

CASE NO.:
Appeal (civil) 3888 of 2007

PETITIONER:
SUKHDEO PANDEY

RESPONDENT:
UNION OF INDIA & ANR

DATE OF JUDGMENT: 24/08/2007

BENCH:
C.K. THAKKER & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 3888 OF 2007
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 15065 OF 2006

C.K. THAKKER, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated May 15, 2006, passed by the High Court of Jharkhand at Ranchi in Writ Petition (S) No. 4784 of 2005. By the said order the Writ Petition filed by the appellant herein was dismissed by the High Court.

3. Short facts giving rise to the present appeal are that the appellant was appointed as Extra Departmental Branch Post Master (hereinafter referred to as 'EDBPM') in 1964. The appellant appeared in the Departmental Promotion Examination for the promotional cadre (Class III) of Postman and allied services from Class IV. On April 30, 1969, the appellant, along with twenty two other candidates, was declared successful and eligible for promotion to the post of Postman and allied cadre. But it was alleged that there were some irregularities in conducting the examination and accordingly the said examination was cancelled. Consequently, the appellant could not be appointed as Postman. A true and correct copy of the final selection and approved list of candidates for appointment to the post of Postman and allied cadre had been annexed by the appellant along with the appeal.

4. It is the case of the appellant that one Deoraj Ram, the then Inspector of Post Offices lodged a false complaint against him alleging that the appellant had committed an offence punishable under Section 467 read with Section 469 of the Indian Penal Code. In view of pendency of the case, the appellant was not allowed to join duty. The police, after investigation, found that no offence had been committed by the appellant. A final report was submitted on April 24, 1973 by the police which was accepted by the Court. The Inspector of Post Offices then filed a protest report which was re-inquired and re-investigated and again a final report was submitted by the police on September 2, 1975 in favour of the appellant which was again accepted by the Court. Meanwhile, on August 16, 1973, a departmental charge-sheet was served on the appellant in respect of the aforesaid allegations. The appellant filed his reply

denying such allegations. According to the appellant, without holding any inquiry, he was arbitrarily removed from service in May, 1977. A Departmental Appeal filed by the appellant came to be dismissed on September 27, 1977. He, therefore, approached the High Court of Patna at Ranchi Bench by filing petition under Article 226 of the Constitution. The High Court, on August 7, 1984 allowed the petition, quashed and set aside the order of removal by granting liberty to the authorities to pass fresh order in accordance with law. Even at that stage, the Department did not permit the appellant to join duty on one pretext or the other. Finally, by an order dated September 21, 1991, the Postmaster (HSC), Gridih Head Quarter appointed the appellant as Reserve Postman in the cadre of Postman on temporary basis. He continued to hold the said post thereafter. Since the appellant was not paid salary during the pendency of the proceedings, he filed a petition being C.W.J.C. No. 4305 of 2000 in the High Court of Patna for payment of his dues. The High Court, however, directed the appellant to approach the Central Administrative Tribunal. The appellant, therefore, filed Original Application No. 88 of 2002 for arrears of salary and other benefits. According to the appellant, as a counter blast, the Superintendent of Post Offices, respondent No.2 herein, issued a notice to the appellant on February 17, 2003 to show cause as to why he should not be ordered to join the post of EDBPM instead of Postman. The appellant replied to the show cause notice on March 5, 2003, inter alia, contending that he was rightly placed in the cadre of Postman and he had worked for about twelve years and there was no irregularity in his reinstating as Postman. The respondent No.2, however, without considering the reply in its proper perspective and without considering the fact that the appellant had worked for more than a decade as Postman, reverted him as EDBPM on March 7, 2003. The appellant, therefore, filed Original Application No. 78 of 2003 against the reversion. The Tribunal by a common order dated April 21, 2005 dismissed both the applications. The High Court, as mentioned above, dismissed the writ petition filed by the appellant against the Original Applications and hence the appellant has approached this Court.

5. Notice was issued by this Court on September 1, 2006 and thereafter the matter was ordered to be placed for final hearing and accordingly the matter is before us.

6. We have heard learned counsel for the parties.

7. Learned counsel appearing for the appellant contended that the Tribunal as well as the High Court were wrong in dismissing the petitions filed by the appellant and in not granting benefit to him. It was submitted that so far as payment of salary is concerned, since the order of removal passed against the appellant was set aside by the High Court, he was entitled to payment of salary and other allowances. The Tribunal, in the circumstances, was not justified in refusing the relief in a petition which was filed by the appellant in O.A. No. 88 of 2002. The further grievance of the appellant was that the Tribunal and the High Court were wrong in not allowing the appellant to continue as Postman. He was working as EDBPM, appeared in the Departmental Promotion Examination and cleared it in April, 1969. His name was included in the Select List. He was, therefore, entitled to appointment as Postman. He was not

appointed because of pendency of criminal proceedings against him and as soon as the final report was submitted and accepted by the Court, he was entitled to reinstatement and he was actually reinstated albeit belatedly. It was urged that even if there was irregularity in selection process and the persons selected in the said examination were not appointed to the promotional cadre of Postman, it was not the fault of the appellant and, therefore, he should not suffer. The respondents reinstated the appellant and appointed him as Postman and the appellant worked on the said post for more than a decade. He should not thereafter have been reverted as EDBPM as done in 2003. The said action was, therefore, illegal and the Tribunal and High Court were wrong in not setting aside the said action. Finally, it was submitted that the appellant is on the verge of retirement and even if this Court comes to the conclusion that he ought to have been reinstated as EDBPM and was wrongly placed in the cadre of Postman, taking into account the fact that the appellant had actually worked for about fifteen years by now as Postman and within a short period he will retire, the present status of the appellant may be ordered to continue by taking sympathetic view of the matter.

