
(2002) 09 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 981 of 2000

Debojyoti Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2003) 1 GLT 76

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : A.K. Dasgupta, S. Chakraborty and A. Khan, for the Appellant; K.K. Bhatra and S.K. Bhatra, for the Respondent

Judgement

I.A. Ansari, J.—A dismissed employee, when reinstated with directions that he would not be entitled to backwages and seniority, but he would get other service benefits, whether such "service benefits" will include benefit of increment(s) in pay is the question, which is required to be answered in this writ petition.

2. In a short compass, Petitioner's case may be put as follows:

The Petitioner is an employee of Respondent No. 2, namely, Allahabad Bank and was, at the relevant time, working as Clerk-cum-Cashier in its Guwahati branch. A domestic enquiry was initiated against the Petitioner on the ground that his conduct had made the Bank suffer financial loss. In the domestic enquiry, it was held that the Petitioner was guilty of the charges. This finding was accepted by the employer and the Petitioner was dismissed from service. An industrial dispute was raised and the Industrial Tribunal held that the dismissal of the workman (i.e. the Petitioner) was justified. Against the award of the learned Tribunal, the Petitioner filed a writ petition under Article 226 of the Constitution of India, which gave rise to CR No. 212/92. On 02.06.97, while disposing of the Civil Rule No. 212/92 aforementioned, learned Single Judge held that the penalty of dismissal of the workman from service, for the alleged loss of Rs. 4,000/- caused to the

Bank, was disproportionate to the charge proved against him. The learned Single Judge, therefore, interfered with the quantum of punishment, set aside the dismissal order and directed Petitioner's reinstatement into service, on his remitting Rs. 4,000/- to the Bank, with the penalty that the Petitioner would not be entitled to back wages, but save and except the back wages, he shall be entitled to other service benefits including his seniority. Against this judgment and order, the Respondent Bank preferred an appeal, namely, Writ Appeal No. 354/97. This appeal was partly allowed in favour of the Respondent Bank inasmuch as the Division Bench of this Court, on 27.07.98, while maintaining the order for reinstatement of the Petitioner, directed that except for the back wages and seniority, the Petitioner would be entitled to other service benefits. The Petitioner was accordingly reinstated and, upon his reinstatement, the Petitioner demanded, inter alia that his pay should be fixed by giving him all benefits of increment(s) treating as if his services had remained uninterrupted. Since this demand of the Petitioner was not acceded to by his employer, he made representations, in this regard, claiming that the benefits of increment be given to him. Having not succeeded in obtaining benefits of the increments so sought for, the Petitioner has approached this Court, with the help of his present application made under Article 226 of the Constitution of India, seeking appropriate relief(s).

3. The Respondents have contested this case by filing their affidavit-in-opposition, their case being, briefly stated, thus: the Petitioner was holding an important post of trust, but he betrayed the trust and gave financial loss to the Respondent Bank. The increments are earned by an employee for the services rendered by him. During the period within which the Petitioner remained out of job, there was no continuity in service and, hence, he is not entitled to any increment and that he cannot be paid salary as per scale other than the scale, which was available to the Petitioner on the date when he was dismissed from service. The Petitioner is, thus, according the Respondent Bank, not entitled to any benefit of increments for the period during which he had remained under order of dismissal.

4. I have carefully perused the materials on record. I have heard Mr. A.K. Dasgupta, learned Counsel for the Petitioner, and Mr. K.K. Bhatra, learned Counsel appearing on behalf of the Respondents No. 2, 3 and 4. None has appeared, at the time of hearing, on behalf of the Respondent No. 1, namely, Union of India.

5. Assailing the stand of the Respondent Bank, Mr. Dasgupta has submitted, inter alia, that since the Petitioner was directed to be reinstated in W.A. No. 354/97 aforementioned without back wages and seniority, but with specific direction that he would be entitled to other service benefits, the Respondents cannot deny him the benefits of increment(s) on his reinstatement inasmuch as "other service benefits" include, contends Mr. Dasgupta, the increments in pay of the employee. Withholding of the increments in pay, points out Mr. Dasgupta, is a penalty and

since this penalty was not imposed on the Petitioner by the Court, the Respondents cannot impose such a penalty by refusing to give the Petitioner the benefits of increments in pay.

6. Controverting the above submissions made on behalf of the Petitioner, Mr. Bhatra has contended that increments in pay are received by an employee only for the work that has been put in by the employee concerned. In the case at hand, submits Mr. Bhatra, the Petitioner remained out of job from the date of his dismissal until the time he was reinstated. During this period, when the Petitioner did not work, contends Mr. Bhatra, he would not be entitled to any increment in pay, because such increments would be available only against the work put in by the employee concerned.

