

CASE NO.:
Appeal (civil) 3984 of 2002

PETITIONER:
HINDUSTAN MOTORS LTD.

Vs.

RESPONDENT:
TAPAN KUMAR BHATTACHARYA & ANR.

DATE OF JUDGMENT: 12/07/2002

BENCH:
D, .PP..VMEONHKAAPTAATRRRAAMA REDDI.

JUDGMENT:

D.P.MOHAPATRA, J.

Leave granted.

This appeal, filed by the Management of M/s. Hindustan Motors Limited, is directed against the judgment dated 26.06.2001 of the Division Bench of Calcutta High Court in APO No.540 of 1998 setting aside the judgment of the single Judge and directing reinstatement of the workman, respondent herein with back wages. It was further ordered by the Division Bench that seniority and continuity in service should be maintained and any interim amount paid by the management to the workman should be deducted from the amount of back wages. The learned single Judge in his judgment dated 12.3.98 had set aside the Award of the Industrial Tribunal passed on 3.10.1991, in which direction for reinstatement of the workman with back wages was ordered.

On 3.9.2001 this Court issued notice to the respondent limited to the question of back wages only. In the light of the said order learned counsel appearing for both the parties confined their arguments to the question of back wages.

The short resume of facts relevant for determination of the question raised may be stated thus:

The respondent was employed as a mazdoor in the production control department (car press shop) of the appellant. On 13.2.1980 at about 10.40 p.m. while on duty in the car press shop he had assaulted one Ramagya Jadav, General Supervisor of the department, as a result of which the said Supervisor became unconscious and had to be hospitalized. On the basis of the said incident a show cause notice was issued to the respondent to explain why disciplinary action should not be taken against him for committing major misconduct under Item Nos. 1,17 and 19 of Appendix 'D' of the Certified Standing Orders of the

company. The respondent was immediately placed under suspension. This was followed by a Departmental Enquiry in which the respondent was found guilty of major misconduct. Thereafter the appellant by the communication dated 1.8.80 conveyed its decision to dismiss the respondent from service with effect from 15.2.80. Thereafter the appellant filed an application under section 33(2) (b) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Fourth Industrial Tribunal, West Bengal seeking approval of the proposed dismissal order. The Tribunal by order dated 12.7.1982 approved the proposed order of dismissal from the service of the respondent. Thereafter at the instance of the respondent an industrial dispute was raised. The State Government by the order dated 22.7.1986 passed under sub-section (2A) of Section 10 of the Act referred the following dispute to the Tribunal for adjudication :

"1. Is the dismissal of Shri Tapan Kumar Bhattacharya from the service is justified ?
What relief, if any, is he entitled to ?"

The Fifth Industrial Tribunal, West Bengal by its Award dated 3.10.1991 held that the charges framed against the respondent were not proved by any cogent and reliable evidence and as such his services could not have been terminated. On such finding the Tribunal answered the reference in the following terms:

"In the result, I find that the order of dismissal of the concerned workman from his service is not at all justified and as such, he is entitled to reinstatement in his service with other benefit upto the date of his reinstatement."

The Award of the Tribunal was challenged by the company by filing a writ petition before the High Court which was registered as matter No.212/92. The learned single Judge by judgment dated 12.3.1998 allowed the said writ petition. The operative portion of the order reads as under:

"In any event for the reasons as discussed above the impugned award is not liable to be sustained. I accordingly set aside and quash the same. Thus the writ petition succeeds. There will be no order as to costs. Consequently, the gazette notification published in the said award is also set aside and quashed. Accordingly, there will be a writ of mandamus commanding the respondent no.1 not to give effect and/or implement and/or enforce the said impugned award dated 3rd October, 1991."

The respondent carried the matter in appeal before the Division Bench in APO No.540/98, which, as

noted earlier, was decided by the judgment dated 26th June, 2001. The Division Bench allowed the appeal and set aside the judgment of the learned single Judge on the terms noted earlier. The said judgment is under challenge in the present appeal.

In view of the limited notice issued in the appeal, the sole question for determination is whether on the facts and circumstances of the case the Tribunal and the Division Bench of the High Court were justified in passing the order for payment of full back wages in favour of the workman.

Shri Bhaskar P. Gupta, learned senior counsel appearing for the appellant strenuously contended that both the Tribunal as well as the Division Bench of the High Court committed error in directing payment of full back wages without considering the relevant aspects of the matter. Shri Gupta contended that in the facts and circumstances of the case no order for payment of back wages should be passed in favour of the workman. Per contra Shri G.S. Chatterjee, learned counsel appearing for the respondent contended that since the Tribunal held that the charges framed by the management against the workman could not be established by adducing cogent and reliable evidence, as such the order of dismissal of service could not be passed; therefore, there was no alternative before it but to order reinstatement of the workman with full back wages. Shri Chatterjee further contended that since the Division Bench on consideration of the matter, held the order of dismissal to be illegal and unjustified, therefore rightly confirmed the award of the Tribunal directing reinstatement with full back wages. 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 Pvt. Ltd. Vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. & Ors., (1979 (2) SCC 80), a three-Judge Bench of this Court laid down :

"In the very nature of things there cannot be a strait-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)".

The Court, on taking into account the financial position of the employer-Company, thought it fit to modify the award by allowing 75% of the back wages instead of full back wages.

In *P.G.I. of Medical Education & Research, Chandigarh Vs. Raj Kumar*, (2001 (2) SCC 54), this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus :

"The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect."

Again at paragraph 12, this Court observed :
"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."

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. Instead of remitting the matter to the Labour Court or High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled

finally. 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. The amount already paid as wages or subsistence allowance during the pendency of the various proceedings shall be deducted from the back wages now directed to be paid. The appellant will calculate the amount of back wages as directed herein and pay the same to the respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs.