

(1988) 02 BOM CK 0049
In the Bombay High Court
Case No : Writ Petition No. 3052 of 1986

Jafri Luis (Shri)	Vs	APPELLANT
S.D. Kadam and Another		RESPONDENT

Date of Decision : 12-02-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1988) 2 BomCR 199

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : S.D. Puri, for the Appellant; Nishita Mhatre, for the Respondent

Judgement

H.H. Kantharia, J.—In reference (I.D.A.) No. 111 of 1981, the learned Labour Judge presiding over Sixth Labour Court, Bombay, adjudicated upon the demand of the petitioner-workman with regard to his reinstatement with full back wages and continuity of services. By this Award dated 22nd January, 1985 the learned Labour Judge granted relief to the petitioner of reinstatement with continuity of services. However, as regards the back wages he directed the second respondent company to pay six months back wages to the petitioner - workman. The petitioner workman here in this writ petition under Article 226 of the Constitution challenges the validity, legality and propriety of the said Award to the extent of denying to him full back wages and granting the same only to the extent of six months.

2. Mr. Puri, learned Advocate appearing on behalf of the petitioner - workman, took me through the record as to the roznamas recorded by the learned trial Judge and pointed out that the reasoning of the learned Labour Judge that the matter could not be decided in time as both the parties had sought adjournment is factually incorrect in as much as the petitioner - workman had in the Labour Court obtained adjournments only on there occasions whereas the employer-company had sought adjournments on as many as 17 occasions. This part of the record further shows that the matter had to be adjourned on 25 occasions by the

trial Court on its own. Mr. Puri, therefore, submits that the workman should not be penalised for delay in the disposal of the matter which is an inevitable consequence of the system in which we are working. On the other hand Mrs. Mahtre, learned advocate appearing on behalf of the second respondent-company, submits that the Company cannot be penalised for the delay caused on account of the Court being required to adjourn the matter. In support of her contention. Mrs. Mahtre pointed out a decision of the Supreme Court in *Western India Match Co. Ltd. Vs. The Third Industrial Tribunal, West Bengal and Others*, .

3. Now, the observations made by the learned Labour Judge for granting only six months back wages to the petitioner-workman are as under:

"So far as back wages are concerned, the company is a small concern employing less than 10 persons. It is also seen that though the reference was received in this Court in February 1981, the same could not be decided earlier as both parties sought adjournment from time to time. The company could not be burdened with full back wages because the reference could not be decided earlier. It would meet the ends of justice, if 6 months wages are granted to the workman."

4. From these observations made by the learned Labour Judge, it is clear that they gave two reasons to grant only six months back wages to the workman. Firstly, he was of the view that the Company is a small concern. It is pertinent to note that once the relief of reinstatement with continuity of services is granted to a workman, the further order of payment of full back wages should normally follow unless there are compelling reasons to reduce any quantum from the full back wages. That the Company is a small or a big concern is not only immaterial but also irrelevant for the purpose of considering whether full back wages should be granted or not. Therefore, this reasoning of the learned Labour Judge is totally wrong. The second reasoning given by him for granting only six months back wages to the workmen is that both the parties had sought adjournment from time to time and Company alone should not be burdened with full back wages. So long as this is concerned, all that can be said is that a solution to the problem of back wages is to be found in the peculiar facts and circumstances of each and every case. There cannot be any hard and fast rule as to what exactly should be the back wages. Normally, however full back wages should be granted when the order of reinstatement is made. But there may be cases and cases where the quantum of back wages may be reduced regard being had to the facts and circumstances of the case. The finding of the learned Labour Judge that the workman here was entitled to only six months back wages because both parties had sought adjournments from time to time is factually incorrect. As pointed out by Mr. Puri and as the record shows, the workman in the instant case had sought adjournments only on three occasions whereas the Company had done it on as many as 17 occasions. I have gone through the entire recorded of the roznamas recorded by the learned Labour Judge and I find that nearly on 25 occasions the Court had adjourned the matters not for its pleasure but on a day to day working

basis. The record shows that the matter has been adjourned from time to time by the Court not for nothing for adjusting his work in as much as on occasions after certain witnesses were examined, the matter had to be adjourned for the presence of other witnesses and thereafter for arguments and thereafter for judgement which are all usual instances for which the matters are adjourned by the Court. The record further shows that on a couple of occasions the matter had to be adjourned because the Judge was on leave or the Court was not functioning because of a declared holiday. These are the usual happenings in a Court of law and no one could be blamed for it. After the matter goes to the Court, it gets adjourned for one reason or the other on account of the nature of the Court working and the workman as against the Company cannot be made the victim of the system of the Court working. In my opinion these are not the compelling reasons on account of which one should adopt a course different from the one of full back wages when reinstatement with continuity of services is granted to a workman. The decision of the Supreme Court on which Mrs. Mhatre relied is not relevant to the facts and circumstances of the present case. In the case before the Supreme Court, it was clearly pointed out by the Supreme Court that the length of the proceeding in that Court from 1971 to 1977 was the inevitable consequence of the backlog in the said Court and not blamable on either side. In that given situation, the Supreme Court was of the view that they should mould the relief as not to prejudice either party bearing in mind the equities of the case. Their Lordships of the Supreme Court, therefore, thought it would be fair, having regard to the overall circumstances of the case, that the management therein should be ordered to pay 50 per cent back wages to the workman. In our case, it is not the contention of either party that the case was delayed on account of the backlog alone in the Court. The two reasons given by the learned Labour Judge are factually wrong and the 25 occasions on which the Court had to adjourn the matter was in the useful day to day business of the Court which, is say the least, is inevitable whether there is or there is no backlog. The learned Labour Judge here lost sight of the fact that the employer had obtained 17 adjournments as against 3 by the workman. Therefore, he was totally wrong in limiting the back wages to the extent of only six months in favour of the workman. His impugned Award in this regard, therefore, totally suffers from errors apparent on the face of the record and the same has got to be quashed and set aside.

5. In this view of the matter, the impugned Award passed by the learned Labour Judge granting only six months back wages to the workman is quashed and set aside. It is substituted by a direction that the second respondent shall pay full back wages to the petitioner-Workman for the period of his forced unemployment with the second respondent company. It is further directed that the second respondent company shall pay up the entire back wages to the petitioner-workman by the end of this month i.e. on or before 29th February, 1988, failing which the second respondent-company shall be liable to pay interest at the rate of 15 per cent per annum to the petitioner -workman. Rule is accordingly made

absolute with no order as to costs.