entertained the said application, the learned Judge thereafter proceeded to reject the same on the ground that the affidavit filed in support of the restoration application makes vague assertions with regard to the knowledge of dismissal of the writ petition. Accordingly, the restoration application was rejected against which the present appeal has been preferred.

6. We have heard learned counsel for the parties.

7. From a perusal of the records, it appears that the appellant admittedly received salary up to 2006. It is, therefore, clear that neither the department nor the appellant appears to be aware of the dismissal of the writ petition on 16.9.1997. The grounds taken in the affidavit filed in support of the restoration application ought not to have been disbelieved. Accordingly, the reasons given in support of the delay condonation application are accepted and we allow the restoration application. The impugned order dated 20.11.2006 is set aside.

8. In view of the reasons given hereinabove and the fact that a suit for annulling an action for payment of salary by the authority is barred under the U.P. Act No. 24 of 1971, the judgment dated 16.9.1997 is also not sustainable and the same is set

aside.

9. The writ petition stands restored to its original number and shall be heard by the learned Single Judge having jurisdiction.

10. The appeal is allowed.

11. The writ petition be now placed before the learned Single Judge having jurisdiction, who shall decide the matter in accordance with law.

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