

CASE NO.:
Appeal (civil) 1168 of 2002

PETITIONER:
State of Punjab

RESPONDENT:
Jagir Singh

DATE OF JUDGMENT: 27/09/2004

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

JUDGMENT:
J U D G M E N T

W I T H

CIVIL APPEAL NO.1167 OF 2002

S.B. SINHA, J :

These two appeals arising out of a common judgment and order dated 7.12.2000 passed by a Division Bench of the Punjab and Haryana in Civil Writ Petition No.8212 of 1999 involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

Jagir Singh, the Appellantg in Civil Appeal No.1167 of 20002 will be hereinafter referred to as 'the workman'; whereas the State of Punjab, Appellant in Civil Appeal No.1168 of 2002, will be hereinafter referred to as 'the State'.

FACTS :

The workman herein joined the service in the Punjab Roadways, Taran Taran, in the year 1965 as a driver. It is not in dispute that he absented himself from duty from 2.5.1979 to 3.8.1979. The workman did not apply for any grant of leave. He was asked to report for duty by a registered letter dated 22.6.1979 but despite the same he did not comply with the said request. As regard his absence from duty, a notice was published in the newspapers but despite the same he did not join his duties within the time specified therein. The State, therefore, on the ground his being absent from duty, terminated his services with effect from 3.8.1979. Questioning the legality of the said order, a purported demand was raised by the workman to reinstate him in service by a letter dated 5.3.1981. An industrial dispute was raised in relation whereto, conciliation proceedings were held. Consequent upon failure of the parties to arrive at an amicable settlement therein, the dispute was referred to the Labour Court by the State purported to be in exercise of its power under Section 10(1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') by a notification dated 25.8.1993 on the following :

"Whether termination of the services of the workman is justified and in order ? If not, to what relief/exact amount of compensation is he entitled ?"

The said reference was answered in favour of the workman and against the State by an award dated 2.5.1997. In terms of the award, the State was directed to reinstate the workman with continuity in service and full back-wages stating :

"In view of my findings on the aforesaid issues the workman is entitled to be reinstated with continuity in service and since the workman has stated that he had remained unemployed throughout, and there being no evidence contradicting above statement by management

in this regard, workman shall be entitled to full back-wages from the date of demand notice and all allied benefits. The reference is answered as such. No order as to costs. The workman is directed to report for duty within 30 days of the publication of the award."

The State thereafter filed a writ petition questioning the said award before the Punjab and Haryana High Court on 2.6.1999. The High Court by reason of its impugned judgment dated 7.12.2000 allowed the writ petition in part to the limited extent that instead and place of full back-wages, the workman was held to be entitled to 60% of the back-wages, while upholding the direction for reinstatement of the workman, stating :

"So far as back wages are concerned , the Labour Court awarded full back wages from the date of demand notice. However, it can be seen that the demand notice was issued on 5.3.1981. Reference was made on 25.8.1993 and the impugned order is dated 2.5.1997. In view of this position, we restrict back wages to 60% from the date of demand notice. The writ petition deserves to be allowed to this extent. In the light of above discussion, this writ petition is partly allowed. The back wages are restricted to 60% only from the date of demand notice. Rest of the prayer made in the writ petition is declined."

Aggrieved, both the State and the workman have filed these appeals upon obtaining special leave.

Mr. Kuldip Singh, learned counsel appearing on behalf of the State, would submit that keeping in view the fact that the workman failed and/or neglected to join his duties despite receipt of notice and publication as regard his absence from duty in the newspapers, he was not entitled to any relief. In such a situation, the learned counsel would contend that the provisions of the Punjab Civil Services (Punishment and Appeals) Rules, 1970 would have no application inasmuch as no leave having been granted, the question of initiation of a disciplinary proceeding would not arise.

Mr. Manoj Swarup, learned counsel appearing on behalf of the workman, per contra, would submit that the conditions of services of the workman being governed by the statutory rules, being the Punjab Civil Services (Punishment and Appeals) Rules, 1970 and the Punjab Civil Services Rules, 1953, the impugned order of termination has rightly been set aside by the Labour Court in view of the fact that no disciplinary proceeding was initiated against the workman as is mandatorily required under Rules 5 and 8 of 1970 Rules and Rule 3.25 of 1953 Rules. It was pointed out that the State's plea of abandonment of service on the part of the workman was also found to be incorrect. According to the learned counsel, as no material was brought on records by the State to show that the workman had availed of any alternative employment, the workman was entitled to full back-wages from the date of issuance of the demand. It was argued that only because more than twelve years have elapsed from the date of the demand and the date of reference, it cannot be said that delay was attributable to the workman as the delay, if any, in making the reference was on the part of the State.

Before advertting to the questions raised in these appeals, we may record that pursuant to the award dated 2.5.1997, the workman was reinstated in service with effect from 24.8.1999 and he reached the age of superannuation in March 2004.

The short question, therefore, which arises for our consideration in these appeals is as to whether the workman is entitled to back-wages.

