

S. M. Saiyad

Vs

Baroda Municipal Corporation Baroda

Civil Appeal No. 1100 of 1982

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

07.08.1984

ORDER

1. Special leave to appeal limited to the question relating to the non-payment of salary for the period the appellant was litigating in the Civil Court was granted.
2. Appellant was dismissed from the service of the respondent on December 12, 1969. After some litigation in the Civil Courts ultimately a reference was made to the Labour Court whether there was justification for the dismissal of the appellant from the service of the respondent.
3. The Labour Court by its award dated September 6, 1979 directed that there appellant be reinstated in service but declined to grant back wages. In the special civil application filed by the appellant under Article 226 of the Constitution in Gujarat High Court, a Division Bench of the High Court modified the award in respect of back wages by awarding back wages for the period October 26, 1976 till January 18, 1980 the date on which appellant was reinstated in service. The High Court declined to interfere with the award refusing back wages for the earlier period on the ground that the appellant was seeking relief if reinstatement in the Civil Court which had no jurisdiction to grant the same and for such lapse on the part of the appellant the respondent cannot be asked to shoulder the burden of back wages.
4. The only question that arises for consideration in this appeal is whether the appellant is entitled to claim back wages for the period December 12, 1969 the day on which he was dismissed from service till October 26, 1976 from which date onward the appellant has been awarded back wages by the modification of the award by the High court. The appellant seeks back wages for the period December 12, 1969 to October 26, 1976. This period according to the respondent has to be divided in two parts : (1) from December 12, 1969 to January 20, 1972 when the appellant was enrolled as an advocate, and (2) for the period January 21, 1976 to October 26, 1976 from which date he has already been awarded back wages. It was sub-mitted on behalf of the respondent that the appellant himself has admitted that since his being enrolled as an advocate he was earning Rs 150 per month which aspect must be borne in mind while considering the submission of the appellant for the award of back wages.
5. The High Court declined to grant back wages for the period the appellant was seeking relief of reinstatement in Civil Court. It may be recalled that the appellant has been reinstated in service meaning thereby that the dismissal of the appellant from the service of the respondent was found to be invalid and a declaration followed that the appellant continued to be in service. It is in the context of these facts that we have to examine the submission that the High Court was not justified in refusing the back wages on the only ground that the appellant sought relief from a forum which had

no jurisdiction to grant the same. When the appellant was dismissed from service he was not a qualified lawyer. He must have sought assistance and advice from a qualified legal practitioner and then approached the Civil Court for relief or reinstatement. The appellant must have gone in search of justice to a forum to which he must have been advised to approach but ultimately because of complexities of the justice system it transpired that he cannot get relief from that forum. He cannot be faulted for this outcome of technicalities of jurisdiction. Now if on this account the appellant is declined back wages he suffers double jeopardy through no fault of his, in that not only all wages are directed (sic) but also delay occurred in getting reinstatement. It this denial justified when the appellant could not be blamed for approaching a forum under competent legal advice. This would amount to imposing a penalty which with respect to the High Court the appellant did not deserve. On this lean ground we find it difficult to depart from the normal rule that on dismissal order being found to be invalid and the direction for reinstatement having been given the workman would be entitled to full back wages, unless the same can be denied on some relevant grounds. We are of the opinion that the denial of back wages for a portion of period for the reason that he was prosecuting remedy in a wrong forum would not be a relevant consideration for refusal of back wages. As a corollary to this finding the appellant would be entitled to back wages for the whole of the period December 12, 1969 to October 26, 1976 and straightway we would have awarded the same but further enquiry becomes necessary on account of one more aspect brought to our notice.

6. Appellant enrolled himself as an advocate after taking requisite educational qualification on January 20, 1972. It was pointed out to us that the appellant admitted that he was earning Rs 150 p.m. since he started his legal practice. It was therefore, urged that no back wages for the period January 20, 1972 to October 26, 1976 should be awarded. We are not impressed. Undoubtedly the respondent will be entitled to deduct the amount which the appellant was admittedly earning from the back wages payable to him. The question is from what date deduction at the rate of Rs 150 p.m. should be permitted.

7. Appellant contended and in our opinion rightly that deduction at the rate of Rs 150 p.m. should not commence from the very day he was enrolled as an advocate because it is common knowledge that no one earns from the first day and therefore a reasonable period must be set apart from finding a footing in the profession. The contention deserves consideration. The appellant himself has been rather loose in his statement. It would be reasonable to hold that he must have at least started earning at the rate of Rs 150 p.m. as stated by him after the lapse of one year from the date he was enrolled as an advocate.

8. We, accordingly, allow this appeal and set aside the decision of the High Court refusing the back wages for the period December 12, 1969 to October 26, 1976 and direct that the appellant shall be entitled to back wages including salary and allowances and other benefits to which he would be entitled as if he had continued the service. While making the payment of back wages as per his order the respondent is entitled to deduct the amount of Rs 150 p.m. from January 20, 1973 to October 26, 1976 from the amount which becomes payable to the appellant. The respondent must compute the amount payable as herein directed and pay what becomes payable, to the appellant within a period of two months from today.

9. The appeal is allowed to the extent herein indicated. As the appellant has appeared in person, there will be no order as to costs.

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