

**AFR**

Court No. - 9

Case :- WRIT - A No. - 23468 of 2013

Petitioner :- Ram Lakhan Singh

Respondent :- State Of U.P.& 3 Ors.

Counsel for Petitioner :- Daya Shankar Mishra, Chandrakesh Mishra

Counsel for Respondent :- C.S.C.

**Hon'ble Mahesh Chandra Tripathi, J.**

1. Heard Shri Daya Shankar Mishra, learned counsel for the petitioner and Shri Pankaj Rai, learned Additional Chief Standing Counsel for the respondents.

2. By means of present writ petition, the petitioner has prayed for quashing the impugned order dated 01.3.2013 passed by respondent no.2, by which the claim of the petitioner has been rejected, and the order dated 30.11.1974 by which his services were terminated. He has further prayed for a writ of mandamus directing the respondents for payment of salary and other consequential benefits including the benefits of 6th Pay Commission.

3. Brief facts, giving rise to the present writ petition are, that the petitioner was initially recruited as Constable in 4th Battalion, Provincial Armed Constabulary (PAC) on 16.1.1956, and after completion of nine months' training, he had been discharging his duties as Constable in PAC. It has been averred in the writ petition that even at the time of war with China in the year 1962, the petitioner was also deputed at the frontiers. Thereafter, he was restored back to the 28th Battalion, PAC, Chunar, Mirzapur and had been given training for Head Constable in the year 1969, which he had completed satisfactorily in the year 1970.

4. It has been alleged that the petitioner along with other Constables of PAC were involved in an incident, which is known as 'PAC revolt' and had occurred in the year 1973. The first information report was lodged against the petitioner along with other Constables as Case Crime Nos. 111, 112, 113, 114 and 115 of 1973 under Section 6 (C), 7 (C) of P.A.C. Act, 1948; Police Force (Restriction of Rights) Act, 1966 and Section 34/43 of Indian Defence Act. Due to involvement in the aforesaid cases, the petitioner's services were dispensed with by the order of Hon'ble Governor of Uttar Pradesh dated 30.11.1974 exercising powers

under Article 311 (2) (C) of Constitution of India on the ground that it was not in the interest of security of the State to keep to the petitioner in service, and on the same reasoning the enquiry was also contemplated under proviso to sub-clause (2) of Article 311 of Constitution of India. The petitioner was convicted by the trial court but subsequently in the appeal he was acquitted vide judgment and order dated 27.2.1996. After his acquittal the petitioner had approached to the Commandant, 26th Battalion, PAC, Gorakhpur for reinstatement. Thereafter the petitioner filed a Writ Petition No.43463 of 1997, which was finally disposed of on 12.12.2000 directing the respondent i.e. Commandant, 26th Battalion, PAC Gorakhpur to decide the claim of the petitioner. Again the petitioner had approached this Court by means of Writ Petition No.76652 of 2011 (Ram Lakhan Singh vs. State of UP and others). The said writ petition was disposed of vide order dated 03.1.2012 directing the Inspector General of Police, UP, Lucknow to take appropriate decision on the claim of the petitioner. By means of impugned order dated 03.1.2013 the claim of the petitioner has been rejected.

5. However, in the present case the termination is not based on the conviction of the petitioner in a criminal case but in fact his services had been dispensed with on various charges of invoking the provision of Article 311 (2) (c) of Constitution of India. The provision of Article 311(2)(c) of the Constitution of India was not invoked while dismissing the services of the petitioner. Article 311 of the Constitution of India reads as under:

**"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State :-**

(1) No person, who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause ( 2 ), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

6. From the aforesaid, it is clear, that Article 311(2)(a) and Article 311(2) (c) operate in different areas. Whereas, under Article 311(2)(a) a person can be dismissed without holding an inquiry on the ground of his conviction in a criminal case, on the other hand a person could be dismissed under Article 311(2)(c) where the President or the Governor is satisfied that in the interest of the security of the State it was not expedient to hold such an enquiry.

