

CASE NO.:
Special Leave Petition (civil) 23385 of 2004

PETITIONER:
G.M. Haryana Roadways

RESPONDENT:
Jai Bhagwan & Anr

DATE OF JUDGMENT: 05/03/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO.23385 OF 2004

S.B. Sinha, J.

1. First respondent was appointed as a Driver on daily wages by the appellant roadways. He was a casual employee. He was being paid wages at the rate fixed by the Deputy Commissioner, Rohtak.

2. Indisputably, he was continuously working from 4.8.1995. Allegedly, he abandoned the service. First Respondent's contention, however, is that his services were illegally terminated.

3. First respondent filed an application under Section 2A of the Industrial Disputes Act, 1947 praying for his reinstatement with full back wages along with continuity of service and other statutory benefits. The said application was allowed by the Labour Court. Before the Labour Court, appellant did not adduce any evidence to establish to its contention that workman himself had left his job. Apart from the fact that he was found to be working for more than 240 days during the period of 12 months preceding the date of his termination and furthermore as admittedly the mandatory requirements of Section 25F of the Act had not been complied with, the learned labour court also found that some drivers who were junior to him had been retained in service in violation of the provisions of Section 25G of the Act. It was, therefore, directed that the respondent be reinstated on his previous post with continuity of service and full back wages from the date of service of the notice of demand.

4. The said award appears to have been implemented in part as the first respondent was reinstated in service by an order dated 10.5.2002 passed by the General Manager, Haryana Roadways, Rohtak, stating :
"As per Presiding Officer, Labour Court, Rohtak judgment dated 28.2.2000, Shri Jai Bhagwan, Ex. Driver D.W. s/o Shri Ram Kishan is hereby reinstated with immediate effect along with continuity of service subject to decision of outcome of the CWP/SLP on the post of Driver on daily wages upto 31.5.2002. He will be paid as per @ fixed by Deputy Commissioner, Rohtak. He is posted at Rohtak & Driver allotted No.102A.

The terms and conditions of the appointment will remain the same as per previous order. His services are liable to be terminated at any time without prior notice or assigning any reason. He can be transferred to any unit of Transport Department, Haryana."

5. It is a matter of some significance that on the said date, namely, 10.5.2002, no writ petition had been filed. A writ petition was filed

questioning the said award before the High Court of Punjab and Haryana at Chandigarh only on 27.7.2002. It does not appear that even in the writ petition, the fact that first respondent had been reinstated in service in term of the award of the learned Labour Court was disclosed. The said writ petition was summarily dismissed by an order dated 23.9.2002.

6. Relying on or on the basis of a purported scheme for regularization, the services of the first respondent were regularized, stating :

"In pursuance of the Transport Commissioner, Haryana, letter No.1224-45/A2/E3 dated 23.3.1998 and letter No.3471-90/A2/E3 dated 6.7.1999.

Your services are hereby regularized as driver w.e.f. 10.5.2002 after completing 2 years of service in the scale of Rs.4000-100-4800-EB-100-6000 subject to final outcome of decision in CWP/SLP on the following terms and conditions\005."

7. The special leave petition was filed before the Court on 13.9.2004 with an application for condonation of 153 days' delay. In the List of Dates filed with the SLP, the fact that the first respondent had been reinstated in service or that his services had been regularized had not been disclosed. To crown all, a prayer for interim relief was made to the following effect :

"It is, therefore, respectfully prayed that Your Lordships may graciously be pleased to grant ad interim ex parte stay of the operation of the final judgment and Order dated 23.9.2002 of the High Court of Punjab and Haryana at Chandigarh in CWP No.15317 of 2002."

8. A notice in this matter was issued by this Court on 1.11.2004. First Respondent in his counter affidavit brought the aforementioned facts to the notice of this Court.

