

SUPREME COURT OF INDIA

Retu Marbles

Vs.

Prabhakant Shukla

(Tarun Chatterjee J.)

C.A.No.635 of 2007

03.12.2009

JUDGEMENT

SURINDER SINGH NIJJAR, J.

1. This appeal is directed against the judgment and order dated 20.7.04 of the High Court of Judicature at Allahabad in Writ Petition No.18641/03 and order dated 28.4.06 in Civil Miscellaneous Review Application No.172974/04.

2. Briefly stated the relevant facts are that the appellant is carrying on business in marble and other allied products at Kanpur. The respondent was engaged by the appellant as an accountant. He served the employer from 1.3.86 to 11.6.87, when his services were terminated. The respondent raised an industrial dispute, which was referred by the State Government for adjudication before the Labour Court. The employer as well as the employee filed their written statements. Oral evidence was also presented on behalf of the respondent as well as the employer.

3. It was submitted on behalf of the respondent that he was being paid a sum of Rs.1200/- per month as wages. He worked till 10th of June 1987. He was not permitted to work from 11th June 1987 onwards. On behalf of the employer it was stated that respondent was employed only as a part time accountant. Therefore, the reference was not competent.

4. Upon due appreciation of the evidence led by the parties, the Labour Court concluded that the respondent was working in the organization of the appellant on a salary of Rs.1,200/- per month as full time Accountant. It further held that respondent was removed from service without any notice or retrenchment compensation, which is clearly improper and illegal. Therefore, the respondent was entitled to reinstatement w.e.f. 12.6.87. With regard to back wages, the Labour Court observed as follows:

"It is to mention that plaintiff has not undertaken any work of the defendant organization from the date of his removal from services, but he must have worked somewhere to earn his livelihood.

Therefore, there seems no justification in allowing the salary and other benefits for the days he did not work.

Plaintiff is not entitled to get the pay and allowances for the period he did not perform any work. But from the date of this Judgment, plaintiff will be entitled to get the pay and admissible allowances at the rate of Rs.1200/- per month from the defendant.

5. This award was rendered by the Labour Court on 27th of September 2002 i.e., more than 15 years after the services of the respondent were terminated.

6. It is the case of the appellant that the respondent was duly reinstated in service after joining duty. He worked for 6 days and thereafter never returned.

7. Respondent, thereafter filed writ petition in the Allahabad High Court seeking modification of the award. This writ petition was opposed by the appellant. By the judgment and order dated 20th July 2004, the writ petition has been allowed.

The award of the Labour Court in so far as it declines to grant full back wages to the petitioner, has been held to be illegal.

The award has been modified and it has been held that the respondent shall be entitled to full back wages from the date of termination till the date of reinstatement.

8. Being aggrieved by the aforesaid judgment, the appellant filed a review application which has been dismissed by the High Court with the observation that the writ petition was decided on merits and if the applicant is not satisfied with the judgment it is open for it to challenge the same in the higher court of law. Aggrieved by the aforesaid two judgments the employer is before us in appeal.

9. We have heard the counsel for the appellant and the respondent in person.

10. Counsel for the appellant submits that the award of the Labour Court had been duly implemented. The respondent was reinstated in service. However six days after joining, he again abandoned the job. This absence from duty was recorded in a letter sent to him, on 6.4.2003. His salary was sent by money order on 20.4.2003. On 22.4.2003, the respondent filed the Writ Petition. In spite of the aforesaid factual position the High Court misdirected itself by directing the appellant to pay full back wages to the respondent. The respondent had failed to give any evidence before the Labour Court, that he remained unemployed from the date his services were terminated. He was unable to explain as to how in the absence of gainful employment, he had maintained himself for the long gap of 15 years. Taking into consideration the entire fact situation and on due appreciation of the evidence the Labour Court had correctly declined to award any back wages. The aforesaid finding has been reversed by the High Court without any legal justification. Learned counsel also submitted that the entitlement to back wages is not automatic. In fact in the writ petition, the respondent had only prayed for amendment of the award with respect to two aspects. It was prayed that the respondent ought to be paid wages as per the Minimum Wages Act and the period spent before the Conciliation Board be added to the award for the purposes of granting monetary benefits. According to the learned counsel the High Court has granted the relief of full back wages without there being any factual basis for the same.

11. Learned counsel has relied on a number of judgments of this Court in support of the proposition that entitlement to back wages is not a natural consequence when an order of termination is found to be in contravention of the Industrial Disputes Act, 1947. The court has to examine the facts and circumstances of each case.

12. On the other hand the respondent submitted that the High Court has correctly undone the injustice that had been done to him by the Labour Court. The Labour Court came to the conclusion that he was a full time accountant with the appellant. His services had been illegally terminated. He was entitled to be reinstated. However, the Labour Court illegally declined to grant full back wages on the ground that in order to survive for 15 years between the time of date of termination and the award, he must have worked somewhere to earn his livelihood.