7. In similar circumstances a large number of petitions were dismissed by judgment dated 24.10.2003 in **Writ Petition No.3676 of 2003 (Ram Briksha Singh vs. State of U.P. and others)**, wherein this Court held that the petitioners were not entitled to any relief of reinstatement or back wages as they have slept over their rights and no explanation of delay had been given in the petition. The Court held -

"The negligence or omission to assert a right, taken in conjunction lapse of time, more or less great, and other circumstances causing prejudice to the opposite parties operates as a bar in a Court of equity. Although Article 226 of the Constitution does not prescribe any period of limitation, but ordinarily no application can be entertained after a reasonable period of time. The discretionary relief cannot be granted to a person who does not seek his remedy with due diligence. Any person who invokes extra ordinary power under Article 226 of the Constitution of India must be vigilant and must approach the Court at the earliest."

8. Shri Daya Shankar Mishra, learned counsel for the petitioner has placed his arguments on the ground that in similar circumstances, various special appeals have been allowed and even a Division Bench of this Court vide its judgment dated 31.5.2013 allowed **Special Appeal No.1780 of 2008** filed by Mohan Singh against the judgment dated 10.9.2004 passed by learned Single Judge dismissing Civil Misc.Writ Petition No.9912 of 1993 (Mohan Singh vs. State of UP and others).

9. Shri Daya Shankar Mishra submits that a bunch of writ petitions including **Civil Misc. Writ Petition No.28752 of 2002 ( Satish Chandra Chaturvedi Vs. State of U.P. and others)** were dismissed by a common judgment. By judgment dated 8.12.2005 passed in **Special Appeal No.757 of 2005 ( Satish Chandra Chaturvedi Vs. State of U.P. and others)**, the impugned judgment was set aside by the Division Bench of this Court. A Division Bench of this Court has considered the similar controversy and by judgment dated 9.11.2010 in **Special Appeal No.697 (Defective ) of 2003 (Moti Lal Vs. State of U.P. and others)**, allowed the special appeal after noticing several judgments passed in similar matters. There was no laches on the part of the petitioner to file the writ petition, inasmuch as he was acquitted by the judgment of this Court dated 27.2.1996 and immediately thereafter, he represented before the Commandant, 26th Battalion, PAC, Gorakhpur for reinstatement and filed a writ petition in the year 1997. In similar circumstances, the question of laches was considered by the Division Bench of this Court in the case of **(Moti Lal Vs. State of U.P. and others)** (supra) and the Division Bench has held that the writ petition cannot be dismissed on the ground of laches in the facts and circumstances of the case. A large number of special appeals were filed by the State Government, leading appeal being **Special Appeal No.110 of 2000 ( State of U.P. and others Vs. Gajadhar Pandey)** which were filed against the judgment of the learned Single Judge in similar circumstances quashing the termination order. These special appeals were allowed by a common judgment dated 15.11.2002 against which the Special Leave to Appeal No.4238 of 2003 was filed by the State of U.P., which was dismissed by the Hon'ble Supreme Court by order dated 7.5.2003. He also referred and relied upon a judgment dated 13.3.1997 passed in **Writ Petition No.4993 of 1992 (Chabi Nath Singh Vs. U.P. Public Service Tribunal)**, judgment dated 28.7.2004 passed by the learned Single Judge in **Writ Petition No.45896 of 2003 (Vikram Rai Vs. State of U.P. and others)** and the judgment dated 8.9.1999 passed in **Writ Petition No.40702 of 1998 (Radhey Lal Vs. State of U.P. and others)**. The Government Order dated 7.9.1998 itself provides for reinstatement.

10. By judgment dated 9.11.2010 passed in the **Special Appeal No.697 of 2003 (Defective), (Moti Lal Vs. State of U.P. and others)**, the Division Bench of this Court has considered the various judgments passed by this Court in similar matters as well as the Government Orders issued from time to time on the issue involved in the present writ petition. The judgment passed by the

**Division Bench of this Court in the case of Moti Lal Vs. State of U.P. and others (supra ) is being reproduced below:**

"The appellant, a Constable of the Provincial Armed Constabulary, was terminated from service on 8th of July, 1973 after giving him one month's notice. The appellant had been terminated in the background that he had participated in the PAC revolt which had occurred in the year 1973. A large number of such Constables, who were similarly situated, had approached this Court and certain directions were issued by the High Court to decide their representations and some writ petitions were also disposed of with a direction to reinstate such terminated employees.

