

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2392 OF 2009
(Arising out of SLP(C) No. 24225 of 2007)

Sharda Singh

.....Appellant

Versus

State of U.P. & Ors.

.....Respondents

ORDER

Leave granted.

- 2) Challenging the judgment and order passed by the High Court of Allahabad in Writ Petition No.4436 (S/S) of 2005 dated 05.04.2007, the appellant is before us in this appeal.
- 3) The appellant was working as Collection Amin. While in service, he was served with a charge memo, inter-alia alleging, that, instead of depositing the amount by himself, he got it deposited through Peon. After holding an enquiry, he was visited with a minor penalty. Adverse entry in his confidential records by District Magistrate,

Sitapur vide his order dated 31.10.2003. In the same order, it was informed to the appellant that payment of back wages during the period of suspension will be determined separately. Aggrieved by the order so passed, the appellant had preferred appeal before the appellate authority as provided in the Rules. The appellate authority vide his order dated 04.04.2005 has dismissed the appeal of the appellant.

- 4) There is yet another aspect of the matter that requires to be noticed. The competent authority by order dated 13.09.2004 had rejected the claim of the appellant for back wages during the period of suspension till the date of reinstatement into service, only on the ground, that, the appellant had not performed any work during the period of suspension. This order is also confirmed by the first appellate authority vide his order dated 04.04.2005.
- 5) The appellant had called in question the order passed by the appellate authority dated 04.04.2005 and the orders passed by the District Magistrate, Sitapur dated 31.10.2003 and 13.09.2004 and further for a direction to the respondents to pay the full amount of salary for the period, when appellant was kept away from service by an order of

suspension dated 22.10.1998, by filing a writ petition before the High Court.

- 6) The High Court, vide its order dated 05.04.2007 has allowed the writ petition in part by quashing the order dated 04.04.2005 passed by Commissioner, Lucknow Division, Lucknow (Appellate authority) and has declined to quash the order dated 31.10.2003 and 13.09.2004 passed by District Magistrate, Sitapur.
- 7) We have heard learned counsel for the parties.
- 8) The order passed by the appellate authority dated 04.04.2005 is a composite order. In the said order, the appellate authority has considered the order passed by the District Magistrate dated 31.10.2003 wherein he has imposed a minor penalty of making adverse entry in the service records and the order dated 13.09.2004, wherein the same authority has declined to order the payment of salary during the period when appellant was kept out of service and has confirmed the same vide his order dated 04.04.2005. In that view of the matter, the order passed by the District Magistrate has merged with the order passed by the appellate authority (See Commissioner of Wealth Tax Vs. Mrs. Kasturbai Walchand and Ors. 1989 Supp (1) SCC 640, Devi Singh Vs. Board of Revenue 1994 (1) SCC 215,

Chandi Prasad and Ors. Vs. Jagdish Prasad and Ors. (2004) 8 SCC 724). That order passed by the appellate authority is set aside by the High Court. Therefore, the only inference that can be drawn is, that the order passed by the District Magistrate, Sitapur dated 31.10.2003 and the order passed on 13.09.2004 is set aside by the High Court. In our view, having set aside the order dated 04.04.2005, there is no reason for the Court to decline to set aside the order passed by the District Magistrate, Sitapur dated 31.10.2003 and the order dated 13.09.2004. When an appeal is filed before the appellate authority against an order passed by the District Magistrate, the impugned order merges in the order passed by the appellate authority, when the appeal is disposed of on merits. When that order of the appellate authority is set aside, the natural consequence is that the orders passed by the District Magistrate also becomes inconsequential. Therefore, the High Court was not right in refusing to set aside the order passed by the District Magistrate dated 31.10.2003 and the order dated 13.09.2004. At this stage, we must observe that the High Court while deciding the writ petition has given importance only to the order passed by the District Magistrate dated 31.10.2003 and there is no discussion whatsoever with regard to the claim made by

the appellant for arrears of salary for the period when he was kept out of service. Therefore, it may not be proper to held, the Court has also set aside the order passed by the District Magistrate dated 13.09.2004.

- 9) The next question that falls for our consideration is, whether the appellant is entitled for full back wages/salary, during the period of suspension till the date of passing the order of reinstatement into service, when he was exonerated of the charges framed against him by the disciplinary authority. The competent authority has rejected the claim of the appellant on the ground that during the period of suspension, the appellant has not worked and therefore by applying the principle of 'no work no pay', has rejected the claim of the appellant for payment of arrears of salary. This view is confirmed by the appellate authority while passing the order dated 04.04.2005. This portion of the order was also questioned by the appellant before the High Court and also had made specific prayer to annul that portion of the order passed by the District Magistrate and confirmed by the appellate authority. The Court, as we have noticed earlier, has declined to entertain this specific prayer of the appellant and for doing so, the Court has not stated any reason whatsoever. It seems to us that the view taken by the High Court cannot be sustained. The

Court while declining to set aside the order dated 13.09.2004 passed by the District Magistrate, Sitapur could have sustained the order passed by relying on the rules which governs the parties to the lis and in the alternative on the legal principles evolved by this Court. This appears to be not even attempted by the High Court. We say so for the reason, that, a Government servant exonerated of the charges framed against him cannot be deprived of any portion of his pay for the period of suspension. (see State of West Bengal Vs. Bata Krishna Burman AIR 1971 SC 156). Then again there could be a rule or regulation which may provide, that, during the period of suspension, an employee would be entitled only for suspension allowance, dehors the ultimate result of the enquiry proceedings. This grey area either should have been determined by the Court or should have asked the authorities to determine the claim with reference to the prevailing rules/regulations.

- 10) In the aforesaid circumstances, we are unable to agree with the cryptic order passed by the High Court. In the facts and circumstances of the case, what should have been done by the High Court was to decide the issue with reference to the rules/regulations, which governs the parties or direct the respondents to reconsider the

issue of payment of salary during the period of suspension till the order dated 31.10.2003, in accordance with law and also in accordance with the provision of Financial Handbook which governs the parties.

- 11) In the result, the appeal is allowed in part and the impugned order passed by the High Court in declining to set aside the order passed by the District Magistrate, Sitapur dated 31.10.2003 is set aside. In so far as the order passed by the District Magistrate dated 13.09.2004 which has culminated in the order passed by the appellate authority is set aside and the matter is remanded back to the District Magistrate, Sitapur to consider the claim of the appellant for payment of back wages/salary for the period 22.10.1998 to 31.10.2003 in accordance with law and also the rules/regulations which governs the parties to the lis. In the circumstances of the case, there is no order as to costs. Ordered accordingly.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

New Delhi,

April 13, 2009.

8

JUDIS