
(2001) 09 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 925 of 2000

Bachhu Lal

APPELLANT

Vs

Dy. Conservator-Forest and Another

RESPONDENT

Date of Decision : 27-09-2001

Acts Referred:

Citation : (2002) 3 LLJ 112 : (2002) 2 RLW 1225 : (2003) 1 WLN 552

Hon'ble Judges : Shiv Kumar Sharma, J;A.C. Goyal, J

Bench : Division Bench

Advocate : S.C. Gupta, for the Appellant; M.A. Rafiq, A.A.G., for the Respondent

Judgement

Sharma, J.—The only question arises for our consideration in the instant Special Appeal is as to under what circumstances, a workman, in the event of reinstatement of his services, is entitled to the back wages and continuity of past services?

2. Brief resume of the facts is that while answering the reference, the learned Labour Court, Bharatpur, vide its Award dated October 17, 1994, ordered that the termination of services of the appellant-workman, by the respondent was illegal and he was entitled to be reinstated in the service along with entire back wages from the date of his termination till the date of reinstatement in the service. Undeniably, the Award of the Labour Court was based on the uncontroverted testimony of the workman as the respondent did not adduce any evidence in support of his reply.

3. Award of learned Labour Court was assailed by the respondent by filing writ petition before the learned Single Judge of this Court. Learned Single Judge, vide order dated March 10, 2000, partly allowed the writ petition and modified the Award to the extent that termination of services of the workman was held to be illegal and unjustified. However, the workman was found entitled to reinstatement only from the date of Award i.e. October 17, 1994. The workman was not found entitled to the back wages w.e.f. the date of Award till his

reinstatement in the service. In the instant Special Appeal the workman has assailed the order of learned Single Judge.

4. We have heard Mr. Shiv Charan Gupta, learned counsel appearing for the appellant and Mr. M. Rafiq, learned Additional Advocate General, appearing on behalf of the respondents and carefully scanned the material on record.

5. It is canvassed on behalf of the appellant that the Award of the learned Labour Court is based on the uncontroverted testimony of the workman and there is no material on record to show that the appellant was gainfully employed during the period when he was out of employment. Reliance has been placed on *Dipti Prakash Banerjee, v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others*. (1).

6. Per contra, learned counsel appearing for the respondents contended that the order of learned Single Judge is based on reasoning. Learned Single Judge after looking to the nature of work, appointment and employment and specially noticing the fact that the workman had worked only for about nine months in the year 1988-89, observed that there was no justification in allowing any benefit of past services and back wages to the concerned workman.

7. Reliance has been placed on *R. Rajender Singh v. Depot Manager, A.P.S.R.T.C.* (2), and *H.M.T. Limited v. Labour Court, Ernakulam and others* (3).

8. In *Dipti Prakash Banerjee* (supra) their lordships of the Supreme Court in Para No. 47 indicated thus:-

"As to backwages, on facts, the position in the present case is that - there is no material to say that the appellant has been gainfully employed. The appellant is, therefore entitled to reinstatement and backwages till the date of reinstatement from the date of termination and to continuity of service."

9. In *D.P Banerjee*, their lordships of Supreme Court referred and distinguished *State of Haryana v. Jagdish Chander*, (4), and *Managing Director, ECIL V. B. Kamnagar*, (5). In those cases, it was held that merely because an order of termination was set aside on grounds of lack of opportunity, it was not necessary to direct reinstatement and backwages. In *D.P. Banerjee*, their lordships of Hon. Supreme Court observed that in *Karunakar's* case, there was a regular departmental inquiry but the inquiry report was not given to the officer. The Supreme Court directed the report to be given and set aside the proceedings from that stage and stated that no order for reinstatement or backwages need be passed at that stage. In *D.P. Banerjee's* case there was no departmental inquiry and under those circumstances, it was held that *Karunakar's* case cannot be an authority on the point.

10. In *R. Rajender Singh* (supra) the workman was charge sheeted, which ultimately led to his removal from service. The order of removal was set aside by the award of Labour Court and the award directed reinstatement of the workman with continuity of service and back wages at 60%. The High Court modified the

award to the extent it directed payment of backwages and continuity of service to the workman. Hon. Supreme Court issued a limited notice confined to the question of granting continuity of service and after hearing the parties observed thus:-

"Having regard to the nature of the charges, learned counsel for the respondent has very fairly stated that the Corporation, on the facts and circumstances of the present case, would have no objection to grant continuity of service to the appellant so long as he does not insist on back-wages, which is agreeable to the appellant."

11. It is thus evident that the Hon. Supreme Court in R. Rajender Singh's case (supra), passed an order on the basis of the consent of the parties.

12. In HMT Ltd. (supra), Hon. Supreme Court modified the award of the Labour Court and directed that the workman will be reinstated with 60 percent of all back wages till the date of his reinstatement. It was observed by their lordships thus:-

"However, we find that the dismissal of the workman was on July 30, 1979 and till date more than 14 years have elapsed. It is now accepted that no party should suffer on account of the delay in the decision by the court. Taking all facts into consideration, we are of the view that it would meet the ends of justice in the present case, if instead of full back wages, the workman concerned is given 60 per cent of the back wages till he is reinstated."

13. It is apparent that the decision rendered in H.M.T. Limited (supra) by their lordships of the Hon. Supreme Court is based on the peculiar facts and circumstances of that case.

14. Coming to the facts of the instant case, it may be noticed that the Labour Court rendered its award on October 17, 1994. The respondent Dy. Conservator of Forest, filed writ petition on September 12, 1995. It was kept pending before the learned Single Judge of this Court who ultimately decided the writ petition on March 10, 2000 and modified the award of the Labour Court looking to the nature of work, appointment and employment. The order of the learned Single Judge is also based on the observations that the appellant workman had only worked for about nine months in the year 1988-89.

15. In our considered opinion as is held by their lordships of Hon. Supreme Court in D.P. Banerjee's case (supra), it was necessary for the respondent employer to place on record the material before the Labour Court to show that the workman was gainfully employed while he was out of service. But no such material was placed on record and even the evidence of the workman was not controverted by the respondent. The well established principle is that no suffering should be caused to a litigant as a consequence of court's delay. In view of this we are of the view that the Labour Court was right in passing the order of reinstatement of the workman w.e.f. March 1, 1989, with continuity of service and entire back

wages.

16. In the result, the Special Appeal stands allowed and the impugned order of the learned Single Judge dated March 10, 2000, shall stand set-aside. The order dated October 17, 1994, of the Labour Court stands confirmed.

17. No costs.