

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 7420 OF 2008
(Arising out of SLP (Civil) No. 6147 of 2008)

Y. Yohannan

Appellant(s)

Versus

State of M.P. & Ors..

Respondent(s)

ORDER

Leave granted.

This appeal is directed against the judgment and final order dated October 09, 2007 passed by a Division Bench of the High Court of Judicature at Jabalpur, Madhya Pradesh, in Writ Appeal No. 173 of 2006. By the impugned order, the High Court, while allowing the appeal, preferred by the appellant, in part, has directed that he will be entitled to 25% of the back wages as against 50% of back wages awarded by the learned Single Judge.

Since the controversy in the appeal is confined to the question whether the appellate Bench was justified in reducing the amount of back wages in an appeal preferred by the appellant for further enhancement of the back wages, we deem it unnecessary to state the facts in detail. It would suffice to note that while quashing the order of compulsory retirement passed against the appellant, an Upper Division Clerk in the Police Department, the learned Single Judge had directed his reinstatement with payment of 50% of back wages.

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Being aggrieved with the direction for payment of back wages @ 50%, the appellant preferred intra-Court appeal. The respondent State did not challenge the

said order. As noticed earlier, the appeal was partly allowed. The penultimate paragraph reads as under:

“The principle with regard to back wages, as is manifest, has gone a sea-change. The earlier view was that with the quashment of the order of termination consequent grant of full back wages were a logical corollary. Presently, as the law has been enunciated, it would depend upon many a factor. A pragmatic view has to be taken. The petitioner stood dismissed in the year 1989. Regard being had to the facts and the circumstances in totality, the law in the field, the financial crunch suffered by the State and keeping in view the concept of a pragmatic approach, we are of the considered opinion that grant of 25% back wages would meet the ends of justice.

In the result, the writ appeal is allowed in part. We direct that the appellant would be entitled to 25% of the back wages. The same shall be paid to him within a period of three months hence. There shall be no order as to costs.”

Thus, the appellate bench held that the appellant shall be entitled to 25% of back wages. Aggrieved by the said order, the appellant is before us.

We have heard learned counsel for the parties.

Learned counsel appearing on behalf of the appellant has submitted that the order passed by the Division Bench, reducing the amount of back wages, as awarded by the learned Single Judge, in an appeal preferred by the appellant is *ex facie* illegal, particularly, when the State had not questioned the correctness of the order of the learned Single Judge, awarding 50% back wages. It is also pointed

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out that the back wages awarded by the learned Single Judge have already been paid to the appellant. Learned counsel appearing on behalf of the respondent State, on the other hand, supported the order passed by the Division Bench.

We are of the opinion that the order passed by the learned appellate bench cannot be sustained. Admittedly, the State was not in appeal against the direction of the learned Single Judge for payment of back wages at the rate of 50%. Therefore,

in an appeal preferred by the appellant for enhancement of the back wages, as awarded by the learned Single Judge, there was no reason for the Division Bench to reduce the back wages awarded by the learned Single Judge.

Accordingly, the appeal is allowed and the impugned order is set aside.

There will, however, be no order as to costs.

**.....J.
[D.K. JAIN]**

**.....J.
[AFTAB ALAM]
NEW DELHI,
DECEMBER 18, 2008.**