

Baldev Singh

Vs

Presiding Officer, Labour Court, Patiala and Another

Special Leave Petition (Civil) No. 2782 of 1984

(A. P. Sen, B. C. Ray JJ)

15.10.1986

JUDGMENT

B.C. RAY, J. -

1. This application for special leave is directed against the judgment and order passed in Civil Writ Petition No. 5403 of 1983 dismissing the writ petition filed by the petitioner questioning the validity of the award made by the Labour Court, Patiala on April 29, 1982, whereby the Labour Court though directed for the reinstatement of the petitioner refused to grant back wages.

2. Briefly stated the petitioner was in the service of Punjab Roadways, Moga District, Faridkot (Punjab State) as a driver. The petitioner was charge-sheeted for failing to discharge his duties as a driver properly inasmuch as he caused damage to the Punjab Roadways to the extent of Rs. 22.50 by not taking the bus No. 5803 of which he was the driver on November 14, 1977 from Bhatinda to Nihal-Singh-Wala via Moga, but rather took back the bus from Jawahar-Singh-Wala. Enquiry was held and he was found guilty of the charges levelled against him. The service of the respondent was terminated on June 27, 1979. The Labour Commissioner referred the dispute for adjudication the Labour Court, Patiala under Section 10(1)(C) of the Industrial Disputes Act, 1947. The Labour Court, Patiala after hearing both the parties and on a consideration of the facts and circumstances came to the finding that the respondent held fair and proper enquiry against the workman and the workman could not show that the enquiry was not fair and proper. The Labour Court also found that the punishment awarded was harsh being not in consonance with the nature of the charges against the workman and as such found that a lesser punishment would meet the ends of justice. The Labour Court therefore found that order of dismissal was a serious step taken by the respondent-management. The charges against the workman were of minor nature. As a result he held that the order of termination of the service of the workman was not justified. The Labour Court therefore held that : "The workman is entitled to reinstatement with continuity of service but without back wages The period of forced idleness shall be treated as leave of the kind due and in case no leave is due as leave without pay. The reference stands disposed of accordingly."

3. This order has been impeached by the petitioner by a writ application under Article 226 of the Constitution before the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 5403 of 1983, on the ground that the order Labour Court was wrong as though he was held to be entitled to reinstatement with continuity of service, yet without assigning any reason the back wages during the period of wrongful termination was refused to the petitioner in derogation of the terms of the provisions of Section 11-A of the Industrial Disputes Act, 1947. It has also been submitted therein that in similar cases and in similar circumstances this Court disposing of four special leave petitions directed payment of one half of the back wages, during the period the appellants were kept

out of employment. It has been, therefore, claimed that order of the Tribunal is illegal and bad and the same needs to be modified by directing payment of back wages for the period of his absence from service due to the said order of termination.

4. The writ petition being Civil Writ Petition No. 5403 of 1983 against the order of Tribunal urging back wages was dismissed by the High Court of Punjab and Haryana by order dated November 16, 1983.

5. It is against this order instant application for special leave to appeal under Article 136 of the Constitution of India has been made.

6. The only contention made before us by the learned counsel on behalf of the appellant is that the impugned order of summary dismissal of the writ petition is illegal and bad being not in accordance with provisions of Section 11-A of Industrial Disputes Act, 1947 as well as the decision of this Court rendered in Civil Appeal Nos. 8370-8373 of 1983 [Ed. : Given as appendix below : Kirpal Singh v. Secy. to Govt. of Punjab].

7. We have heard the submission of the learned counsel and also we have considered the provisions of Section 11-A of the Industrial Disputes Act, 1947 as well as the order passed by this Court on September 16, 1983 in Civil Appeal Nos. 8370-8373 of 1983 [Ed. : Given as appendix below : Kirpal Singh v. Secy. to Govt. of Punjab]. We do not find any merit in this submission for the reasons stated hereinbelow.

