NON-REPORTABLE

2024 INSC 1015

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.12845 OF 2024
(Arising out of Petition for Special Leave to Appeal (C) No. 25967 of 2015)

STATE OF U.P. & ORS. ...APPELLANTS

Versus

SANDEEP AGARWAL ...RESPONDENT

with
CIVIL APPEAL NO.12846 OF 2024
(Arising out of Petition for Special Leave to Appeal (C) No. 15618 of 2016)
and
CIVIL APPEAL NOS.12847-12848 OF 2024
(Arising out of Petition for Special Leave to Appeal (C) Nos. 18766-67 of 2016)

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The respondents who are doctors joined the service of the State of Uttar Pradesh. The respondent in the Civil Appeal No. 12845 of 2024 joined service on 30th June, 1994. The respondent in Civil Appeal No. 12846 of 2024 joined service on 25th September, 1989 and the respondent in Civil Appeal Nos. 12847-12848 of 2024 joined service on 21st February, 1991. The respondents applied for voluntary retirement (for short "VRS") on 05th January, 2008, 6th October, 2008 and 7th December, 2006 respectively. After making the applications, all

of them remained absent for a considerably long time, along with several other medical officers.

2. On 03rd May, 2010, an Order was passed by the appellants in the exercise of powers under clause (b) of the second proviso to Article 311(2) of the Constitution of India. By the said order, the employment of the respondents, along with more than four hundred other doctors, was terminated. The respondents preferred separate writ petitions before the High Court of Judicature at Allahabad. By the impugned judgment dated 17th April 2014 in Civil Appeal No. 12845 of 2024, the High Court allowed the writ petition and, while quashing the order of termination, passed an order of reinstatement with all the consequential benefits in favour of the respondent. The High Court held that in the facts of the case, clause (b) of the second proviso to Article 311(2) of the Constitution was not applicable. The High Court held that the appellants had failed to prove that it was not reasonably practicable to hold a disciplinary enquiry.

3. In Civil Appeal No. 12846 of 2024, by the impugned judgment dated 18th September, 2013, similar relief was granted to the respondent. In addition, the High Court directed the appellants to consider the application for VRS submitted by the respondent and directed the appellants to pay costs of Rs. 1,00,000/- to the respondent.

4. In Civil Appeal Nos. 12847 and 12848 of 2024, by the impugned judgment dated 23rd September, 2015, the writ petition was allowed. A direction was issued to the appellants to consider the application for VRS made by the respondent.

SUBMISSIONS

5. The learned senior counsel appearing for the appellants submitted that the respondents remained absent from the duties for more than 2 to 3 years about which there is no dispute. He submitted that considering the fact that a few thousand doctors took recourse to absenteeism, from the order of termination dated 03rd May 2010 itself, it is apparent that it was impracticable to conduct a disciplinary enquiry against the defaulting doctors. He submitted that the grievance in the petitions filed before the High Court was essentially about the failure of the appellants to pass orders on the applications for VRS. Learned counsel pointed out that in such petitions, there was no occasion to pass an order of reinstatement considering the conduct of the respondents. Therefore, the impugned orders of the High Court are illegal.

6. The learned counsel appearing for the respondents submitted that the appellants kept applications for VRS filed by the respondents pending without taking any decision thereon for an unreasonably long time. The decision taken on the applications made by the respondents was never conveyed to the respondents. Without deciding the applications seeking VRS, the State Government initiated proceedings for termination from service. The learned counsel submitted that the order of termination was illegal as clause (b) of the second proviso to Article 311(2) was not applicable to the facts of the case.

CONSIDERATION OF SUBMISSIONS

7. We have given careful consideration to the submissions. The applications made by the respondents for seeking VRS were kept pending by the appellants for no reason till the orders of termination were passed. No reasons are forthcoming in the counter filed by the appellants before the High Court for keeping the applications pending for such a long time.

8. It is true that the conduct of the appellants in not deciding the applications for VRS cannot be supported at all. However, there was no reason for the respondents to take recourse to absenteeism. When the respondents found that their applications were not decided within a reasonable time, they could have adopted remedies in accordance with the law. But, in any event, the appellants ought to have decided the VRS applications within a reasonable time. But that was not done. It is necessary to note that the respondents in Civil Appeal Nos. 12847-12848 of 2024 have already reached the age of superannuation.

9. However, there was no justification for the High Court to pass an order of reinstatement with all consequential benefits. The most appropriate order would have been to direct the appellants to decide the applications for the grant of VRS. Now, it is too late in the day to do that, as a period of more than 16 years has elapsed from the dates on which applications for VRS were made. At the same time, the order of reinstatement would be inappropriate considering the conduct of the respondents of remaining absent from duties for a few years.

10. Therefore, the interests of justice would be served by setting aside the order of termination dated 3rd May 2010, and by directing the appellants to accept an application for VRS with effect from the date of the order of termination. There is nothing on the record to show that after 3rd May, 2010, there was no source of livelihood for the respondents who are doctors. Therefore, we propose to direct that the respondents will not be entitled to pension till the date of this order. However, the respondents would be entitled to refixation of their pension on the basis of VRS with effect from 3rd May, 2010, if the pension is otherwise payable. We are exercising our jurisdiction under Article 142 of the Constitution to do complete justice between the parties in peculiar facts of the case.

9. Accordingly, we pass the following order:

(i) Impugned judgments and orders are hereby quashed and set aside;

(ii) The applications made by the respondents for the grant of VRS are hereby allowed, and the order of 03rd May 2010 shall stand substituted by an order of their voluntary retirement;

(iii) We direct that the respondents stand voluntarily retired with effect from 03rd May, 2010;

(iv) We, however, make it clear that the respondents will not be entitled to arrears of salary or any monetary benefits, including pension, if otherwise payable till the date of this order. We direct the appellants to release monetary benefits to the respondents within a period of three months from today. However, pension,

if any payable, shall be fixed by treating the date of voluntary retirement as 3rd May, 2010. The pension shall be payable from the date of this order.

Appeals are accordingly partly allowed on the above terms with no orders as to costs.

.....J
[ABHAY S. OKA]

.....J
[AUGUSTINE GEORGE MASIH]

NEW DELHI,
DECEMBER 19, 2024