The Constables fell into two categories, one who were permanent in service and the others, who were treated to be temporary and their services had been dispensed with after giving one month's notice. The matter had been engaging the attention of the State Government pursuant to the aforesaid litigation, which was being contested and ultimately the State Government on its own issued a Government Order on 7th September 1998 for reinstatement. This policy decision was followed by another clarification on 13th November, 1998 extending the benefit to permanent as well as temporary Constables, whose services had been dispensed with after giving one month's notice.

This policy decision led to a spate of writ petitions being filed before this Court. In some matters, the writ petitions were allowed and the termination orders were quashed, against which the State went up in Special Appeal. A bunch of these matters came to be decided by a Division Bench of this Court in the State of U.P. and Others Versus Gajadhar Pandey, reported in 2003(1) Education and Service Cases Page 221. The Special Leave Petition filed against the said decision has also been dismissed by the Apex Court. In the said decision, the State Government had taken a stand that these Police Constables had approached the Court after a lapse of more than 24 years, and therefore, this Court should decline to exercise discretion on the ground of laches. The aforesaid contention of the State was rejected by the Division Bench, which is as follows:

"15. Having heard the learned counsel for the parties, we find that the services of the respondent - writ petitioners were terminated in the year 1973 by giving one month's pay in lieu of notice. They had approached this Court for the first time in the year 1997. All those police constables whose names were mentioned in the FIR and whose services were terminated on account of taking part in the PAC revolt after their acquittal were reinstated in service on account of the decision taken by the Government in the year 1996-97. These respondent - writ petitioners immediately thereafter approached this Court. In the first instance this Court directed the respondent - writ petitioners to make a representation before the concerned authorities. The representations were rejected and thereafter they had approached this Court by filing writ petitions giving rise to the present special appeals. Thus, it cannot be said that the respondent - writ petitioners are guilty of laches. It is to be remembered that our State is a welfare State. If the services of those constables, who took part in PAC revolt and indulged in criminal activities can be reinstated by the State Government without their termination order having been set aside on account

of a policy decision, the cases of the respondent - writ petitioners, who did not indulge in any criminal activity and whose services were terminated by giving one month's pay in lieu of notice stood in a better footing. The State ought to have reinstated such persons also. Thus, we are of the view that the State has acted arbitrarily in not reinstating them while reinstating other set of persons whose services were terminated in specific charge, the cause being common i.e. PAC revolt, and they had to approach this Court. Thus, it cannot be said that the respondent - writ petitioners were guilty of laches. The decision of the Hon'ble Supreme Court as relied upon by the learned Standing Counsel would not be applicable in the peculiar facts of this case, as the Hon'ble Supreme Court had dismissed the special leave petition in respect of similarly situated employees, namely, Chhavi Nath Singh and Narottam Singh Tomar, who had filed the claim petition before the U.P. Public Service Tribunal where the order of discharge was simplicitor like the present one."

11. It is necessary to mention here at this stage that the appeals filed by the State were dismissed and as noted above, the said judgement has been affirmed by the Apex Court.

12. Shri Daya Shankar Mishra, learned counsel for the petitioner submits that the petitioner is also claiming parity of reinstatement and for setting aside the order of dismissal in view of the policy decision of the State Government as also the decision of this Court in similar matters. In the present matter also, earlier this Court had directed the respondents to consider the claim of the petitioner but however, the respondents had rejected the claim of the petitioner, ignoring the fact that similarly situated persons have already been reinstated and have been given all the consequential benefits, whereas in the present matter while considering the claim of the petitioner it has been observed that the same could not be sustained on the ground of laches for having approached to this Court after considerable lapse of time.

13. Shri Daya Shankar Mishra submits that once the claim of similarly situated persons have already been upheld upto Hon'ble Apex Court, the petitioner is also liable to get all the benefits in terms of the other similarly situated Constables, who were also involved in the alleged incident, and eventually they were reinstated in service and great discrimination has been made with the petitioner. He also makes his submission that the petitioner is also liable to be reinstated in view of judgment of the Division Bench of this Court in **Special Appeal No.406 of 2010 (State of UP & ors vs. Gopal Yadav)**, which was decided on 05.10.2010.

