SUPREME COURT OF INDIA

Jayantibhai Raojibhai Patel

Vs.

Municipal Council, Narkhed

C.A.No.6188 of 2019

(Dr.D.Y.Chandrachud and Indira Banerjee,JJ.,)

21.08.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

SLP(C) No.8112 of 2019

1. The appellant was appointed on 1 July 1986 as a Headmaster of the Nagar Parishad High School conducted by the Municipal Council of Narkhed in the District of Nagpur. On 5 February 1994, a notice to show cause was issued to him, levelling an allegation of misappropriation of Rs 5,000. After the appellant submitted a reply on 6 February 1994, the first respondent appointed a former Deputy Education Officer, Shri Marathe as an inquiry officer. A charge-sheet was issued to the appellant on 8 June 1994. The inquiry officer submitted a report on 25 July 1994, holding that the appellant was not guilty of the misconduct he was charged with.

2. On 27 August 1994, the first respondent resolved to appoint another inquiry officer to conduct an inquiry into the charges against the appellant. A former Chief Officer, Shri Sontakke was appointed as an inquiry officer. The appellant objected to the convening of a second inquiry by his letter dated 24 September 1994. The new inquiry officer issued a notice to show cause to the appellant on 26 September 1994. The appellant objected to the appointment. In the meantime, on 10 October 1994 the first respondent called upon the appellant to show cause what action should be taken pursuant to the report of the first inquiry officer. On 8 November 1994, the first respondent inferred that the report of Shri Marathe was not acceptable to the appellant and proceeded with the inquiry under Shri Sontakke.

3. The new inquiry officer submitted his report on 20 April 1995, holding the appellant guilty of misappropriation of funds and defalcation. On the basis of the report of the inquiry officer, a notice to show cause was issued to the appellant to which he submitted his reply. The first respondent then passed a resolution removing the appellant. This was followed by an order of removal dated 29 June 1996. The appeal filed by the appellant

before the Regional Director, Municipal Administration, Nagpur Division under Section 79 (6) of the Municipal Councils, Nagar Panchayats and Industrial Townships Act 1965 was dismissed on 31 August 1996.

4. The appellant instituted a writ petition before the High Court to challenge his removal. The High Court, by its judgment and order dated 12 August 2014 quashed the order of removal. The appellant had already attained the age of superannuation. The High Court held that no back-wages should be paid to the appellant for the period for which he had not rendered service. However, the High Court directed the disbursement of retiral benefits to the appellant, treating him to be in service with continuity of service until the date of superannuation.

5. The submission which has been urged on behalf of the appellant in support of the appeal is that once the High Court found that the appellant had wrongfully been removed from service, the general principle that back-wages must follow a determination in regard to the illegality of termination should be applied. This was sought to be supported by relying upon the decisions of this Court in *Hindustan Tin Works (P) Ltd v Employees*[1] ("Hindustan Tin Works") and *Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya*[2] ("Deepali Surwase") .

6. After notice was issued in these proceedings, a counter affidavit has been filed on behalf of the first respondent. It has been submitted that pursuant to the order of the High Court, retiral benefits amounting to Rs 27 lakhs have been paid to the appellant in July 2015 after deduction of tax. Moreover, the appellant is drawing a pension of Rs 31,500 per month. The first respondent submitted that within two years of the removal, it had taken necessary steps to reinstate the appellant but the order could not be implemented as a result of a stay granted by the District Collector. The first respondent submitted that the appellant ought not to be granted back-wages for the period for which he has not worked, particularly having regard to the fact that it is a 'Class-C' municipality with a limited income.

The rival submissions now fall for our consideration.

7. The High Court has held that the action of the Municipal Council in proceeding with a de novo inquiry was vitiated since no reasons were recorded by the Municipal Council. The High Court held that even if a de novo inquiry was permissible under the rules, no reason was furnished for discarding the report of the first inquiry officer and convening a fresh enquiry. Moreover, the appellant had objected to the appointment of Shri Sontakke as an inquiry officer since he was an ex-officer of the Municipal Council who was occupying quarters allotted to him at the material time. Hence, the High Court held that the removal was illegal. However, the High Court denied back-wages for the period between the date of dismissal and the date on which the appellant attained the age of superannuation. The appellant has been granted his retiral dues on the basis of continuity of service. The judgment of the High Court has not been challenged by the Municipal Council.

