

(2012) 01 DEL CK 0369
In the Delhi High Court
Case No : WP (C) No. 4587 of 1999

Constable Bholu Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Penal Code, 1860 (IPC) — Section 307, 325

Citation : (2012) 01 DEL CK 0369

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : Abhishek Mishra, for the Appellant; Atul Batra, for the Respondent

Judgement

Anil Kumar, J.—The petitioner has sought directions to the respondents to pay the outstanding salary from 30th November, 1990 to 6th June, 1995 (about 55 months) amounting to Rs.88,000/- besides legal expenses of Rs.21,000/-; Rs.1,00,000 as compensation for mental sufferings, lowering of prestige in the eyes of peers and society and D.A., incentives, bonus, JH, Food Pockets, EL and HPL (leaves) as per government rules and regulations.

2. The brief facts to comprehend the controversies are that the petitioner had joined the Central Industrial Security Force (CISF) on 13th December, 1988. However, on 8th November, 1990 the services of the petitioner was terminated on account of non-disclosure by the petitioner of a criminal case under Sections 307 and 325 of the IPC which was filed in the Court of Judicial Magistrate First Class, Bharatpur (Rajasthan) before the petitioner's enlistment in the force.

3. Aggrieved by the order of termination of his services, the petitioner had filed a writ petition bearing WP(C)No. 4011/1992 titled as "Ex. Constable Bholu Singh vs. Union of India and Others" which was decided by order dated 2nd March, 1995. While allowing the writ petition of the petitioner by order dated 2nd March, 1995, it was noticed that the petitioner was discharged in the criminal case by judgment dated 21st January, 1986 in appeal whereas the application for

employment in the Central Industrial Security Force was made by the petitioner in the year 1988 and also that the petitioner was appointed on 13th December, 1988 much after he was discharged in the criminal case. At the time the petitioner had applied for enlistment in CISF, no case was pending against him in any Court of law.

4. The Division Bench of this court while allowing the petition of the petitioner had held as under:-

This requirement suggests that if the answer to any of the above questions is "yes" then, further information was required to be given. Further as per facts disclosed above the petitioner could not have given answer in the affirmative (yes) to the question referred to above. This makes it clear that the petitioner cannot be blamed for any alleged incorrect answer given in the said form of agreement. During the course of hearing-the learned counsel for the respondent drew our attention to certain other columns also in the form at page 5 to suggest that to those columns also the answers of the petitioner were not correct.

We are afraid we cannot go into this aspect for the reason that this is not the basis of the action against the petitioner. Moreover we have been seen the questions and they are of such a trivial nature that even if the answers are not correct it cannot be said that they suggest such a blameworthy action on the part of the petitioner so as to disentitle him from getting employment in the services on this ground. Learned counsel for the petitioner further submits that the action against the petitioner is based on an alleged report of the District authorities of the District of the petitioner and if any action as proposed to be taken against the petitioner on that basis, in all fairness an opportunity should have been granted to the petitioner to answer that report or clarify his position qua the said report before the impugned action was taken. In view of the fact that on the main point itself we agree with the case set up by the petitioner, we need not go further into this aspect through prima facie there appears to be some substance in the contention of the learned counsel for the petitioner.

The result is that the writ petition succeeds. The impugned orders dated 8 November, 1990 (Annexure P.1) and 28 November 1990 (Annexure P.4) discharging the petitioner on the aforesaid ground are quashed. The Rule is made absolute.

5. Pursuant to the order dated 2nd March, 1995, the petitioner was taken on the strength of the CISF Unit at KIOCL, Kudremukh with effect from 7th June, 1995.

6. The respondents thereafter, issued a show cause notice dated 7th July, 1995 to the petitioner proposing to treat the period from 30th November, 1990 to 6th June, 1995 as leave without pay on the ground of "no work no pay basis". The petitioner was given time to make his representation within seven days from the date of the receipt of the show cause notice.

7. In reply to the show cause notice dated 7th July, 1995, the petitioner sent a

communication dated 17th July, 1995 asking for more time to file the reply.

8. The respondents thereafter, passed the order dated 16th September, 1995 holding that the request of the petitioner to grant 90 days time to reply to the show cause notice dated 7th July, 1995 which was received by him on 15th July, 1995 has been rejected and it was directed that the petitioner was required to submit his representation within 7 days of the Office Order dated 31st July, 1995. Since the petitioner had reported to the CISF Unit, NMPT, Mangalore on 21st August, 1995 and had submitted his representation on the same day and on perusing his representation it was held that no convincing point had been made for consideration, therefore, the intervening period of the petitioner from the date of termination, i.e., 30th June, 1990 up to the date of rejoining on 6th June, 1995 was ordered to be treated as "not on duty" (leave without pay).

9. The petitioner made representation dated 24th December, 1995 against the order dated 16th September, 1995 before the Home Secretary, Ministry of Home Affairs contending that the intervening period from 30th November, 1990 up to 6th June, 1995 could not be treated as leave without pay, as he could not work during the said period due to the acts imputable to the respondents and that the petitioner had always been ready to work. In the circumstances, the petitioner sought release of his legal dues pertaining to the said period. The petitioner, however, did not receive any reply to his representation and therefore, he sent more representations. Along with his subsequent representation dated 4th December, 1998, the petitioner also sent a copy of his representation dated 24th December, 1995.

