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Babu Lal Vs. State of Raj. and anr

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Court : Rajasthan Jodhpur

Decided On : Apr-17-2013

Appellant : Babu Lal

Respondent : State of Raj. and anr

Judgement :
[1] IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ORDER S.B. CIVIL WRIT PETITION NO.747/2013 Babu Lal Versus State of Rajasthan & Anr. Date of Order :

17. 04.2013 PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR Mr. Harish Purohit for the petitioner Mr. I.S. Pareek for the respondents BY THE COURT : By the order dated 11.03.2010, the Superintendent of Police, Barmer while exercising powers under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules placed the petitioner under suspension contemplating disciplinary action. During the period of suspension, the respondents paid subsistence allowance to the petitioner as prescribed. An another order dated 08.12.2011 was passed by the Superintendent of Police, Barmer instructing competent authorities to utilize service of all the suspended police officials/personnel in uniform to maintain law and order [2] conditions. The order aforesaid was made looking non-availability of adequate police Nafri. Under the order dated 08.12.2011, though instruction was given to utilize the services of the suspended police officials/personnel, however, their entitlement for grant of wages was confined to the extent of payment of subsistence allowance only. Being aggrieved by the order

dated 08.12.2011 and also the order of suspension dated 11.03.2010, this petition for writ is preferred. The submission of learned counsel for the petitioner is that after placing the petitioner under suspension by order dated 11.03.2010, the respondents have decided to utilize his services, then he cannot be treated as an employee facing suspension, as such, the instruction given to make payment of subsistence allowance only is illegal. No reply to the writ petition has been filed on behalf of the respondents. The factual position mentioned above is not at all disputed. The petitioner was placed under suspension vide the order 11.03.2010 and under the order dated 08.12.2011, competent authorities were instructed to avail services of the suspended police officials/personnel in maintaining law and order conditions. While doing so, they were made entitled to have subsistence allowance only. The resultant of the order [3] dated 08.12.2011 is that the suspended police officials/personnel, through are discharging regular duties, but are getting subsistence allowance only and they are yet being treated under suspension. During currency of suspension the relationship of master and servant exists, but the employer do not utilize services of the employee concerned as an interim measure to avoid his interference in the proceeding relating to disciplinary action or otherwise to maintain fairness in such process. Once the employer decides to utilize the services of a suspended employee, then suspension does not remain in currency. In the case in hand, the respondents in pursuant to the order dated 08.12.2011 utilized services of the petitioner to discharge official duties, meaning thereby that the suspension made earlier is to be treated as revoked. In that eventuality, no just reason exists to deny payment of complete wages to such employee. In view of whatever discussion above, this petition for writ deserves acceptance. Accordingly, the same is allowed. The suspension of the petitioner made under the order dated 11.03.2010 is required to be treated as revoked from the date the respondents utilized his services in pursuant to the order dated 08.12.2011. The petitioner shall be [4] entitled for complete wages from the date his suspension is treated as revoked. However, it is made clear that the respondents shall be at liberty to post the petitioner at any appropriate place in District Barmer to avoid any kind of interference by the petitioner in pending disciplinary proceedings. No order as to costs. [GOVIND MATHUR],J.

Pramod [5]

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