

SUPREME COURT OF INDIA

P.V.K. Distillery Ltd.

Vs.

Mahendra Ram

C.A.No.1349 of 2009

(Tarun Chatterjee and H.L. Dattu JJ.)

02.03.2009

ORDER

Leave granted in the special leave petition.

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 32250 of 1990 dated 21.5.2007.

2. The facts in nutshell are as follows: the respondent, Mahendra Ram, was recruited on casual basis some time in the year 1981 in M/s P.V.K. Distillery Ltd. (now rechristened as Lords Distillery Ltd.). On 14.8.1982 he was shifted to bottling section as a permanent workman by the orders of the General Manager. On 19.1.1985 services of the respondent were terminated by an oral order from the employer. Aggrieved by the said order, respondent went before the Labour Court inter-alia alleging that he was employed in the establishment of the employer and that his services were terminated orally in an unjustifiable and illegal manner. Appellants on the other hand contended, that, respondent was engaged by Gaya Singh Yadav, contractor and therefore respondent was never in their employment and thus master-servant relationship never existed between them.

3. Labour Court after considering and appreciating the oral and documentary evidence on record, has come to the conclusion, that, the respondent, Mahendra Ram, was in the continuous employment of the establishment since 1980 and the employer unjustifiably and illegally terminated workman's services from 19.1.1985. The labour court has also come to the conclusion that the respondent-workman has worked for more than 240 days in a calendar year, as required by section 25B(2) (a) of *Industrial Disputes Act, 1947*, and therefore he is entitled for reinstatement with continuity of service and full employment benefits and back wages.

4. In the interregnum, the appellant's factory remained closed for years together and ultimately it was declared as a sick unit. Management of the company was substituted with the present management for its rehabilitation/reconstruction.

5. Appellant then went before the High Court challenging the validity and legality of the award by which the workman has been reinstated with continuity of service and full employment benefits and back wages. By the impugned order, the High Court has stated that there is no reason to doubt the findings given by the Labour Court and declined to interfere with the award passed by the Labour Court in Adj. Case NO. 32/87. Aggrieved by the said order, appellant is before us by this special leave petition.

6. Notice was ordered to be issued to the respondent on 25.1.2008. The order reads : "Issue notice to the limited to the question of 50% back wages".

7. Pursuant to the order passed by this Court, notice was issued to the respondent to the address furnished in his claim statement filed before the Labour Court. Since the same was returned unserved, the Registrar of this Court on 7.8.2008 ordered that two weeks time is granted to the appellant to file application for substituted service. Learned counsel for the appellant on 20.8.08 filed an application for substituted service by way of publication in the newspaper. In spite of such publication, the respondent has not appeared before this court either in person or through his learned counsel. Therefore we are deciding this appeal after hearing the learned counsel for the appellant.

8. In the instant appeal, the Labour Court on appreciation of evidence on record has rendered a finding that there exists a master-servant relationship between the employer i.e. appellant and Mahendra Ram.

9. Section 11A of Industrial Disputes Act gives power to the Labour Courts to give appropriate relief in case of discharge and dismissal of a workman in exceptional circumstances. Labour Court after appreciating the facts and evidence on record has rightly held that services of respondent have been unjustifiably and illegally terminated by the appellant without complying with the procedure prescribed in Section 6- N of the U.P. Industrial Disputes Act, and accordingly has directed reinstatement of respondent in service with all other service and monetary benefits.

10. The only question which requires to be considered by us in this appeal is, whether the Labour Court was justified in awarding full back wages, while directing the employer to re-instate the workman in service. Learned counsel for the appellant in this regard contends that the High Court has acted erroneously by declining to interfere with the award of the Labour Court. He would urge that the grant of relief of reinstatement and back wages is not automatic in all matters arising under the provisions of Industrial Disputes Act. He would also urge that the appellant will suffer irreparable loss and injury, if it has to employ a contractor workman on its rolls with full back wages even for the period when the

establishment was closed. In support of his arguments, reliance is placed on the observations made by this court.

11. In the case of *P.G.I. of M.E. and Research, Chandigarh v. Raj Kumar*¹ this court has held that the payment of back wages having a discretionary element involved in it, has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable.

12. In the case of *Hindustan Motors v. T. K. Bhattacharya*², this court has stated that section 11-A as amended in 1971, is couched in wide and comprehensive terms. It vests a wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows, that, the Tribunal is duty-bound to consider whether in the circumstances of the case, back wages have to be awarded and if so, to what extent. Court then held that Industrial Tribunal and Division Bench of High Court erred in proceeding on the assumption that quashment of dismissal order should be followed by reinstatement with full back wages as a matter of course. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement.

