

Jitendra Singh Rathor

Vs

Shri Baidyanath Ayurved Bhawan Ltd and Another

Civil Appeal No. 108 of 1984

(D. A. Desai, Ranganath Misra JJ)

15.03.1984

JUDGMENT

RANGANATH MISRA, J. -

1. The workman is in appeal after obtaining leave under Article 136 of the Constitution from this Court. The appellant was working as librarian under the respondent-employer, His services were terminated on May 24, 1977, on payment of a month's salary. The appellant laid a complaint before the Industrial Tribunal under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and the Tribunal came to find on hearing parties that though the charge of misconduct within the meaning of Clause 16 (iii) (a) of the Standing Orders had been established, punishment of termination of service was not warranted. Accordingly, reinstatement was ordered. The direction of the Tribunal ran thus :

Considering the facts and circumstances of the case and evidence on record I direct the opposite party (employer) to reinstate the complainant (appellant) with half of his back wages and other benefits from the date of termination of his service (May 24, 1977) within one month from the date of pronouncement of this award.

The employer applied to the High Court under Article 227 of the Constitution to quash the direction of reinstatement and in support of the stand it was contended that as the Tribunal had found misconduct on the part of the workman, it was obligatory for the Tribunal to impose some punishment which it had failed to do. The employer also took the position that there was loss of confidence and reinstatement was not appropriate. The appellant maintained that though under the law he was entitled to full back wages upon reinstatement, the Tribunal had directed withholding a moiety of it in view of its finding that misconduct had been established. The High Court came to hold that withholding of 50 per cent of the back wages was a condition of reinstatement and was not by way of punishment. The High Court observed :

The two powers under Section 11-A are alternative; the first is to direct reinstatement of the workman on such terms and conditions as it thinks fit and the second is to give some other relief to the workman including the award of any lesser punishment in lieu of reinstatement as the circumstances of the case may require. Under the second alternative, the Tribunal may instead of directing reinstatement give the relief of compensation to the workman or award a lesser punishment..... If was for the Tribunal, therefore, to decide as to which of the two alternatives it should adopt. But the Tribunal is always bound to exercise its discretion judicially and decide to adopt either the first course to direct reinstatement on such terms and conditions as it thinks

fit or the second course to award a lesser punishment in lieu of reinstatement as the circumstances of the case may require. The order of reinstatement with half back wages is an order of the first category and not of the second category. The payment of only half of the back wages is a condition of the reinstatement and not a punishment for the misconduct of the workman.

The High Court then came to the conclusion that the order of reinstatement was not called for and proceeded to indicate :

The question now is should the award be set aside and the case be remitted back to the Tribunal for a fresh determination of the matter in accordance with law or should the proceeding be concluded by making a reasonable modification in the award of the Tribunal ?

The High Court thereafter vacated the order of reinstatement holding that ends of justice would be served by directing payment of compensation to the respondent-workman in lieu of reinstatement and quantified the compensation at Rs. 15,000. This modification by the High Court is assailed in appeal at the instance of the workman.

2. Section 11-A of the Act provides :

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

3. Wide discretion is vested in the Tribunal under this provision and in a given case on the fact established the Tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well-settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages. In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty.

4. Under Section 11-A of the Act, advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior court, it is vested with the right of superintendence. The High Court is indisputably entitled to scrutinise the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it could in an appropriate case

quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal as in the case of an appeal where it lies to it. In this case the Tribunal had directed reinstatement, the High Court vacated the direction of reinstatement and computed compensation of Rs. 15,000 in lieu of restoration of service. We are not impressed by the reasoning of the High Court that reinstatement was not justified when the Tribunal in exercise of its wide discretion given under the law found that such relief would meet the ends of justice. The Tribunal had not recorded a finding that there was loss of confidence of the employer. The job of a librarian does not involve the necessity of enjoyment of any special confidence of the employer. At any rate, the High Court too did not record a finding to that effect. Again, there is no indication in the judgment of the High Court as to how many years of service the appellant had put in and how many years of service benefits which the appellant was receiving also did not enter into the consideration of the High Court while computing the compensation. We are, therefore, of the view that the High Court had no justification to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying compensation of Rs. 15,000 it acted without any legitimate basis.

5. Mr. Prasad for the first respondent invited our attention to the fact that the High Court was cognizant of the necessity of a remand but taking into consideration the delay involved and the fact that a remand was unnecessary in view of the nature of the order it was going to make took upon itself to give a final decision. We reiterate that ordinarily it is not for the High Court in exercise of the jurisdiction of superintendence to substitute one finding for another and similarly one punishment for another. We may not be understood to have denied that power to the High Court in every type of cases. It is sufficient for our present purpose to hold that on the facts made out, the approach of the High Court was totally uncalled for and the manner in which the compensation was assessed by vacating the order of reinstatement is erroneous both on fact and in law.

6. The appeal, therefore, is allowed and the order of the High Court is set aside and the award of the Industrial Tribunal is restored. The appellant became entitled to reinstatement within a month from November 24, 1979, when the award was made. He would therefore, be entitled to full wages and other service benefits from December 24, 1979, taking the month's allowance given in the award into account. He would also be entitled to the half of the back wages in terms of the award from May 24, 1977 till December 23, 1979. We direct the Tribunal to compute the amount so due as back wages and the appellant is entitled to 12 per cent interest on the sum from January 1, 1980, till payment. The appeal is allowed with costs. Hearing fee assessed at Rs. 2000.

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