

(1)

Date of decision : November 15, 1990.

Versus

For the applicant ... M/s. Aswini Kumar Misra,
S.K. Das, S.B. Jena, Advocates.

For the respondents... Mr. Ashok Mohanty
Standing Counsel (Central)

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN
AND

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

© 2000 Blackwell Science Ltd

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *NO*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

B.R.PATEL, VICE-CHAIRMAN. The circumstances leading to this case, briefly stated, are as follows: The applicant had earlier moved the Hon'ble High Court of Orissa in O.J.C.No.1559 of 1985 which ~~was~~ subsequently stood transferred to the Tribunal and renumbered as T.A.39 of 1987. In that case the Tribunal passed the following orders.

" ... it is accordingly ordered that the petitioner is permitted to withdraw his letter of resignation and it is further directed that the concerned authorities may absorb him to the post which he was holding on 2.12.77 before he tendered his resignation. While passing such an order we would make it clear that

[Signature]

from 2.12.77 till the date of joining the petitioner in the post which would be given to him, the petitioner will not be entitled to any remuneration on the principle 'no work no pay'."

To make the matter clear we would like to state here that the applicant who was a Junior Clerk in the National Savings Organisation joined the service on 18.8.1972 and was confirmed on 1.10.1975. He submitted resignation on 2.12.1977 but before it could be accepted he withdrew the resignation on 5.10.1984. Being aggrieved with the orders of the Tribunal the Department took the case to the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 9415 of 1987. The Hon'ble Supreme Court passed the following orders.

" After hearing counsel on both sides and also perusing the order of the Tribunal, we decline to interfere in this special leave petition. The special leave petition is therefore dismissed.

We are told that the respondent has since been reinstated into service from 1st June, 1987. We, however, make it clear that he is not entitled to claim seniority over others by claiming antecedent service."

From the order of the Tribunal and the order of the Supreme Court extracted above it is clear that the applicant was reinstated into service with effect from 1.6.1987 after the Tribunal's order was passed on 12.5.1987. The present dispute relates to fixation of pay of the applicant on reinstatement into service.

2. The respondents have maintained that by virtue of the order of the Hon'ble Supreme Court all previous service have been quashed and his pay should be fixed at the initial stage of the scale of pay of Rs. 950-1500/- as prescribed for the post.

Prakash

3. We have heard Mr. Aswini Kumar Misra, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel (Central) for the respondents and perused the documents. The facts are admitted. It is only centering round the interpretation of the orders passed by the Hon'ble Supreme Court which has been quoted above. Mr. Mohanty says that the effect of the order of the Hon'ble Supreme Court is that the previous service of the applicant should not be taken into account not only for the purpose of seniority but also for the purpose of his pay fixation and his pay should be fixed at the initial of the scale of pay. This has been controverted by Mr. Aswini Kumar Misra whose submission is that the Hon'ble Supreme Court's order relates only to the matter of seniority. We have read very carefully the order of the Hon'ble Supreme Court. Supreme Court order refers only to seniority. At the cost of repetition we would like to say that the Hon'ble Supreme Court has stated;

" He is not entitled to claim seniority over others by claiming antecedent service."

There is, therefore, absolutely no doubt that the precondition imposed by the order of the Hon'ble Supreme Court relates only to the claim of the applicant for seniority and it has nothing to do with the pay fixation. If we go by the submission made by Mr. Mohanty, an absurd situation would arise inasmuch as the officer who was getting Rs. 1050/- on 2.12.1977 when he tendered his resignation would now get Rs. 950/- which is the initial of the scale. For these reasons we are of the firm view that the pay of the applicant on his reinstatement should



be fixed at Rs.1050/- which he was getting before he
tendered his resignation. In the result, consequently,
we quash Annexures-3 & 4. The application is accordingly
disposed of leaving the parties to bear their own costs.

[Signature]
.....15/11/90
Member (Judicial)



[Signature]
.....15.11.90
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 15, 1990./Sarangi.