

Mathura Electric Supply Co. Ltd. and Another

Vs

State of U. P. and Summera

Civil Miscellaneous Petition No. 1853 of 1983 In Civil Appeal No. 433 (N) of 1971

(D. A. Desai, A. Varadarajan JJ)

22.08.1984

ORDER

DESAI, J. –

1. The chronology of events leading to the reinstatement of the respondent which gave rise to the present miscellaneous petition have been succinctly set out in the judgment of this Court in Mathura Electric Supply Co. Ltd. v. State of U.P. ((1981) 3 SCC 623 : 1981 SCC (L&S) 557 : AIR 1981 SC 1526) Respondent Summera was employed as an Assistant Lineman in the Mathura Electric Supply Co. Ltd. ('appellant' for short). He was dismissed from service on August 19, 1955. This led to an industrial dispute in respect of which a reference was made under Section 4-K of the U.P. Industrial Disputes Act, 1947 ultimately to the Labour Court, Meerut. As was only to be expected, a preliminary objection was raised on behalf of the appellant that the reference was incompetent. The Labour Court by its award dated September 30, 1958 held that the reference was competent and further held that the dismissal from service was illegal and invalid and granted reinstatement with continuity of service and full back wages. The appellant after an unsuccessful writ petition and writ appeal in the Allahabad High Court landed in this Court by an appeal by special leave. This Court by its Judgment dated May 6, 1981 held that the reference was competent and affirmed the award of the Labour Court. Once the award of the Labour Court became final, the respondent had to be reinstated in service with all consequential benefits. The respondent has been reinstated in service.

2. The dispute between the parties was about the computation of the benefits to which the respondent is entitled under the award of the Labour Court affirmed by this court.

3. Apart from seeking monetary computation, the respondent also prayed for taking action in contempt against the officers of the appellant-company as well as the U.P. Electricity Board.

4. It may be mentioned that in July 1975 the undertaking of the appellant-company was acquired under Section 6 of the Indian Electricity Act, 1967 and it has vested in the U.P. Electricity Board. Accordingly, a notice was also sent to the U.P. Electricity Board and Mr S. N. Kacker, learned senior counsel instructed by Mrs Shobha Dikshit appeared for the U.P. Electricity Board (Board for short). This petition was heard on number of occasions having a speed of slow motion news and by small bits some relief has already been given to the hard pressed respondent.

5. To begin with, the respondent has been reinstated in the service of the Board under the orders of this Court. By an order made by this Court on October 24, 1983, the Board was directed to pay Rs 20,000 to the respondent towards the arrears of back wages with liberty to adjust the amount when final computation is made. Both the sides were directed to file their respective computations of back

wages and monetary equivalent of other benefits. Computation and counter-computations have been filed by both the parties.

6. Mr Kacker urged that the liability of the Board would commence from the date of the acquisition of the undertaking of the appellant-company and prior thereto the liability to pay the back wages and monetary equivalent of other benefits would be of the appellant. It was also submitted that the liability of the appellant till the date of take over in the matter of back wages and other benefits to respondent Summera would be in the amount of Rs 30,000. On this submission, we heard learned counsel appearing for the appellant-company. Having heard them we are satisfied that this computation is correct and unassailable. We accordingly direct that the Board shall pay Rs 30,000 to the respondent for the back wages and monetary equivalent of other benefits for the period commencing from the date of the termination of service i.e. August 19, 1955 upto the date of acquisition of the electrical undertaking of the appellant-company i.e. July 1975. We further direct on the payment of Rs 30,000 by the Board to respondent Summera, as herein directed, the same shall be deductible from the compensation that the Board may have to pay to the appellant-company for the acquisition of its electrical undertaking.

7. The next period for which the Board pursuant to the award is under an obligation to pay back wages and monetary equivalent of other benefits is from July 1975 till the date of reinstatement.

8. Mr Kacker drew our attention to the chart of computation prepared by the accountant of the Board and annexed to the letter dated May 26, 1984 of the Executive Engineer addressed to Mrs Shobha Dikshit. On the basis of this computation, the Board has to pay Rs 56,399.80 p. from which adjustment is claimed in the amount of Rs 20,000 paid under the order of this Court made on October 24, 1983. As against this, Mr G. L. Sanghi, learned senior advocate, who appeared for respondent Summera drew our attention to the chart annexed to the affidavit of the workman dated March 1984 which shows that the Board will have to pay a sum of Rs 1,57,561.50 p. for the period from July 1975 upto the date of reinstatement. This wide gap between the two calculations was attributable to certain assumptions made by both the parties in calculating the back wages payable to the workman : to wit the Board assumed that throughout the period the basic salary of the appellant will be Rs 425 without reference to the scale and the workman assumed that he must be deemed to have reached the maximum of the scale available to Assistant Lineman in 1975 and that at least he was bound to claim one promotion as Lineman. Both the assumptions are erroneous and untenable in part. We therefore, invited both the learned counsel to take over the year to year computation keeping in view the salary scale admissible to Assistant Lineman, yearly increment, rise in dearness allowance and the incidental benefits. Promotion aspect was kept out of consideration for the simple reason that no material is placed on record to show that it could have been earned as a matter of right, and by the time effective reinstatement of the workman took place, he was nearer his superannuation. When the exercise of year to year computation was taken up, ultimately we were told that we may award a reasonable compensation for the back wages because this year to year computation would be a long and tardy exercise.

9. We accordingly heard the learned counsel appearing for the parties and we direct the payment of back wages as herein indicated :

- (a) Respondent Summera shall be paid Rs 30,000 by way of back wages and monetary computation of other benefits for the period from August 19, 1955 to July 1975. This amount will be payable by Mathura Electric Supply Co. Ltd. as it existed prior to its acquisition. The amount of Rs 30,000 as directed herein shall be paid by

the Board and the Board is entitled to deduct that amount from the compensation that may become payable by the Board to the appellant-company for the acquisition of its electrical undertaking.

(b) The Board shall pay Rs 75,000 in one lump sum to the appellant in respect of the back wages and monetary equivalent of other benefits for the period from July 1975 to the effective date of reinstatement. The Board will be entitled to take credit for the amount of Rs 20,000 already paid under the order of this Court dated October 24, 1983. In other words, the Board shall pay Rs 55,000 to the workman Summera as back wages and monetary equivalent of other benefits for the period July 1975 to the date of reinstatement.

10. The cumulative effect of these two directions is that the Board shall pay Rs 85,000 to workman Summera, respondent in the appeal, within a period of eight weeks from today.

11. We order accordingly.

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