8. Learned counsel for the respondents, on the other hand, supported the action taken by the authorities. It was submitted that the appellant was working as EDBPM. He was removed from service. It was stated that the order was no doubt set aside by the High Court and he was ordered to be reinstated and actually reinstated but it was a mistake on the part of the respondents in reinstating the appellant as Postman instead of EDBPM which post he had never held prior to his removal. It was also stated that when the selection process was held to be vitiated because of irregularities and no person from the said list was promoted as Postman and allied cadre, the appellant had no right over that post. A show cause notice was, therefore, issued to him, explanation was sought and after considering the matter, he was reverted to his substantive post of EDBPM. It was, therefore, submitted that there is no illegality in the order and the Tribunal as well as the High Court were right in dismissing the petitions filed by the appellant.

9. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed.

10. So far as the claim of the appellant to his substantive post of EDBPM is concerned, since the order of removal was set aside by the High Court, he was entitled to the benefits as EDBPM. But his grievance that he ought to have been continued as Postman which was the promotional post from EDBPM, has no force. Indisputably, the appellant was appointed as EDBPM. He had cleared the examination for the promotional cadre of Postman but because of irregularities in the selection process, no effect was given to the said selection and none could claim the benefit from the list prepared at the said selection process which was vitiated. It was, therefore, obvious that when reinstatement of the appellant was effected, he ought to have been reinstated to the substantive post held by him which was EDBPM.

11. In this connection, it is pertinent to observe that the Central Administrative Tribunal considered this aspect and rightly observed thus;

"No doubt that the applicant was found fit for promotion to the cadre of Postman vide Annexure A/1, but as made clear in the written statement, that order was withdrawn because of some irregularities. There is nothing on record to show that the withdrawal order was ever rescinded. After order of the Hon'ble High Court, aforesaid when the applicant requested for his re-engagement, the concerned official at Giridih, keeping in view of the order at Annexure A/1, posted him to the post of Postman, which was not only irregular, but without any legal basis. It has been admitted that prior to that posting, he had never worked in the cadre of Postman on account of the order at Annexure A/1. It is obvious, therefore, that the applicant should have been reinstated in the post of EDBPM which he was holding prior to his removal from service".
(emphasis supplied)

12. The Tribunal, in our opinion, was also right in observing that the contention of the appellant that he had worked as postman for a substantially long period would not help him since he had worked on the said post illegally and irregularly which was detected after a long period. Since he had no right to hold the said post, he could be reverted to his substantive post and the respondent authorities were right by taking such course, particularly when the said action was taken after due observance of principles of natural justice and fair play. A notice was issued to the appellant to show cause as to why he should not be reverted to his substantive post, his explanation was sought and thereafter the impugned action was taken. We are, therefore, unable to hold that by reverting the appellant from the cadre of Postman to a substantive cadre of EDBPM, any illegality had been committed by the respondents.

13. At the same time, however, it is clear that the appellant has worked for more than a decade as Postman. Relying on a decision of this Court in *Dr. M.S. Mudhol & Anr. v. S.D. Halegkar & Ors.*, (1993) 3 SCC 591, it was contended that the said position may be ordered to continue. In *M.S. Mudhol*, one B did not possess requisite qualifications to be selected for the post of Principal in a school. The Selection Committee, however, considered his claim and appointed him as Principal. B continued to occupy the post almost for a decade. A challenged the selection and appointment of B by seeking a writ of quo warranto. On behalf of B it was, inter alia, contended that since he had worked for quite some time holding the post, he should not be disturbed from the position.

14. The Court also stated; "The post of the Principal in a private school though aided, is not of such sensitive public importance that the court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable".

15. The learned counsel for the appellant contended that the proposition of law laid down in *M.S. Mudhol* would apply with equal force in the case on hand inasmuch as the cadre of Postman also cannot be said to be of so much significance that the appellant who is to retire shortly should be disturbed and should not be allowed to continue for some time more.

16. Though we are of the view that the order passed by the Tribunal and confirmed by the High Court is not contrary to law or otherwise illegal, on the facts and in the circumstances of the case, we direct the respondents to continue appellant as Postman on which he was reinstated about fifteen years back from today.

17. Before parting with the matter, however, we may make one thing clear. From the record, it appears that after the appellant was reverted from the cadre of Postman to his substantive post of EDBPM, he has not joined duty and has not worked. No interim relief was granted by any court including this Court in his favour. In the circumstances, it was obligatory on him to report for duty as EDBPM. He, however, failed to do so. We, therefore, hold that if the appellant has not worked, he will not be paid salary for the period for which he has not worked. It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of 'no work, no pay' is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied. In the present case, though the appellant ought to have joined as EDBPM, he did not do so. He, therefore, in our considered opinion, cannot claim salary for that period. But he will now be allowed to work as Postman. He will also be paid salary as Postman but we also hold that since the action of the respondent authorities in reverting him to his substantive post of EDBPM was strictly in consonance with law, the appellant would be entitled to pensionary and other benefits not as Postman but as EDBPM which post he was holding substantively.

18. The appeal is accordingly partly allowed to the extent indicated above. On the facts and in the circumstances of the case, there shall be no order as to costs.