

Mahendra Singh Dhantwal

Vs

Hindustan Motors Ltd.

Civil Miscellaneous Petition No. 27015 of 1984 in Civil Appeal No. 2574 of 1972

(D. A. Desai, Ranganath Misra JJ)

04.09.1984

ORDER

1. Civil Appeal 2574 of 1972 preferred by the appellant Mahendra Singh Dhantwal was disposed of by this Court on May 7, 1976. The decision of this Court is reported in Mahendra Singh Dhantwal v. Hindustan Motors Ltd. (1976 Supp SCR 635 : (1976) 4 SCC 606 : 1977 SCC (L&S) 20 : (1976) 2 LLJ 259 : (1976) 49 FJR 253).

2. The operative portion of the judgment reads as under : [SCC para 37, p. 614 : SCC (L&S) p. 28]

We, therefore, feel that, in the interest of industrial peace and above all to draw a final curtain to this unhappy litigation, we would be justified in quantifying the compensation payable to the workman in this case to a sum of Rs 20,000 only in lieu of reinstatement with full back wages as ordered by the Tribunal, which we accordingly order.

3. The respondent was accordingly required to pay Rs 20,000 only in lieu of his reinstatement. In order to fully grasp the meaning of the operative portion of the judgment, it may be recalled that in an earlier round of litigation between the parties, the Industrial Tribunal made an award directing "reinstatement of the workman (present appellant) with 50 per cent. of his back wages for the period of his forced unemployment as compensation". After this award the respondent-company paid lip sympathy by reinstating the appellant but again terminated his service by paying three months' salary in lieu of notice on the assumption that it was open to the respondent to terminate the appellant's service with three months' notice. This assumption was founded on the alleged contract of service between the parties that the appellant was employed for a period of eight years. If the law is, as it stands now on this point, as declared in Santosh Gupta v. State Bank of Patiala ((1980) 3 SCR 884 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409 : 1980 Lab IC 687), this would have again been impermissible retrenchment but that aspect is no more open to us, In the second round of litigation, the Tribunal held that the respondent-company under the guise of invoking a contractual term had in fact dismissed the appellant on the ground of misconduct as alleged by the respondent. The Tribunal directed again "reinstatement with full back wages for the period of his forced unemployment as compensation". The respondent challenged the correctness of this award by a writ petition in the Calcutta High Court. The learned Single Judge before whom the writ petition came up for hearing rejected the same observing that the view taken by the Tribunal cannot be characterised as unreasonable. Undaunted by these repeated rebuffs, the respondent carried the matter in appeal before the Division Bench of the Calcutta High Court. The Division Bench reached an unsustainable conclusion that unless the workman is discharged for misconduct, an application under Section 33-A is not required to be made and the Tribunal had no jurisdiction to set aside the order of termination in an application under Section 33-A. By a certificate granted by the High

Court under Article 133(1)(c) of the Constitution, the appellant preferred the aforementioned appeal to this court.

4. This Court disposed of the appeal in terms as hereinabove extracted.

5. The operative order of the judgment of this Court clearly spells out the responsibility of the respondent to pay Rs 20,000 without any deduction therefrom to the appellant. The respondent while implementing the judgment of this Court deducted Rs 2145 from the amount of Rs 20,000 directed to be paid to the appellant on the ground that as the amount was being paid as back wages, the employer was under an obligation to deduct the income tax payable at source. This deduction in our opinion, is impermissible and ought not to have been made for two reasons : (i) that the company completely overlooked sub-section (10-B) of Section 10 of the Income-tax Act, 1961 which was inserted by the Finance Act of 1975 with effect from April 1, 1976 and the payment was made to the appellant after sub-section (10-B) was brought on the statute book. Sub-section (10-B) provides that in computing the total income of a previous year of any person, any income received by way of compensation by a workman under the Industrial Disputes Act, 1947, or under any other Act or rule, order or notification issued thereunder or under any standing order or under any award, contract of service or otherwise, at the time of retrenchment, to the extent such compensation does not exceed.... (ii) Rs 20,000.... Now undoubtedly, the compensation awarded was Rs 20,000 in lieu of reinstatement, by a judgment which will take the place of the award of the Industrial Tribunal of May 7, 1976 i.e. after the introduction of sub-section (10-B) of Section 10. On this ground alone the deduction made by the respondent can be rejected as unjustified and the respondent can be directed to make good the amount. (ii) The second reason is that the Court desired that Rs 20,000 lump sum be paid to the appellant which means that if there arises any liability to pay tax, the same shall be borne by the company. That was the intendment of the order of this Court. Therefore, it must be held that the respondent-company was not justified in deducting Rs 2145 from the compensation amount Rs 20,000 awarded by this Court to the appellant. The respondent-company is accordingly directed to pay Rs 2145 with 15 per cent. interest from May 7, 1976 till payment.

6. It was contended by Mr Saharya that compensation in the amount of Rs 20,000 was awarded by this Court in lieu of reinstatement and back wages. On a correct interpretation of the judgment of the court, the submission does not commend to us. The operative part of the judgment which was been extracted hereinbefore clearly spells out that the compensation in the amount of Rs 20,000 was awarded only in lieu of reinstatement. The Tribunal had awarded back wages and that judgment was being restored by this Court and therefore, on the plain language of the order and the clearest intendment thereof, the respondent was bound to pay back wages over and above the amount of Rs 20,000. Now as it is conceded that the appellant's service was liable to stand terminated under the contract of service, the back wages would be payable only for the period commencing from the date of termination till the date on which the service will come to an end under the terms of contract. Having regard to the monthly pay packed of the appellant, the respondent is directed to pay Rs 5000 as back wages over and above the amount of Rs 20,000 which was awarded by way of compensation in lieu of reinstatement.

7. As the appellant has been kept on tenterhooks for the last nearly eight years, we direct the respondent to pay Rs 2000 as and by way of costs.

8. The amounts herein directed to be paid by the respondent to the appellant shall be paid within a period of four weeks from today.

9. We order accordingly.

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