10. On the failure to get his dues for the period 30th November, 1990 up to 6th June, 1995, the petitioner filed the above noted petition seeking his dues for the said period besides the legal expenses and the compensation for the mental sufferings and his other entitlements, on the ground that the petitioner did not work during this period as he was not allowed to work and had been dismissed and later on the order of dismissal had been set aside by the High Court entailing his reinstatement in the service. The petitioner categorically asserted that he was always willing to work but he was kept away from the work by the respondents for no fault on the part of the petitioner which is attributable to him. He asserted that he never absented himself from his work for any of his own reasons and in the circumstances, the normal rule of "no work no pay" shall not be applicable. The petitioner also relied on the decision of the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., holding that where an employee remains away from work for his own reasons, although the work is offered to him, should be treated as a period of dies non but in a case where the employee is willing to work but he is kept away from the work by the authorities for no fault of such an employee and which is not attributable to such an employee then in such a case, the principle of "no work no pay" cannot be applied.

11. The writ petition has been contested by the respondents who filed the counter affidavit dated 24th January, 2000 contending inter alia that the

petitioner was involved in a criminal case u/s 325 of the Indian Penal Code before First Class Judicial Magistrate, Bharatpur (Rajasthan) and that this fact was concealed by the petitioner deliberately and was not disclosed in his attestation form when he joined the CISF. The respondents reiterated that the service of the petitioner was terminated by order dated 8th November, 1990 under the provision of para 2(a) in accordance with the Memorandum No.V-11016/24/90/A-6(SZ)/13559 dated 8th November, 1990 under para 2(a) of the agreement furnished by the petitioner under Rule 15 of the CISF Rules, 1969. However, by order dated 2nd March, 1995 the High Court directed that the petitioner be reinstated entailing the joining of the petitioner at the CISF, KIOCL, Kudremukh on 7th June, 1995.

12. Regarding treating the intervening period of dismissal from 30th November, 1990 to 6th June, 1995, the respondents contended that it was stated to be leave without pay as the petitioner did not show any reasonable and genuine reason for remaining away from the work for such a long duration. The plea raised by the respondents in their counter affidavit in para 7 is as under:-

7. That it is submitted that the petitioner was served with a Show Cause Notice for regularizing the intervening period from the date of termination to the date of reinstatement of the petitioner as not on duty (leave without pay) as "No Work No Pay" basis vide DIG (SZ) Chennai letter No.V-14013/84/92/L&R(SZ)/5960 dated 07th July, 1995 with a direction to submit representation, if any, for such proposal within seven days from the date of receipt of the said notice. It is, however, submitted that the petitioner vide his letter dated 17.07.1995 sought 90 days time to submit his representation against the proposal of regularizing the intervening period as Not on duty. The said application was rejected by the Respondent because no reasonable and genuine reasons were given by the petitioner for such a long duration.

13. Learned counsel for the petitioner has contended that there is no provision for treating the said period from 30th November, 1990 up to 6th June, 1995 as leave without pay as the petitioner was kept away from work by the respondents and the petitioner had always been ready and willing to work. Learned counsel contended that there is no rule, regulation or any other provision which entitles the respondents to deprive the petitioner of his emoluments, in view of the fact that the petitioner could not perform the work on account of the acts imputable to the respondents. Learned counsel also relied on the judgments titled as Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, ; U.P.S.R.T.C. Vs. Mitthu Singh, ; and Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, to contend that though the payment of back wages is discretionary, discretion has to be exercised by the courts keeping in view the facts in their entirety, however, in the facts and circumstances, since the petitioner was kept away from the work on account of the acts solely imputable to the respondents, the petitioner is entitled at least for the full back wages.

14. Learned counsel for the petitioner on instructions also contended that the petitioner does not press his claim for legal expenses of Rs.21,000/- and compensation for mental sufferings, lowering of prestige in the eyes of peers and society of Rs.1,00,000/- and the claim for D.A., incentives, bonus, JH, Food pockets, EL and HPL (leaves) as per government rules and regulations.

15. Learned counsel for the respondents has however relied on the judgments titled as Union of India Vs. K.V. Jankiraman, etc. etc., ; U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, ; Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, ; and Gujarat Agricultural University Vs. All Gujarat Kamdar Karmachari Union, to contend that the petitioner is not entitled for back wages and in any case not the entire back wages as the petitioner had not done any work and therefore the doctrine of 'no work no pay' shall be applicable and consequently the petitioner shall not be entitled for any amount, and that the period from 30th November, 1990 to 6th June, 1995 has to be treated as leave without pay.

16. This Court has heard the learned counsel for the parties. Learned counsel for the respondents has contended that though the earlier writ petition being WP(C) No.4011/1992 was allowed by order dated 2nd March, 1995 and the order of termination was set aside and the petitioner was reinstated, however, certain other information was not disclosed by the petitioner in his form which was filled at the time of his inductment in the Force. This submission on behalf of respondents by the learned counsel cannot be accepted and is without any basis and shall not impact the entitlement of the petitioner for the pay during the said period. Even in the earlier writ petition, the respondents had tried to draw the attention of the Court in respect of certain other answers given by the petitioner which according to the respondents were not correct, however, this plea was not accepted and the Court had held that the termination was for non-disclosure about the criminal case under Sections 307 and 325 of IPC pending against the petitioner in which case also, the petitioner was discharged in appeal in 1986 much prior to filling up the form of agreement for induction in the CISF. This Court had also observed that the incorrect answers allegedly given by the petitioner were also held to be of such a trivial nature that the petitioner could not be held to be blameworthy so as to disentitle him from getting enlistment in the force.

17. The order of termination had been set aside by this Court by order dated 2nd March, 1995 and the said order was not challenged by the respondents in any manner. The respondents now again contend that certain other information given by the petitioner, other than the information on which his services were terminated, were also incorrect and therefore, the petitioner is not entitled for his pay for the said period in the present facts and circumstances. In the show cause notice dated 7th July, 1995, no such ground had been raised by the respondents. The respondents therefore, cannot be allowed to deny the petitioner his pay for the intervening period on this ground. It is no more res-

integra that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons. The Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, had held that the orders cannot be supplemented by fresh reasons as otherwise an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. The Apex Court in case of *Mohinder Singh Gill*(supra) in para 8 at page 417 had held as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

18. This is not disputed that the petitioner could not work as his services were terminated and he had been reinstated pursuant to the order of this Court setting aside the order of termination. While setting aside the order of termination, no benefit of doubt or non-availability of evidence against the petitioner has been stated to be the reason to set aside the order of termination. In *K.V. Jankiraman & Ors. (supra)*, the Supreme Court had categorically held that the principle of "no work no pay" shall be inapplicable where the employee without his fault, though willing, is not allowed to work.. The Supreme Court had held in paras 25 and 26 of *K.V. Janaki Raman (supra)* is as under:-

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along

with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary.

This is not the plea of the respondents that the determination of case of the petitioner challenging his termination was delayed on account of petitioner or any act imputable to the petitioner. This also cannot be disputed that on account of non disclosure of a criminal case which was filed and decided against petitioner before he was enlisted in force, no other punishment was awarded except termination which was set aside and all the pleas of the respondents were repelled.

19. Learned counsel for the respondents is also unable to point out any provision of any enactment concerning the employment of the petitioner with the CISF or any rules and regulations which would entitle the respondents to treat the period when the petitioner was dismissed from service till he was reinstated consequent to setting aside the order of termination, as the period of leave without pay. Though in the impugned order dated 16th September, 1995, it has been held that the petitioner was unable to bring out any convincing point for consideration for not treating the intervening period as leave without pay, however, it is apparent that it was for the respondents to show as to under which enactment or rules or regulations they could treat the intervening period as leave without pay.

20. The precedent relied upon by the respondents in Uday Narain Pandey (supra) was pertaining to the back wages after the retrenchment of the workman was set aside by the Court. In the instant case, the workman had not pleaded that after his retrenchment, he was wholly unemployed and that he was not gainfully employed during the said period. In Jagbir Singh (supra) relied upon by the respondents, it was held that on reinstatement, the award of back wages does not follow automatically pursuant to setting aside the order of retrenchment passed in violation of Section 25-F, I.D. Act. Similarly, in Gujarat Agricultural University, (supra) the employer had debarred the daily wagers from work and pay for the government declared holidays, which the employer had an obligation to adopt being a fully aided private institution. In the circumstances, it was held that the doctrine of "no work no pay" could not be applied as a rule of thumb. Apparently, the above noted judgments relied upon by the respondents are clearly distinguishable and on the basis of the ratio of the same, they cannot contend that the petitioner is not entitled for the emoluments for the stipulated

intervening period. In *K.V. Jankiraman & Ors. (supra)* rather it was held that the rule of "no work no pay" will not be applicable where an employee, though willing, is not allowed to work without his fault. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.* AIR 2004 SC 778 had held that a decision cannot be relied on without considering the factual situation. In the judgment the Supreme Court had observed:-

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

21. For the foregoing reasons, the writ petition is allowed. The respondents are directed to pay back wages amounting to Rs.88,000/- as the salary from 30th November, 1990 to 6th June, 1995 to the petitioner. The claim of the petitioner for legal expenses of Rs. 21,000/-, and compensation for mental sufferings of Rs. 1,00,000/- including the D.A., incentives, bonus, JH, food pockets, EL and HPL is, however, declined as the counsel for the petitioner on instructions has not pressed for the same. The petitioner has also not claimed any interest on the amounts due to him, therefore, no interest is awarded to the petitioner on the amount of Rs.88,000/-. This amount of Rs.88,000/- be paid to the petitioner within eight weeks. If the said amount is not paid within eight weeks, the petitioner then shall be entitled to interest at the rate of 9% till the amount shall be paid to the petitioner.

22. Considering the facts and circumstances, the petitioner shall also be entitled for a cost of Rs.10,000/-. Copy of the order be sent to the respondents forthwith for compliance.