

CASE NO.:
Appeal (civil) 5688 of 2000

PETITIONER:
Ram Ashrey Singh & Anr.

RESPONDENT:
Ram Bux Singh & Ors.

DATE OF JUDGMENT: 11/02/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT, J.

In this appeal challenge is to judgment of the Division Bench of the Allahabad High Court. The dispute relates to entitlement of service and retiral benefits of respondent No.1 (hereinafter referred to as 'the employee').

Factual background in a nutshell is as follows:

Respondent No.1-employee was employed as Lab. Assistant, a class IV post, on 1.2.1973. On 8.11.1977 a show-cause notice was served on him detailing eight charges. By order dated 11.2.1978, his services were terminated by the then Principal holding that the charges were fully proved. Against the order of termination an appeal was preferred which was dismissed by the Committee of Management. After about 6 years the employee filed a representation before the prescribed authority under Regulation 21 of Chapter III framed under the U.P. Intermediate Education Act, 1921. The same was dismissed by the District Inspector of Schools. A writ petition was filed by the employee which was registered as Civil Misc. Writ Petition No. 13159 of 1984. By order dated 18.9.1991, the writ petition was disposed of directing payment of lump-sum amount of Rs.30,000/-. While making order the High Court, inter alia, noted that the employee had no aptitude for service, and if reinstated after such a long time, the peaceful atmosphere of the institution may be spoiled. The amount was directed to be paid within three months.

Employee filed a review petition in the High Court with a prayer to review the aforesaid order, on several grounds and also pointing out that the amount was not paid. Against the judgment of the High Court, an appeal was filed before the Division Bench by the employee. The High Court dismissed the review petition filed by the employee holding that the case for review was not made out. While dismissing the application for review it was noted that since the payment had not been made as directed, the employee was entitled to receive interest @12% per month till payment was made. It appears that there was a difference in perception of the authorities as to who was required to make the payment. The

employee filed an application bringing it to the notice of the High Court that its orders have not been complied with. Application was filed by the Management of the present appellant No.1-Principal of the Institution, for a direction to the State and the District Inspector of Schools to make the payment. The High Court disposed of both the applications directing District Inspector of Schools and the State to make the payment within a period of three months in the light of order dated 18.9.1991 modified by the order in the review application dated 3.2.1993. A contempt petition was filed by the employee alleging non-compliance of the order. The employee superannuated on 26.1.1995. On 20.9.1995 a sum of Rs.30,000/- along with Rs.2450/- towards interest, was paid. It is to be noted in the order dated 3.2.1993 the rate of interest was indicated to be Rs.12% per month, which was later on corrected by order dated 15.5.1996 to read as "per annum". Direction was also given to pay the correct amount within a month. On 3.6.1996 a further sum of Rs.9870/- was paid as the balance amount of interest. Against the order passed by the High Court, the employee filed special leave petition before this Court [S.L.P. (C) No. 24287 of 1996]. On 6.12.1996 a notice was issued in the Special leave petition on the limited question as to why the amount of compensation should not be enhanced. However, the Special leave petition was dismissed as the special appeal before the High Court was pending. The Division Bench allowed the special appeal filed by the employee by directing reinstatement by the impugned judgment. It was noted that after five years also payment of the sum of Rs.30,000/- was not made even though that was passed on consent. The said judgment of the Division Bench is under challenge.

At this juncture it would be appropriate to note that by order dated 26.9.2000, the Special Leave Petition was admitted only on the question of back wages. As an interim measure direction was given to pay a sum of Rs.35,000/- in addition to the amount of Rs.30,000/- as fixed originally by the High Court. Direction was also given to grant arrears of pension and retiral benefits.

It is not in dispute that said benefits have been worked out and necessary payments are being made. The only question, therefore, which survives consideration, relates to claim of back wages in view of the limited notice issued. According to the appellant the back wages from 4.1.1978 to 31.1.1995 would be Rs.1,79,484/- and interest @ 12% would be Rs.24,993/-. Out of the said amount Rs.65,000/- (Rs.30,000/- + Rs.35,000/-) along with interest of Rs.12,320/- has been paid.

When fixing the back wages several factors need to be noted. It is a well-settled position in law that on reinstatement there is no automatic entitlement to full back wages. In *Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and Ors.* (1979 [2] SCC 80), a three three-judge Bench of this Court laid down:

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

In *P.G.I. of Medical Education and Research, Chandigarh v. 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 affect."

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." [See: *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Anr.* (2002 AIR SCW 3008)].

In the case at hand, there was no challenge to the order of termination for six years, as indicated above. Some time was lost because the State and its functionaries on the one hand and the appellant on the other differed on the issue as to who was liable to make the payment in terms of the first direction of the High Court. It cannot also be lost sight of that the High Court while fixing a sum of Rs.30,000/- to be paid in terms of its order dated 18.9.1991 recorded a finding about lack of aptitude of the employee and the likelihood of absence in sincerity of work. Taking all these aspects into consideration, ends of justice would be best served if the appellants are directed to pay a sum of Rs.35,000/- in addition to what has already paid, within a period of four weeks from today. In case the payment is not made within the stipulated time, it shall carry interest @ 18% per annum from today till the amount is actually paid which shall, in any event, be not later than four months

from today.

The appeal is allowed to the extent indicated.

JUDIS