

Sundaram Motors Pvt. Ltd

Vs

Ameerjan and Another

Civil Appeal No. 2741 (NL) of 1972

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

12.09.1984

ORDER

1. We heard Mr K. S. Ramamurthi, learned counsel for the appellant. We take note of the constructive suggestion made by him, that instead of granting reinstatement to the respondent compensation as deemed adequate by the Court may be awarded to the respondent which may sufficiently compensate the respondent for loss of future service and back wages. On this submission, we invited Mr S. S. Khanduja, learned counsel for the respondent to state what would be the adequate compensation in lieu of reinstatement. Mr Khanduja gave some rough calculations. Having examined the calculations, we are satisfied that the appellant shall pay Rs. 2,25,000 (Rupees two lakhs and twenty-five thousand) to the respondent within two weeks from today. The amount of compensation thus awarded includes interest, costs, back wages and compensation in lieu of reinstatement. In other words, the respondent has no further claim against the appellant.

2. The amount calculated as compensation by this Court is in lieu of back wages and future wages which ought to have been paid from year to year. Therefore, the entire amount shall be spread over the period 1970 to 1989, 1970 being the year of dismissal from service and 1989 being the presumed year of retirement on superannuation. As the compensation is being paid in total lumpsum, we direct the spread over. If the income is not taxable in any year, no income tax shall be deducted from the amount payable for that year.

3. The appeal is disposed of accordingly.

ORDER DATED SEPTEMBER 12, 1984.

DESAI, J. –

This appeal was disposed of by our judgment and order dated August 7, 1984.

5. Mr K. S. Ramamurthy, learned senior advocate who appeared on behalf of the appellant, mentioned this matter with a view to seeking certain clarifications in respect of the judgment. Acceding to his request, the matter was posted today for clarifications and further directions in respect of our aforementioned judgment and order.

6. Mr Ramamurthi pointed out that in view of the provision contained in Section 192(1) of the Income Tax Act, 1961, it would be obligatory upon the appellant to deduct income tax from the amount of compensation ordered to be paid by this Court as per its judgment dated August 7, 1984 at the average rate of income tax computed on the basis of the rates in force for the financial year in

which the payment is made, on the estimated income of the assessee under the head 'salaries' for that financial year. After drawing our attention to Section 89 of the Income Tax Act, 1961 which provides that "where, by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than twelve months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed the Income Tax Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed", he proceeded to submit that unless the relief as provided by Section 89 is claimed, the appellant-employer is under a statutory obligation to deduct the income tax from the lump sum directed to be paid from the judgment of this Court and, therefore, the appellant will be in a position to make payment to the tune of Rs. 1,11,000 after deducting the requisite amount payable as income tax and which will have to be deposited by the appellant with the concerned authority under the Income Tax Act.

7. We have made it abundantly clear in our judgment and order dated August 7, 1984 that the compensation awarded is in lieu of back wages, and future wages in lieu of reinstatement which were and would be payable from year to year. Therefore, we made it very clear that the entire amount awarded by our judgment shall be spread over from 1970 to 1989, 1970 being the year of dismissal from service and 1989 being the year of retirement on superannuation as per the relevant service rules. We are, accordingly, clear in our minds that viewed from any angle, respondent-Ameerjan, the workman is fully entitled to the relief under Section 89 of the Income Tax Act. No other view on this point is possible. In order to satisfy the requirements of law, the respondent-Ameerjan shall with the assistance of the appellant and its income tax consultants make the necessary application to the Income Tax Officer having jurisdiction in the matter at Bangalore for relief under Section 89 and the officer concerned shall, without further enquiry, grant him immediate relief under Section 89 and dispose of the proceedings within a period of three months from the date of the application so that the spirit and purpose of our judgment and order would be implemented without unnecessary delay and the agony and torture of unemployment heaped upon the lowly paid respondent Ameerjan from 1970 be relieved.

8. Having given the aforementioned directions we consider it unnecessary to accept the alternative submission of Mr Ramamurthi that if the concerned Income Tax Officer is unable to grant relief within the prescribed time as provided under the Act, the appellant will have to make the necessary payments as per the provisions of the Income Tax Act to the Central Government and the Central Government will, in turn, make the payment to the respondent as soon as the concerned Income Tax Officer passes the necessary order granting relief under Section 89(1) read with Rule 21-A of the relevant rules.

9. The clarification herein made shall form part of the main judgment and shall be treated as an integral part of the main judgment and order dated August 7, 1984.

10. The application is disposed of with this clarification.

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