8. The petitioner is admittedly an employee, of the Punjab Road ways, Moga as a driver and On November 14, 1977 he was driving bus No. 5803. This bus started from Bhatinda and was bound for Nihal-Singh-Wala via Moga. Admittedly the driver did not take the bus to Nihal-Singh-Wala but he took back the bus from Jawahar-Singh-Wala. He was charge-sheeted for damage to the Punjab Roadways to the extent of Rs. 22.50 by way of two miles short bus trip. After enquiry into the charges duly after giving him the opportunity of hearing the management dismissed him from service finding that the charge had been proved. The Labour Commissioner, Punjab, Chandigarh thereafter referred the dispute regarding the justifiability of order or termination of service to the Labour Court, Patiala under Section 10(1)(C) of the Industrial Disputes Act, 1947. The Labour Court, Patiala on hearing the parties and considering the evidences found that the workman failed to show that the enquiry held was neither fair nor proper. It was, however, submitted on behalf of the workman that the punishment of termination of service awarded was no in consonance with the nature and gravity of the charges levelled against the workman and the workman should be imposed a lesser punishment. The Tribunal in consideration of this submission made an order reinstatement with continuity of service but without back wages. The Tribunal has further held that the period of forced idleness shall be treated as leave of the kind due and in case no leave is due as leave without pay. The reference was thus disposed of by order dated April 29, 1982.

9. This order of the Tribunal, in our considered opinion, is quite in consonance with the provisions of Section 11-A of Industrial Disputes Act, 1947 which empowers the Tribunal to make an award, "directing 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 require". In the instant case we have stated hereinbefore that the Tribunal clearly found that the enquiry was held fairly and properly and there was no violation of the principles of natural justice. The Tribunal on considering the harshness of the punishment in consideration of the nature of the charge directed reinstatement of the workman

with continuity of service but without back wages. There was also a further direction that the period of absence from service is to be treated as leave of the kind due and in case no leave is due as leave without pay. The Tribunal, therefore, did not direct for payment of back wages to the petitioner. On the other hand it directed specifically that the period the petitioner was kept out of the duty has to be treated as leave of the kind due and in case no leave is due has to be treated as leave without pay. This award of the Tribunal is in conformity with the provisions of Section 11-A of the said Act. There is no lack of jurisdiction or want of jurisdiction in making order in question and it cannot be said that the order is contrary to the provisions of Section 11-A of the said Act which vests the Labour Tribunal to whom a dispute has been referred with jurisdiction to pass appropriate orders which the Tribunal will think proper and expedient in the facts and circumstances of the case. We do not find any infirmity far less any illegality in the above order of the Tribunal. The decision of this Court rendered in Kirpal Singh v. Secretary to Govt. of Punjab [Ed. : Given in appendix below] is not applicable to the instant case as the facts of that case are distinguishable from the facts of this case. In that case the Labour Court, Patiala held :

Considering the said evidence placed on record it is clear that somehow the enquiry file has been misplaced and obviously therefore, the benefit of doubt on that account has to be given to the workman. The respondent could have examined the enquiry officer and other officials who have made allegations of misconduct against the workman and there was no harm in the way of the respondent in producing independent evidence in that respect about the alleged shortcoming of the workman necessitating the termination of his service. Taking the overall assessment of the evidence produced and in exercise of powers vested under Section 11-A of the Industrial Disputes Act, 1947, I am satisfied that the termination of services of the workman is not justified and is not in order. Accordingly the issue is decided against the respondent and in favour of the workman I feel that the ends of justice will be served if the workman is reinstated with continuity of service but without back wages.

10. This order of non-refusal to direct payment of back wages was questioned in the Special Leave Petition Nos. 872, 893, 908 and 910 of 1981 [Ed. : Given in appendix below]. The learned judges of this Court in view of the concession made by the learned counsel for the State of Punjab directed that the State Government will pay to the appellant concerned in each of the above appeals one half of the back wages which the appellant concerned would have drawn but for the termination of his service which gave rise to the dispute before the Labour Court during the period when the appellant concerned was kept cut of employment modifying the award and the appeals were thus disposed of. This judgment of this Court has got no application to the instant case firstly because there is a clear finding that there was no violation of the principles of natural justice in holding the departmental enquiry and the enquiry was held to be fair and proper. Secondly, there has been no concession made by the learned counsel on behalf of the State that they are prepared to pay half of the back wages to the appellant (workman). Thirdly, it has been specifically ordered by the Tribunal in its award that the workman would be reinstated with the continuity of service but without back wages and the period of absence from duty owing to the order of termination would be treated as leave without pay. This direction was made by the Tribunal in consideration of submission on behalf of the workman that punishment imposed was disproportionate to the charge against the workman.

11. In the premises aforesaid the special leave petition being without any substance is dismissed and the judgment and order made by the High Court is upheld. There will however be no order as to costs.

APPENDIX

</html