

(2010) 01 CHH CK 0027
In the Chhattisgarh High Court
Case No : Writ Petition No. 4614 of 1999

Awadhesh Kumar Agrawal	Vs	APPELLANT
M/s. Durg Transport Co. Pvt. Ltd. and Others		RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 4 MPJR 5

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Rajkamal Singh, for the Appellant; Itu Rani Mukherjee, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition filed under Article 226/227 of the Constitution of India, the petitioner challenges legality and validity of the order dated 6.8.1999 (Annexure P/2) passed by the Industrial Court, in Appeal Case No. 298/MPIRA/91, whereby the Industrial Court, after upholding the award of the Labour Court, Durg, dated 7.5.1991 (Annexure P/1) to the extent of reinstatement, set aside the order to grant back wages. The facts, in nutshell are that the petitioner was working as Inspector with first respondent/company, was terminated from service on 23.08.1988 without any enquiry or show cause notice. The petitioner filed an application u/s 31 of the Madhya Pradesh Relations Act, 1960 in the Labour Court, Durg in case No. 104/A/MPJR/88. The labour Court, after having considered all the aspects of the matter, came to the conclusion that the first respondent/company has failed to prove the allegations of misconduct made against the petitioner. Thus, the order of termination was set aside and the petitioner was directed to be reinstated in service with full backwages. Being aggrieved, the first respondent/company preferred an appeal before the industrial Court, Raipur in Appeal Case No. 298/MPIRA/91. The Industrial Court, after having examined all the facts upheld the order of

reinstatement passed by the Labour Court, however, set aside the order to grant backwages on the ground of over all conduct of the petitioner, by order dated 6.8.1999 (Annexure P/2) impugned herein.

2. Shri Rajkamal Singh, learned counsel appearing for the petitioner submits that without holding an enquiry as to whether the petitioner was gainfully employed elsewhere or not, the Industrial Court, without assigning any reason, set aside the order of the Labour Court to the extent of grant of full backwages on the ground that the overall conduct of the petitioner does not entitle him to full backwages. All the allegations of misconduct made against the petitioner by the first respondent/company have not been found proved and as such, termination order was set aside and reinstatement with full backwages was granted.

3. Ms. Itu Rani Mukherjee, learned counsel appearing for the first respondent/company would submit in support of impugned order passed by the learned Industrial Court.

4. Having heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto, it appears that no substantial reason has been recorded by the Industrial Court for taking a contrary view to the findings recorded and decision of grant of full backwages by the Labour Court.

5. The first requirement is gainful employment, which has been found by the Labour Court that the petitioner after termination was not gainfully employed elsewhere. Secondly, financial condition of the first respondent/ company was not sound to grant full backwages. It is not the case of the first respondent/company that grant of backwages would be unnecessary burden on the first respondent. The petitioner was terminated on 23.08.1988 and the labor Court passed the award granting reinstatement with full backwages on 7.5.1991 and as such, the first respondent/company is required to pay backwages for a period of about three years.

6. The Supreme Court, in M.P. State Electricity Board Vs. Smt. Jarina Bee, while dealing with the issue of grant of full backwages after order of dismissal was set aside, observed as under:

7. In P.G.I. of Medical Education and Research V. Raj Kumar 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: (SCC p.57, para 9)

9. 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 of 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 para 12, this Court observed: (SCC p.58)

12. 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 strait-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

8. The position was reiterated in Hindustan Motors Ltd. V. Tapan Kumar Bhattacharya and Indian Rly. Construction Co. Ltd. V. Ajay Kumar.

9. 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.

7. Further, the dicta laid down in the above case was referred approvingly in Novartis India Ltd. Vs. State of West Bengal and Others, by the Supreme Court, Observing as under:

22. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right.

24. In M.P. SEB v. Jarina Bee this Court observed that the award of full back wages was not the natural consequence of an order of reinstatement.

8. The ratio as enunciated by the Supreme Court in the cases (supra) is that the award of full backwages is not the natural consequence. In the case on hand, the allegation against the petitioner was that the petitioner was found inebriated in the office, he came with anti-social elements and abused the Managing Director in the office. Further, the petitioner indulged in assault with other employees, though the above stated allegations have not been found proved in the Labour Court.

9. Having regard to the over all facts of the case and well-settled principle of law that full backwages is not a natural consequence of quashing of the termination order, in the case, grant of 50% backwages from the date of termination till the date of reinstatement pursuant to the order dated 7.5.1991 (Annexure P/1) would subserve the interest of justice. The petition is allowed to the extent indicated above. There shall be no order as to costs.