It is not in dispute that the workman did not perform any duty since 2.5.1979. The Labour Court made its award only on the ground that before issuing the order of termination dated 3.8.1979, no disciplinary proceeding was held in terms of the Punjab Civil Services (Punishment and Appeals) Rules and furthermore the mandatory requirements of Section 25F of the Industrial Disputes Act, 1947 were not complied with. The findings of the Labour Court are inconsistent with and self-contradictory. If the services of the workman were terminated for misconduct, the question of payment of any retrenchment compensation or service of any statutory notice would not arise. The question of compliance of the provisions of Section 25F of the Industrial Disputes Act would arise, if the services of the concerned workman were terminated on a ground other than misconduct.

The Labour Court furthermore failed to consider the conduct of the workman in not joining to his duties despite having been asked to do so by a registered letter as well as publication of a notice in the newspapers. While directing grant of back-wages, the Labour Court was required to consider the totality of the circumstance. The conduct of the workman had also an important role to play. The services of the workman were terminated on 3.8.1979. He merely asked for his reinstatement in service on or about 5.3.1981. There is nothing on record to show as to when the industrial dispute was raised. Even if he had raised an industrial dispute in 1981, it does not stand to any reason as to why he kept mum till the reference was made in the year 1993.

We may notice that in *Uptron India Ltd. vs. Shammi Bhan and Another* [(1998) 6 SCC 538], the question as to whether a statute or a Sinding Oder having the force of law containing the provision of automatic termination on the ground of overstay of the leave for a certain number of days is ultra vires or not came up consideration before this Court wherein it was held that when a discretion is conferred upon the employer to terminate or not to terminate the services of the concerned employees, principles of natural justice are ordinarily required to be complied with. However, as indicated hereinbefore, the conduct of the workman would play an important role as regard direction upon the employer to pay back-wages. In this case, no leave was either sought for or granted. No material was brought on record except the oral statement of the workman that an application for leave had been filed. It is not in dispute that the State issued a registered letter directing the workman to join his duty. As he did not do so, notice of his absence was published in the newspaper. These facts would appear from the letter of termination itself which has been annexed with the Special Leave Petition filed by the workman as also his Counter Affidavit to the Special Leave Petition filed by the State.

Mr. Manoj Swarup, learned counsel appearing on behalf of the workman, placed strong reliance on *Scooters India Ltd. vs. M. Mohammad Yaqub and Another* [(2001) 1 SCC 61]. Therein, the question which arose for consideration was as to whether giving of such notices would amount to sufficient compliance of principles of natural justice or not having regard to the fact situation obtaining therein. In paragraph 12 of the judgment it was categorically held that the records therein indicated that no opportunity had been granted to the workman to join his duty.

This Court in different decisions applied the principles of natural justice having regard to the fact situation obtaining therein.

Indisputably, the principles of natural justice may have to be complied with having regard to the conditions of service governed by the rules framed in terms of proviso appended to Article 309 of the Constitution of India. But the said principle cannot be put in a strait-jacket formula. It cannot be applied in a vacuum without reference to the relevant fact situation. [See *Punjab and Sind Bank and Others Vs. Sakattar Singh*, [(2001) 1 SCC 214] and *Dr. Gurjeewan Garewal (Mrs.) Vs. Dr. Sumitra Dash (Mrs.) and Others*, [(2004) 5 SCC 263]]

In *Dr. Gurjeewan Garewal (supra)*, this Court noticed:

"Recently in another case of a very similar nature Anil Bajaj (Dr.) vs. Postgraduate Institute of Medical Education & Research [(2002) 2 SCC 240] this Court held :

"A person who gets an advantage, namely, of a sanction to go abroad on service on the condition that he will come back within two years and if he does not come back, his lien will automatically be regarded as being terminated, he then cannot turn around and challenge the said condition on the basis of which sanction to go abroad was granted\005.but where the facts are not in dispute the inquiry would be an empty formality. In any case the principle of estoppel would clearly apply and the High Court was right in dismissing the writ petition filed by the appellant wherein he had challenged his termination."

Similarly, in the case in hand the 1st respondent was originally granted an ex-India leave for two years on the express condition that she will be deemed to have vacated the post if she opts not to join after the leave period. But she preferred to remain in the greener pastures for a pretty long time in spite of the repeated reminders from PGIMER. She employed the case before the High Court as a dilatory tactic to continue with her foreign assignment and evaded herself from joining under some pretext or the other."

On the aforesaid findings, this Court vacated the stay of holding the departmental proceeding as against the Respondent No.1 therein.

In this case, as despite several opportunities the workman did not join his duties at all, we are of the opinion that the Labour Court and the High Court committed a manifest error in granting back-wages in his favour.

As noticed hereinbefore, the letter of termination issued to the workman itself suggests that such an opportunity had been granted. We are, therefore, of the opinion that even if it is assumed that in the facts and circumstances of this case, it was obligatory on the part of the State to comply with Rules 5 and 8 of the Punjab Civil Services (Punishment and Appeals) Rules, the workman having regard to the totality of the situation was not entitled to back-wages.

We may place on record that keeping in view of the fact that the workman had already been reinstated and has since retired, it was not considered expedient to go into the question of correctness or otherwise of the award directing reinstatement of the workman.

For the foregoing reasons, the appeal preferred by the State is allowed and that of the workman is dismissed. No costs.