

CASE NO.:
Appeal (civil) 8924 of 2003

PETITIONER:
Allahabad Jal Sansthan

RESPONDENT:
Daya Shankar Rai & Anr.

DATE OF JUDGMENT: 03/05/2005

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

Whether the Respondent was entitled to be granted full back wages in the facts and circumstances of this case is the question involved in this appeal which arises out of a judgment and order dated 2.7.2003 passed by the High Court of Allahabad in Civil Misc. Writ Petition No.6597 of 2001.

The basic fact of the matter is not much in dispute. The Respondent herein was appointed purely on a temporary basis on or about 14.10.1985. The appointment letter issued to the Respondent No. 1 stipulates that the said appointment could be terminated at any time without any prior notice. The services of the Respondent No. 1 and others were terminated by the State in terms of an office order dated 24.1.1987. An industrial dispute was raised by the Respondent No. 1 herein. Before the Labour Court the Respondent No. 1 adduced evidence, but the Appellant did not. An ex parte award came to be passed by the Labour Court on or about 11.4.2000 reinstating the Respondent No.1 with full back wages holding that the order of termination was invalid in law as although he had worked for more than 240 days in one calendar year; the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 were not complied with. The writ petition filed by the Appellant herein questioning the legality of the said award came to be dismissed by reason of the impugned judgment.

In this appeal leave was granted confining to back wages only.

Mr. Rajesh, the learned counsel appearing on behalf of the Appellant, would submit that although the award of the Labour Court was an ex parte one, it was obligatory on its part to arrive at a finding that the Respondent herein was not employed in any other concern. The learned counsel would submit that full back wages need not be granted by the Labour Court only because it was lawful to do so, and such an order can be passed after taking into consideration the entire facts and circumstances of the case. Strong reliance, in this behalf, has been placed on Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya and Another [(2002) 6 SCC 41]; M.P. State Electricity Board vs. Jarina Bee (Smt.) [(2003) 6 SCC 141]; and Chief Conservator of Forests and Another vs. Rahmat Ullah [(2003) 10 SCC 92].

Mr. Manoj Prasad, the learned counsel appearing on behalf of the Respondent, on the other hand, would contend that the courts normally grant full back wages, once it is held that the order of termination is illegal. Strong reliance, in this behalf, has been placed on Workmen of Subong Tea Estate, represented by the Indian Tea Eemployees Union vs. Outgoing Management of Subong Tea Estate and Another [AIR 1967 SC 420], M/s Hindustan Steel Ltd. vs. The Presiding Officer, Labour Court, Orissa and Others [(1976) 4 SCC 222], Indian Railway Construction Co. Ltd. vs. Ajay

Kumar [JT 2003 (2) SC 295]; and Nicks (India) Tools vs. Ram Surat and Another [(2004) 8 SCC 222].

A law in absolute term cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that the Respondent No. 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24.1.1987. The Respondent No. 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the Appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the Respondent herein had been reinstated from 27.2.2001.

In Tapan Kumar Bhattacharya (supra), this Court noticed that there was no pleading or evidence as to whether the Respondent therein was employed elsewhere during the long interregnum, and in the fact situation obtaining therein, the Appellant was directed to pay 50% of the back wages till the date of reinstatement.

Yet again in Jarina Bee (supra), this Court observed that the award of full back wages was not the natural consequence of an order of reinstatement.

In Rahmat Ullah (supra), a Bench of this Court held that as the Respondent therein was out of service since 1990 as an ordinary worker, he must have been working elsewhere to earn his livelihood; and there was no material to show that he was not gainfully employed whereupon, a direction to pay 50% of the back wages was made.

In Ram Ashrey Singh Another vs. Ram Bux Singh and Others [(2003) 9 SCC 154], questioning the order of termination after six year was considered to be one of the factors for denying an order of reinstatement with back wages to the workman. In the fact situation obtaining therein, it was held that ends of justice would be sub-served if the Appellants therein were directed to pay a sum of Rs. 35,000/- by way of compensation in addition to what has already been paid. [See also Management of M/s. Sonapat Cooperative Sugar Mills Ltd. vs. Ajit Singh 2005 (2) SCALE 151].

In Haryana State Coop. Land Dev. Bank Vs. Neelam [2005 (2) SCALE 434], it was held :

"It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub silentio\005."

[See also Manager, R.B.I., Bangalore Vs. S. Mani & Ors., 2005 (3) SCALE 202]

Let us now consider the decisions cited by the ld. Counsel for the Respondent No.1.

In Workmen of Subong Tea Estate (supra), whereupon, strong

reliance has been placed by the learned counsel for the Respondents, no principle of law has been laid down. The Court merely directed in the fact situation obtaining therein to reinstate the workmen with full wages.

In M/s Hindustan Steel Ltd. (supra), this Court again did not lay down any law. A finding of fact was arrived at by the Labour Court that the Respondents had no alternative employment which was not challenged. The only ground which was urged before the High Court was that the Respondents had not proved that they had tried to mitigate their losses during the period of unemployment. The questions which have been raised herein had not been raised therein. The argument was confined only to mitigation of the losses. This Court did not interfere with the discretionary jurisdiction of the High Court in interfering with the award.

In Indian Railway Construction Co. Ltd. (supra), this Court merely stated :

"30. Question then would be how the conflicting interests can be best balanced. By an interim order dated 5-5-2000 the appellant was directed to reinstate the respondent subject to an interim payment of Rs 3 lakhs towards the back wages. Direction for reinstatement does not automatically entitle an employee to full back wages. In Hindustan Tin Works (P) Ltd. v. Employees, a three-Judge Bench of this Court laid down:

"11. In the very nature of things there cannot be a straitjacket 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* 12, AC at p. 179)."

In Nicks (India) Tools (supra), this Court again in the fact situation obtaining therein refused to interfere with the discretionary jurisdiction exercised by the High Court particularly having regard to the fact that it was for the first time before the writ court, such plea was raised by way of additional evidence, which had been rejected.

We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

In view of the fact that the Respondent had been reinstated in service and keeping in view the fact that he had not raised any plea or adduced any evidence to the effect that he was remained unemployed throughout from

24.1.1987 to 27.2.2001, we are of the opinion that the interest of justice would be sub-served if the Respondent is directed to be paid 50% of the back wages.

For the reasons aforementioned, the appeal is allowed in part to the extent mentioned hereinbefore. However, in the facts and circumstances of the case there shall be no order as to costs.

JUDIS