14. It is evident that the State Government itself came up with a policy to reinstate all such Constables. This policy decision was taken and accordingly those Constables, who had not been given the benefit of the same, approached this Court by filing writ

petitions. The writ petitions were allowed but the question of back wages was left open as the State Government came up with a plea that a decision shall be taken separately with regard to back wages. Later on, the State Government took a policy decision on 15th April, 2004 not to give back wages to those Constables, who had been reinstated. This policy decision dated 15th April, 2004 was set aside in the case of **Ayodhya Rai Versus State of U.P. and another**, in Civil Misc. Writ Petition No.60949 of 2005, decided on 29th July, 2009. The issue with regard to payment of back wages and reinstatement was considered by a Division Bench of this Court in the case of **State of U.P. and another Vs. Gopal Yadav** (supra) decided on 5th of October, 2010. The order passed by the Division Bench is quoted herein below:

"The learned Single Judge by the impugned order 9.1.2003 noted that the respondent's services were terminated for his involvement in the PAC revolt which took place in May, 1973. The learned Judge then ordered that in the event the petitioner was not involved in criminal cases and no departmental enquiry was pending against him he shall be reinstated on his original post of Constable in PAC and will be taken back in service if he had not attained the age of superannuation and also the arrears of back wages shall be paid preferably within six months from the date of the order so recorded by the learned Judge.

The Court with regard to the back wages and retiral benefits was fully pleased to observe as under:

"Learned Standing Counsel has pointed out that the reference has been made to the State Government for taking the policy decision. The petitioner has to wait for the decision taken by the State Government. The advantage of back wages and other benefits of the petitioner shall depend upon the ultimate policy decision which may be taken by the State Government."

The writ petition was ultimately disposed of on that basis. Thus, it is clear that though in the earlier part of the order the learned Single Judge directing payment of back wages, yet in the later part of the order stated that the same shall be depend upon the policy decision. After that judgment during the pendency of this appeal, the State Government has taken a policy decision by its G.O. dated 15th April 2004.

Considering the above, in our opinion, the State cannot be aggrieved by the order of the learned Single Judge, as the State itself by its G.O. dated 7th September 1998 and 13th November 1998 had took a policy decision to reinstate all those (permanent and temporary both) whose services were terminated under Article 311(2)(c) of the Constitution of India. If the respondent was not reinstated he shall be reinstated from the date of the order and he will be paid back wages from that date.

If the order of this Court has not been complied with on the date of the judgment dated 9.1.2003 the same will be treated for the purpose of payment

of back wages and also for calculating other service benefits including post retiral benefits.

With the above observations the appeal is accordingly dismissed."

15. A perusal of the aforesaid order indicates that reinstatement has been allowed with effect from the date of the judgment as referred to therein namely 9th of January, 2003. Further the question of back wages has also been considered and the same date has been treated for the purpose of payment of back wages and calculation thereon.

16. The question relating to laches would not arise inasmuch as the State Government itself took a policy decision in the year 1998 for the reinstatement of such Constables. This issue was raised and reinstatement was claimed, which culminated in the decision of **State of U.P. and Others Versus Gajadhar Pandey** (supra) and a number of Constables were reinstated. The Division Bench took notice of this fact, that the Constables therein had approached immediately after there was an order of acquittal in respect of those, who were involved in the criminal cases and a policy decision was taken by the Government. In the present case, the petitioner approached this Court by filing his writ petition in the year 1997. The petitioner, therefore, cannot be said to have committed any delay in approaching this Court claiming reinstatement.

17. It is apparent, that the present controversy is squarely covered by the Division Bench judgment of this Court in the case of **Moti Lal** (supra) and **Mohan Singh** (supra), which have the binding effect. Learned Standing Counsel could not point out any distinguishable features and also could not place any judgment taking contrary view.

18. However, in the facts and circumstances of the present case, the petitioner shall not be entitled to any back wages but in view of the decisions taken in the case of **Moti Lal** (supra) and **Mohan Singh** (supra), this Court is of the view that the petitioner is entitled for reinstatement with effect from 09.1.2003, i.e., the date as indicated in the judgment of **State of U.P. And another Vs. Gopal Yadav** (supra) and will be entitled for payment of back wages to the aforesaid extent. The petitioner has already attained the age of superannuation and as such, at this stage he cannot be reinstated but he is entitled to other emoluments, in case, the same is available to him in accordance with law, which shall be calculated within three months from the date of production of a

certified copy of this order.

19. The writ petition is consequently allowed and the impugned orders dated 30.11.1974 and 01.3.2013 are set aside.

Order Date :- 20.4.2015

RKP

(Mahesh Chandra Tripathi,J.)