

SUPREME COURT OF INDIA

The Management of Regional Chief Engineer P.H.E.D. Ranchi

Vs.

Workmen Rep. by District Secretary

C.A.No.9832 of 2018

(Abhay Manohar Sapre and S.Abdul Nazeer,JJ.,)

20.09.2018

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C)No.25965 of 2018

1. Leave granted.
2. This appeal is directed against the final judgment and order dated 02.02.2017 of the High Court of Jharkhand at Ranchi in L.P.A. No.484 of 2008 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and upheld the order dated 08.07.2008 passed by the Single Judge of the High Court in W.P.(L) No.3962 of 2006.
3. Few facts need to be mentioned hereinbelow for the disposal of the appeal, which involves a short issue.
4. The short question, which arises for consideration in this appeal, is whether the Courts below, namely, the High Court and the Labour Court were justified in awarding full back wages to the 37 workmen represented by Workmen Union after setting aside their dismissal order holding it to be bad in law being in contravention of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "I.D. Act") and, in consequence, directing reinstatement of these workmen in services of the appellant in their Public Health and Engineering Department (PHED).
5. The appellant is the Department of the State of Jharkhand [Public Health and Engineering Department (PHED)] whereas the respondent is the Workmen Union representing the interest of the workmen working in the Public Health and Engineering Department (PHED).
6. The State made a reference under Section 10 of the I.D. Act to the Labour Court, Ranchi at the instance of the respondent-Union to decide the following dispute:

“Whether the dismissal and non absorption of 37 acting daily wages Hastrashid employees as mentioned in schedule “K” in work charged establishment by Public Health Engg. Division, East Ranchi (Department of PHED, Jharkhand) is lawful. If not, what other reliefs their employees are entitled to?”

7. By award dated 29.06.2005, the Labour Court (Annex.P-1) answered the reference in respondent- Union’s favour and directed re-instatement of 37 workmen with payment of full back wages in Reference Case No.6 of 2002.

8. The appellant (employer), felt aggrieved by the award of the Labour Court, filed writ petition in the High Court of Jharkhand. The Single Judge of the High Court, by order dated 08.07.2008, dismissed the writ petition filed by the appellant and affirmed the award passed by the Labour Court.

9. Being aggrieved by the order of the Single Judge, the appellant filed intra court appeal. By impugned order, the Division Bench of the High Court dismissed the appeal and upheld the order of the Single Judge, which gave rise to filing of this appeal by way of special leave by the appellant- employer in this Court.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and while modifying the impugned order award 50% back wages to the workmen in place of full wages.

11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, *M.P. State Electricity Board vs. Jarina Bee(Smt.)*¹, *G.M.Haryana Roadways vs. Rudhan Singh*², *U.P. State Brassware Corporation vs. Uday Narain Pandey*³, *J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr.*⁴, *Metropolitan Transport Corporation vs. V.*

Venkatesan⁵, Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr⁶., and Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya(D.Ed.) & Ors⁷.,

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.

15. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages.

16. On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to 37 workmen while directing their reinstatement in service.

17. We, however, find that the High Court in para 9 of the order placed reliance on the decision of this Court in Deepali Gundu Surwase (supra) for holding that the question of back wages is covered by this decision. In our view, the High Court erred in so observing. It should have seen that in the case of Deepali Gundu Surwase (supra) itself, this Court referred decisions, which we have mentioned in para 13 above and then in para 38 of Deepali Gundu Surwase, this Court culled out the ratio of all the cited cases. Thereafter, this Court in Deepali Gundu Surwase' case granted relief to the concerned workers on the facts involved in that case. In our opinion, the High Court did not apply the ratio of the decision in Deepali Gundu Surwase (supra) to the facts of this case properly and only quoted one para of the judgment in Deepali Gundu Surwase(supra) which contained general observations. Those observations had to be read in juxtaposition with para 38 which culled out the ratio of all the case law on the subject.

18. We cannot, therefore, concur with such direction of the Courts below awarding full back wages to the workman which, in our opinion, has certainly caused prejudice to the appellant (employer).

19. However, having regard to the facts and circumstances of the case, we consider it just and proper and in the interest of justice to award to these 37 workmen 50% of the total back wages.

20. This we award to the workmen in exercise of our powers under Article 142 of the Constitution of India for doing substantial justice to the parties concerned having reiterated the legal principles which govern the question of award of back wages.

21. In the light of the foregoing discussion, the appeal succeeds and is allowed in part. Impugned order is modified to the extent indicated above.

22. Let the amount be worked out and paid by the appellant to the respondent-workmen after proper verification within three months from the date of this judgment.

Judgment Referred.

¹(2003) 6 SCC 0141

²(2005) 5 SCC 0591

³(2006) 1 SCC 0479

⁴(2007) 2 SCC 0433

⁵(2009) 9 SCC 0601

⁶(2009) 15 SCC 0327

⁷(2013) 10 SCC 0324