7. In support of his above contention, Mr. Bhatra has placed reliance on Asstt. General Manager, SBI v. Thomas Jose and Anr., (2000) 10 SCC 280 and submitted that since the Petitioner was holding, at the time of committing the misconduct, post of a Cashier, which was a post of trust and confidence, his misconduct cannot be treated lightly and, in such circumstances, he is not entitled to increments, particularly, when it has already been held that he would not be entitled to back wages. In other words, according to Mr. Bhatra, since the Petitioner was directed to be reinstated without back wages and without seniority, his service cannot be treated as a continuous one and, having not put in any work during the period, in question the Petitioner would not be entitled to any increment(s).

8. Having heard both sides and upon considering the materials on record, I find that the submissions, made on behalf of the Respondent Bank, is completely misconceived in law. Increment in pay is an integral and inseparable part of an employee's service benefits. Denial of such an increment or withholding of such an increment is not permissible under the law except as a measure of penalty. To a pointed query made by this Court, even Mr. Bhatra has, though reluctantly, conceded that withholding of increment is a penalty, but he has pointed out that in this case, the Respondent Bank is not withholding the increments inasmuch as the employee has not, according to Mr. Bhatra, earned the increments at all. The fact that withholding of increment or refusal to give increment is a penalty is apparent from the Apex Court's decision in Thomas Jose's case (supra), which Mr. Bhatra himself relies upon, inasmuch as in this very case, the Apex Court has held as follows:

A bank deals with public money. Misappropriation by an employee of a bank is misappropriation of public money and must be treated very differently. Misconduct such as this cannot be treated as lightly as it has been done. We think that the appropriate order should at least have been of reinstatement without back wages plus a direction that the first Respondent would not be entitled to any increments for a substantial period with all the cumulative consequences of such an order. That is the order that we propose to pass.

(Emphasis is added by me).

9. What the Apex Court observed and held above is that while directing reinstatement of the delinquent employee without back wages, a direction ought to have also been given that the employee was not entitled to increment and accordingly, Apex Court gave, ultimately, as a measure of penalty, a direction that the employee concerned would not be entitled increments. In the case at hand, learned Single Judge in Civil Rule No. 212/92, while directing the reinstatement of the Petitioner, made it clear that the Petitioner would not be entitled to back wages, but that he would be entitled to other service benefits, which obviously included benefits of increments inasmuch as learned Single Judge observed, if I may quote, thus:

...Save and except the back wages, he shall however be entitled to his service benefits including seniority.

10. In other words, according to the decision in Civil Rule No. 212/92 aforementioned, the only benefit of service, which was denied to the Petitioner, was his back wages and consequently, he was entitled to receive all other (i.e. remaining) service benefits, which obviously included seniority, increments in pay, etc. This direction was, however, modified by the Division Bench of this Court, in its judgment and order, dated 27.7.98, passed in W.A. No. 354/97 aforementioned, wherein it was observed and held as follows:

...The learned Single Judge, while upholding the award, held that the order of dismissal of the workman from service for the alleged loss of Rs. 4,000/- caused to the bank is disproportionate to the charge and, therefore, came to the conclusion that interference with the quantum of punishment was called for. The learned Single Judge, while invoking the provisions of Section 11-A of the Industrial Disputes Act, set aside the dismissal and reinstates the workman into the service by holding that he was not entitled to back wages. However, the Respondent was held entitled to all the services benefits including seniority.

The discretion exercised by the learned Single Judge is perfectly all right. However, the grant of seniority in service, in our considered view, is not justifiable and, therefore, we modify the finding of the learned Single Judge to the extent that the Respondent would not be entitled to the benefit of seniority but he would otherwise, be entitled to other service benefits, excluding seniority. The back wages have already been declined by the learned Single Judge, which part of the finding is found to be in order.

(Emphasis is added by me).

11. Thus, what the Division Bench held was that the Petitioner would be entitled to neither back wages nor seniority on his reinstatement, but he would be entitled to "other service benefits". These benefits obviously included benefits of increment(s) in pay of the employee concerned and the Respondent Bank cannot take away these benefits from the Petitioner, when the penalty of denying him

increment(s) has not been imposed even in W.A. No. 354/97 aforementioned.

12. Situated thus, I find that the reliance placed by Mr. Bhatra on the case of Thomas Jose (Supra) is misconceived and it is the duty of the Respondent Bank to fix the scale of pay of the Petitioner treating him notionally to be in service from the date of his dismissal until the time he was reinstated and, then, fix his scale on and from the date of his reinstatement on such a scale, which he would have, otherwise, been entitled to receive, had he continuously remained in service. In other words, while not giving him the back wages and seniority, increments should be made available to the Petitioner.

13. In the result and for the reasons discussed above, the Respondents are hereby directed to pass necessary order/orders fixing the scale of pay of the Petitioner with the benefits of increment(s) treating his services as a continuous one. The scale of pay of the Petitioner shall be fixed as aforesaid and the Petitioner shall be paid his dues within a month from today.

14. With the above observations and directions, this writ petition shall stand disposed of.

15. No order as to costs.