

CASE NO.:
Appeal (civil) 4904 of 2007

PETITIONER:
UNION OF INDIA & ORS

RESPONDENT:
K.N. PRAKASAN

DATE OF JUDGMENT: 06/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO. 4904 OF 2007

Heard the parties at length.

The respondent was appointed under the appellant-Union of India as Junior Engineer in the Department of Lighthouses and Lightships, Mumbai on 10/02/1983. By an order dated 01/03/1993, he was charge-sheeted with article (1) and (2) of the charge. The enquiry officer found that both the charges (1) and (2) were proved against the respondent. His services were terminated on 23/08/1993 preceded by an enquiry. In the interregnum, he filed an appeal before the appellate authority. The appellate authority remanded his case to the disciplinary authority to pass a fresh order. Thereafter on 10/02/1994, the disciplinary authority passed a fresh order terminating the service of the respondent. The appeal was dismissed on 24/08/1994. Aggrieved thereby, he filed original petition before the Central Administrative Tribunal, Bombay. By an order dated 7/12/2000, the tribunal again remanded the case to the appellate authority to pass an order supported by
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reasons. Thereafter, a final order was passed on 26/03/2001 by the appellate authority reinstating the respondent. While reinstating the respondent, the appellate authority directed that the period from 10/02/1994 to 26/04/2001 shall not be treated as on duty. The appellate authority further directed that the respondent will be paid the pay and allowances equal to subsistence allowance and other allowance admissible under Fundamental Rule 53, for period of his absence from duty from 10/02/1994 till he takes over the charge, including the period of suspension, preceding his removal and that this period will be treated as not on duty. The pay and allowances to be paid to the respondent will further be subject to other conditions as laid down under Fundamental Rule 54(in short 'F.R. 54'). By the aforesaid order, the respondent was also given liberty to submit a representation before the competent authority.

Pursuant to the aforesaid order, the respondent joined the service on 27/04/2001. He also filed a representation as directed which was rejected by the authority on 08/06/2001. Aggrieved thereby, he preferred another O.A. before the tribunal. The tribunal, after hearing the parties, allowed the application and directed the appellant to treat the period of absence from 10/02/1994 to 26/04/2001 as on duty for all purposes including pay and allowances and directed the appellant to issue orders accordingly. The appellants writ
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petition ended without any result. Hence this appeal by special leave.

At the outset, we notice that the tribunal did not at all considered the effect and impact of the provisions of F.R.54 in the facts and circumstances as recited above. When the provisions of F.R.54 was pointed out, the tribunal simply brushed it aside saying that F.R.54 was not applicable, albeit, without considering the order passed by the appellate authority which directed that other allowances of the respondent shall be decided in terms of the provisions of F.R.54.

F.R.54(4) reads as under:-

"In cases other than those covered by sub-rule(2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired
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or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving, notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice."

On reading of the aforesaid provision it clearly emerges that if the dismissal, removal or compulsorily retirement is set aside by the appellate authority or reviewing authority solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, as may be determined by the competent authority.

In the present case, undisputedly, the order of termination of the respondent was set aside for non-compliance of the requirements of Clause (1) and (2) of Article 311 of the Constitution. In that view of the matter, we are clearly of the opinion that in such a situation the provisions of F.R.54 was clearly attracted.
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Counsel for the respondent has referred to a decision of this Court rendered in Union of India Vs. Madhusudan Prasad, (2004) 1 SCC 43 and contends that the F.R.54 will have no application in the present case and since the respondent was directed for reinstatement he was entitled to backwages for the period he was out of service. We have gone through the said judgment. In Madhusudan Prasad case (supra), the respondent was removed from service without any enquiry and he was not even given a show-cause notice prior to his dismissal from service. Therefore, it is different from the facts of the present case. In the present case, as already stated, respondent's services was done away with preceded by an enquiry. His termination was set aside only on the ground of non-compliance of requirements of Clause (1) and (2) of Article 311 of the Constitution. Therefore, the ratio in Madhusudan Prasad case (supra) will not be

applicable in the facts of the present case.

Learned counsel for the respondent has also referred to another decision of this Court rendered in U.P. State Brassware Corpn. Ltd. & Anr. Vs. Uday Narain Pandey, (2006) 1 SCC 479. In that case, this Court was considering the6.

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termination of a workman in violation of Section 25-F of the Industrial Disputes Act, 1947. The ratio of decision in Uday Narain Pandey case (supra) is also not applicable in the facts of the present case.

In the result, this appeal is allowed. The orders of the High Court and tribunal are set aside. No order as to costs.