13. In *U.P. State Brassware Corp. Ltd. v. Uday Narain Pandey*³ it is observed that the person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

14. In the case of *Haryana Urban Development Authority v. Om Pal*⁴ it is stated that, it is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full back- wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several

factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

15. In deciding the question, as to whether the employee should be recompensed with full back wages and other benefits until the date of reinstatement, the tribunals and the courts have to be realistic albeit the ordinary rule of full back wages on reinstatement. [*Western India Match Co. Ltd. v. Third Industrial Tribunal, West Bengal*⁵.]

16. In *Hindustan Tin Works (P) Ltd. v. Employees*⁶ this Court has held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

17. In the case of *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*⁷ this Court has observed that the plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief.

18. In *Allahabad Jal Sansthan v. Daya Shankar Rai*⁸, this Court has observed: A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration.

19. In *Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan*⁹, the quantum of back wages was confined to 50%, stating: It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retiral benefits like gratuity, etc. and accepting the statement of the learned Senior Counsel for the appellant Mills that it is undergoing a financial crisis, on the facts of this case we think it appropriate that the full back wages granted by the Labour Court be reduced to 50% of the back wages."

20. In the instant case, the notice had been issued limiting the question to the payment of 50% of the total back wages. This does not mean that the respondent is not entitled to further

relief. The point that his services were terminated in the year 1985 and since then the case is pending for the last two decades in different courts also has no relevance, since he had approached the court within a reasonable time. It is not his fault that the case is still pending before the court. These grounds could not be held against him for denying the relief of back wages otherwise he would suffer double jeopardy of losing back wages and delay in getting the reinstatement for no fault of his. Therefore, it would have been more enlightening, had the High Court reasoned out as to why the appellant should reinstate the respondent with full employment benefits and should pay full back wages to him for nothing in return from him in terms of work, production etc.

21. Giving a realistic approach to the matter and in spite of all these circumstances we are restricting ourselves to the question of 50% of the total back wages. Although services of the respondent have been terminated unjustifiably and illegally, it itself does not create a right of reinstatement with full employment benefits and full back wages. The notice was issued with a view that the appellant's factory has been taken over by a new management altogether and by asking the appellant to pay full back wages for the long interregnum would be unfair and unjust. The workman has not entered appearance to justify the award passed by the Labour Court. Therefore, in our view, it would be unreasonable to put a huge burden on the appellant by directing them to reinstate respondent with continuity of service and with full back wages, because the appellant's factory had been declared sick and remained closed for many years and has been assigned to a new management led by its Chief Executive Director, Sri M.K. Pilonia in order to rehabilitate/reconstruct it.

22. In view of the above discussion, we are of the opinion that it would be fair and reasonable to direct the employer to deposit 50% of back wages by way of arrears of back wages, instead of full wages awarded by the Labour Court.

23. Accordingly, the judgment and order of the Labour Court and the High Court are set aside and it is declared that the respondent herein shall be entitled to 50% of the total back wages payable during the aforesaid period in terms of Section 6-N of the U.P. Industrial Disputes Act.

24. The appellant is directed to calculate 50% of the total back wages payable during the aforesaid period and to deposit the same in the Labour Court, Nati Imli, Varanasi, U.P. within 6 weeks from the date of the order. Labour Court, Nati Imli, Varanasi, U.P. is further directed to deposit the said amount in a fixed deposit in a nationalized bank within two weeks thereafter. If for any reason, the respondent claims the said amount within two years from the date of deposit of the said amount in the Labour Court, the Labour Court is directed to take effective steps to ascertain the identity of the respondent and on determining the same; the said amount shall be disbursed to the respondent with interest. If for any reason, respondent does not claim the said amount within two years from the date of deposit of the said amount in the Labour Court, the same should be handed over to the District Legal Service Authority with interest.

25. For the reasons aforementioned, the appeal is allowed in part and to the extent mentioned hereinbefore. However, there shall be no order as to costs.

¹(2001) 2 SCC 54

²(2002) 6 SCC 41

³(2006) 1 SCC 479

⁴(2007) 5 SCC 742

⁵1978 Lab IC 179 (SC)

⁶(1979) 2 SCC 80

⁷(1980) 4 SCC 443

⁸(2005) 5 SCC 124

⁹(2005) 3 SCC 193