13. The only limited issue to be determined by us, in this appeal, is whether the High court was justified in granting full back wages to the respondent in spite of the denial thereof by the Labour Court. In our opinion the High Court erred in law in not examining the factual situation. The High Court merely stated that it was not the case of the employer that the workman had been gainfully employed elsewhere. Although it noticed the principle that the payment of back wages having a discretionary element involved in it, has to be dealt with in the circumstances of each case and no strait jacket formula can be evolved, yet the award of the Labour Court was modified without any factual basis.

14. In the case of M/s. Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and Ors. AIR 1979 SC 75, it has been held as follows:

"Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full backs except to the extent he was gainfully employed during the enforced idleness. That is the normal rule."

15. These observations were subsequently considered in the case of Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya and Anr. (2002) 6 SCC 41 and it was observed as follows:

"Under Section 11-A as amended in 1971, the Industrial Tribunal is statutorily mandated, while setting aside the order of discharge or dismissal and directing reinstatement of the workman to consider the terms and conditions, subject to which the relief should be granted or to give such other relief to the workman including the award of any other punishment in lieu of the discharge or dismissal, as the circumstances of the case may require. The section 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.

From the award passed by the Industrial Tribunal which has been confirmed by the Division Bench of the High Court, it is clear that the order for payment of full back wages to the workman was passed without any discussion and without stating any reason. It appears that the Tribunal and the Division Bench had proceeded on the footing that since the order of dismissal passed by the management was set aside, the order of reinstatement with full back wages was to follow as a matter of course.

In *Hindustan Tin Works (P) Ltd. v. Employees* a three-Judge Bench of this Court laid down: (SCC p. 86, para 11) "11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner.

The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.

As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum."

16. The aforesaid judgment was subsequently considered in the case of *UP State Brassware Corpn. Ltd. vs. Uday Narain Pandey* (2006) 1 SCC 479 it was observed as follows:

"Before advertent to the decisions relied upon by the learned counsel for the parties, we may observe that 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.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P.

Industrial Disputes Act.

The changes brought about by the subsequent decisions of this court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy,

globalization, privatization and outsourcing, is evident."

17. From the above observations it becomes apparent that payment of full back wages upon an order of termination being declared illegal cannot be granted mechanically. It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry.

18. Again in the case of Haryana State Electricity Development Corporation Ltd. vs. Mamni (2006) 9 SCC 434 this court reiterated the principle. The principles laid down in UP State Brassware Corp. Ltd. (supra).

19. Recently this Court again examined the issues with regard to payment of full back wages in the case of P.V.K. Distillery Ltd. vs. Mahendra Ram (2009) 5 SCC 705.

20. After examining the relevant case law it has been held as follows:

"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.

In Haryana Urban Development Authority v. Om Pal it is stated that: (SCC p. 745, para 7) "7.... It is now also well settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A 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."

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. Industrial Tribunal)"

21. Applying the aforesaid ratio of law we have examined the factual situation in the present case. The services of the respondent were admittedly terminated on 11.6.87. The Labour Court gave its award on 27.9.02. Therefore, there is a gap of more than 15 years from the date of termination till the award of reinstatement in service. Labour Court upon examination of the entire issue concluded that the respondent would not be entitled to any back wages for the period he did not work. A perusal of the award also shows that the respondent did not place on the record of the Labour Court any material or evidence to show that he was not gainfully employed during the long spell of 15 years when he was out of service of the appellant. In the writ petition the respondent was mainly concerned with receiving wages in accordance with the Minimum Wages Act and for inclusion of the period spent in Conciliation Proceedings for the calculation of financial benefits. The High Court without examining the factual situation, and placing reliance on the judgment in M/s. Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and ors. held that the normal rule of full back wages ought to be followed in this case. We are of the considered opinion that such a conclusion could have been reached by the High Court only after recording cogent reasons in support thereof. Especially since the award of the Labour Court was being modified. The Labour Court exercising its discretionary jurisdiction concluded that it was not a fit case for the grant of back wages. In the case of P.V.K. Distillery Ltd. (supra), it is observed as follows:

"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."

22. In our opinion the High Court was unjustified in awarding full back wages. We are also of the opinion that the Labour Court having found the termination to be illegal was unjustified in not granting any back wages at all.

23. Keeping in view the facts and circumstances of this case we direct that the respondent shall be paid 50 per cent of the back wages from the date of termination of service till reinstatement.

24. With the aforesaid observations the appeal is allowed.

The respondent shall be paid 50 per cent of the back wages as directed within a period of three months from today. There shall be no order as to costs.

