

CASE NO.:
Appeal (civil) 1340 of 2008

PETITIONER:
M.D., U.P. Shram Evam Nirman Sahkari S. Ltd.

RESPONDENT:
Dev Prakash Tewari & Ors.

DATE OF JUDGMENT: 15/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R
(Arising out of SLP(C) NO. 5205/2006)

Leave granted.

Aggrieved by the judgment and order dated 10th January, 2006 passed by the High Court, this appeal is preferred by the Employer. The respondent was dismissed from service by an order dated 27th April, 1988 preceded by an inquiry. His writ petition was allowed by the High Court mainly on the ground of violation of the principle of natural justice as no proper opportunity had been afforded to the respondent.

The High Court, however, after setting aside the order of dismissal, gave the appellant liberty to initiate a fresh inquiry but directed the payment of full back wages and reinstatement.

The order of the High Court, in our view, is not in accordance with law settled by a Constitution Bench of this Court in the case of Managing Director, ECIL, Hyderabad and Ors. vs. B Karunakar and Ors. reported in 1993 (4) SCC 727. The Constitution Bench of this Court considered a similar question in that case and held that the reinstatement of Government servants in such cases is for the purpose of making fresh inquiry. While inquiry is in progress, he can
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be placed under suspension. This Court also held that in such a situation the employee can only get subsistence allowance in accordance with law. This Court further held that with regard to payment of back wages, it is subject to the result of the fresh inquiry, and therefore, no back wages can be directed to be paid at that stage.

In view of the principle of law settled by this Court in the aforementioned case, the order of the High Court directing payment of back wages is not tenable in law and the same is set aside.

The appeal is, accordingly, allowed.

We, however, observe that the inquiry may be expedited.