When the matter was heard on 7.12.2007, this Court observed :

"When the matter was called out learned counsel for the respondents has produced before us a letter dated 21.6.2004 whereby the services of respondent No.1 have been regularized as driver with effect from 20.5.2002. The said fact has not been mentioned in the list of dates. It appears that questioning the award passed by the Industrial Tribunal-cum-Labour Court, Rohtak, a writ petition was filed before the Punjab and Haryana High Court which was dismissed by an order dated 23.9.2002. When the matter came up before this Court, this Court not only issued notice on the special leave petition but also issued notice on the prayer for interim relief.

It is, therefore, evident that, on the one hand, the petitioner has been questioning the jurisdiction of the Industrial Court to direct reinstatement with full back-wages of the workman and, on the other, it itself has been passing such orders.

One of the grounds taken in the special leave petition is that the appointment of respondent No.1 in service was not on a sanctioned post and he had abandoned the job on his own during the period of question.

Let notice be issued to the petitioner as to why an appropriate order shall not be passed against the administration of the Haryana Roadways, Rohtak, in view of the fact that they are taking one stand before the Court but acting otherwise on the administration side as also

withholding the material fact before the court.

Affidavit be filed before 7th January, 2008.

Put up the matter on 16th January, 2008."

9. Pursuant to the said directions, an affidavit has been filed on 8.1.2008 stating that there was a communication gap between the Department and the counsel for the petitioner. No explanation had been offered why material facts, as noticed hereinbefore, had not been disclosed in the list of dates.

10. Mr. Manjit Singh, learned Additional Solicitor General appearing on behalf of the petitioner, would submit that non-disclosure of the said facts was not intentional. We do not accept the said explanation. We have noticed hereinbefore that the writ petition was filed before the High Court after a period of about one year and five months. Even prior thereto, the respondent was reinstated in service.

11. We have also noticed that the Special Leave Petition was barred by 153 days, but despite the same the aforementioned orders dated 10.5.2002 reinstating the first respondent and that of 21.6.2004 regularising his services were not brought to the notice of the court. The delay occurred in filing the SLP was, in fact, about 721 days. However, it appears that 478 days time was taken for obtaining the certified copy of the order of the High Court which also appears to be a bit unusual.

12. We fail to understand how even in a case of this nature where the State pretended to be so serious in obtaining a principle of law determined by this Court, such a delay took place both in filing the writ petition as also the Special Leave Petition.

Suppression of material fact is viewed seriously by the Superior Courts exercising their discretionary jurisdiction. In S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors. [(2004)7SCC166], this court on suppression of fact held :

"As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case."

The said observation was quoted with approval by one of us in Arunima Baruah v. Union of India (UOI) and Ors. [(2007) 6 SCC 120], wherein the question which was raised was: How far and to what extent suppression of fact by way of non-disclosure would affect a person's right of access to justice?

The court notices that so as to enable it to refuse to exercise its discretionary jurisdiction, the suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the Appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case.

Recently, in Prestige Lights Ltd. v. State Bank of India [(2007) 8 SCC 449], this court held :

"The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

Had the aforementioned facts been brought to the notice of this Court, the Special Leave Petition might have been dismissed summarily. Even delay in filing the same might not have been condoned. The Court was not required to waste so much of time when the State itself had, for all intent and purport, accepted the award.

13. Furthermore, the State was guilty of serious delay and laches. We, therefore, are of the opinion that for suppression of fact of such a nature and that too at the instance of the State must be viewed seriously. We hope and trust that in future the State shall take necessary measures in pursuing its matter before the Superior Court keeping in view the conduct expected of a State.

14. We, therefore, direct that not only this special leave petition should be dismissed but exemplary costs should also be awarded in the matter. The cost is quantified at Rs.1,00,000/- (Rupees one lac only). As the respondent had not appeared today, we are of the opinion that the cost should be paid to the National Legal Services Authority. The amount may be deposited with the Member-Secretary, National Legal Services Authority within a period of four weeks failing which it would be entitled to realize the same in accordance with law with interest at the rate of 12% per annum.