

Abhinash Chandra Gautam (Since Deceased) Through His Lrs,

Vs

Union of Territory of Tripura and Another

Civil Appeal No. 1507 of 1970

(D. A. Desai, A. Varadarajan, O. Chinnappa Reddy JJ)

24.08.1983

ORDER

1. The only point canvassed for consideration in this appeal is whether while computing the backwages payable to the appellant for the period from July 8, 1952 to the date of his retirement in 1976, his earning as a teacher should be taken into consideration and what amount should be deducted from backwages proportionate to the amount earned by him. It may be mentioned that deceased appellant was discharged from service, which discharge is held to be invalid and illegal and he is held to be continuously in service which entitles him to backwages. That part of the decree by which deceased appellant's discharge from service is held to be illegal and invalid is unassailable as concurrently held by all courts. The question of computing backwages arises in these circumstances. The respondents contended that deceased appellant served as a teacher and his earning as a teacher must be deducted from backwages payable to him by the respondents. Mr N. K. Sharma, learned counsel who appeared for the appellant pointed out that the appellant has admitted in his evidence that he was serving as a teacher on a monthly salary of Rs 100. It was submitted the appellant to keep his body and soul together had to make out a living. This is not controverted and there is no material to show that the appellant earned something more than Rs 100 per month.

2. Evidence further shows that the appellant obtained his employment as a teacher on a salary of Rs 100 p.m. 2 1/2 years after his discharge from service, which discharge has been held illegal and invalid. Working out the period of 2 1/2 years approximately the appellant obtained employment as a teacher from January 1955. The appellant is entitled to the backwages as if his service was uninterrupted. But while computing the total amount payable as backwages, the amount earned by him from January 1955 at Rs 100 p.m. must be deducted and the balance should be paid to him by the respondents. We accordingly set aside the decree of the learned Judicial Commissioner and restore the decree of the trial court. In the execution of decree the computation of backwages should be made in the manner herein indicated and if the court fees is payable, the same may be recovered. The balance amount shall be paid to the appellant at 12% interest p.a. The appellant shall be entitled to cost which is quantified at Rs 5,000.

3. We are informed that the appellant is dead but his heirs and legal representatives have been substituted and brought on record and decree shall be in their favour and the amount shall be paid to them. Decree shall be complied with within four months from today.

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