8. The view of the High Court that a fresh appointment of an inquiry officer could not have

been made without recording reasons why the disciplinary authority disagreed with the enquiry report is correct. This is borne out by the decision of this Court in *CSHA University v BD Goyal*[3], where a three judge Bench of this Court observed:

> "7. It is no doubt true that the punishing authority or any higher authority could have disagreed with the finding of the enquiring officer, but in such a case the authority concerned is duty-bound to record reasons in writing and not on ipse dixit can alter the finding of an enquiring officer. The order of the Vice-Chancellor, which was produced before us does not satisfy the requirements of law in the matter of differing with the findings of an enquiring officer."

9. Several judgments of this Court have laid down the principles pertaining to the grant of back wages. In Hindustan Tin Works, a three-judge Bench of this Court adjudicated on the criterion for grant of back-wages where a termination has been held to be illegal. The appellant in that case was a private limited company with an industrial unit. The Labour Court held that the retrenchment of employees by the appellant was not bona fide and awarded full back wages to the employees, which was challenged before the Supreme Court. This Court made the following observations:

> "9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand

for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages..."

(Emphasis supplied)

The Court further clarified that while the payment of full back wages would be the normal rule, there can be a departure from it where necessary circumstances have been established:

"11. In the very nature of things there cannot be a straight- jacket 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 (see *Susannah Sharp v. Wakefield [(1891) AC 173, 179]).*"

Taking note of the financial problems of the appellant company, the Court granted compensation to the extent of 75% of back wages. The principle laid down in Hindustan Tin Works has been followed by other decisions of this Court.

10. In *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum- Labour Court*[4], the termination of the services of the appellants was held to be in contravention of Section 25-F of the Industrial Disputes Act by the Labour Court, but the appellants were denied the payment of back wages. In appeal, a three-judge bench of this Court observed:

"6... 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-a-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, but ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded

where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

11. In Deepali Surwase, the appellant had been employed as a teacher in a primary school run by a trust. The services of the appellant had been terminated by the management of the school pursuant to an ex-parte inquiry proceeding. The School Tribunal quashed the termination of the appellant's services and issued a direction for the grant of full back wages. In appeal, the High Court affirmed the view of the Tribunal that the termination was illegal, but set aside the direction for grant of back wages. In appeal, a two-judge Bench of this Court laid down the following principles:

> "22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money...The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emolument."
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> (Emphasis supplied)

The Court laid down the following principles to govern the payment of back wages:

> "38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
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> 38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.
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> 38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she

was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11 -A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-a-vis the employee or workman. He can avail the services of best legal brain for prolonging

the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested *in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53]* ."

12. In the present case the first inquiry resulted in a report which came to the conclusion that the charge of misconduct was not substantiated. Upon finding that the convening of a fresh inquiry without recording reasons was contrary to law, the High Court would have ordinarily granted liberty to the Municipal Council to take a fresh decision after due notice to the appellant. Such a course of action was, however, rendered impracticable by supervening events. The writ petition instituted by the appellant before the High Court in 1996 remained pending for nearly eighteen years. The appellant had been removed from service on 29 June 1996. Considering the lapse of time, reopening the proceedings would not be expedient in the interest of justice particularly when the appellant had, in the meantime, attained the age of superannuation in 2005. Relegating the appellant to a protracted course of action by restoring the proceedings before the disciplinary authority would also not be fair and proper after a lapse of nearly fourteen years since his retirement.

13. Having due regard to the principles which have been enunciated in Deepali Surwase by this Court, the High Court was not, in our view, justified in denying the back-wages to the appellant altogether. Bearing in mind the circumstances which have been noted above, a lumpsum compensation should be directed to be paid.

14. The ends of justice would be met by directing that the appellant be paid an amount quantified at Rs 5 lakhs in full and final settlement of his claim for back- wages for the period between the date of the order of removal and the date on which he attained the age of superannuation. This payment to the appellant shall be made in addition to the retiral benefits to which he is entitled in terms of the order of the High Court. The payment of Rs 5 lakhs shall be made within a period of two months from the date of receipt of a certified copy of this order.

15. The appeal is accordingly disposed of. There shall be no order as to costs.

Judgment Referred.

[1]*(1979) 2 SCC 0080*
[2]*(2013) 10 SCC 0324*
[3]*(2010) 15 SCC 0776*
[4]*(1980) 4 SCC 0443*