

CASE NO.:
Appeal (civil) 4601 of 2003

PETITIONER:
M.P. State Electricity Board

RESPONDENT:
Vs.
Smt. Jarina Bee

DATE OF JUDGMENT: 15/07/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T

(Arising out of SLP(C) No. 3092 OF 2003)

ARIJIT PASAYAT, J.

Leave granted.

The primal issue involved in this appeal is whether award of full back wages is the natural consequence when an order of dismissal is set aside. The High Court of Madhya Pradesh at Jabalpur held it to be so, and that is why the Madhya Pradesh State Electricity Board (hereinafter referred to as 'the Board') filed this appeal.

Factual background which is almost undisputed is as follows :-

One Habib Khan (hereinafter referred to as the 'employee') husband of respondent Smt. Jarina Bee, was employed as a Line Attendant, Grade-II in the Board. On the allegation that he was responsible for theft of large quantity of aluminum wire, criminal case was lodged and departmental proceedings were initiated. In the departmental inquiry he was found guilty and was removed from service on 20.1.1996. Such removal was challenged by him before the Labour Court-I, Bhopal. The said Court held that since departmental inquiry was not conducted in accordance with the principles of natural justice, the dismissal was bad. Direction was given for reinstatement of employee by granting opportunity to the Board to prove his misconduct. While directing reinstatement, it was held that he was not entitled to any back wages. Both the Board and the employee preferred appeals before the Industrial Court, Bench at Bhopal. By order dated 11.2.2002, the Industrial Court allowed the appeal filed by the employee, while dismissing the one filed by the Board. It was held that when an order of dismissal was set aside, entitlement for full back wages was automatic.

During the pendency of the matter before the Industrial Court the employee breathed his last. Therefore, the direction for re-instatement has become infructuous.

The Board challenged the order of the Industrial Court before the High Court which by the impugned judgment dated 8th October 2002 held that when a charge was not

established at all and the order of removal is set aside award of back wages was the natural consequence.

Shri S.K. Agnihotri, learned counsel appearing for the Board, submitted that the Industrial Court as well as the High Court fell in grave error by holding that the award of back wages was the natural consequence in all cases where the order of removal was set aside. Mr. B.S. Banthia, learned counsel appearing for the respondent (widow of the employee) submitted that the High Court was justified in its conclusion considering the fact that the order of dismissal was without sanctity in law. Alternatively, it was submitted that full back wages are to be paid, considering the nature of the allegations and findings recorded by the Labour Court, Industrial Court and the High Court and the directions cannot be faulted on the facts of the case.

In P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar (JT 2001(1) SC 336), 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."

The position was reiterated in Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Another (2002 AIR SCW 3008) and Indian Railway Construction Co. Ltd. v. Ajay Kumar (JT 2003(2) SC 295).

Applying the legal principles, the inevitable conclusion is that the High Court committed an error in holding that the award of full back wages was the natural consequence.

That brings us to the alternate submission of the learned counsel for the respondent. Considering the background of the case and the fact that the order of dismissal was found to be defective as the principles of

natural justice were not properly followed, and an opportunity was granted to the Board to proceed in accordance with law, and the fact that the employee has expired in the meantime, we feel the payment of Rs.85,000/- towards back wages would meet the ends of justice. The payment is to be made within a period of 8 weeks from today. If any amount has been paid pursuant to the directions given by the Industrial Court and/or the High Court, the same shall be adjusted from the aforesaid sum. If any payment has been made in excess of the amount, the Board shall be entitled to refund thereof.

The appeal is allowed to the extent indicated above.
Costs made easy.

JUDIS