

(1997) 04 KAR CK 0036
In the Karnataka High Court
Case No : W.A. No. 9765 of 1996

Kolar District Cooperative Central Bank Ltd.	APPELLANT
Vs	
Rama Rao and another	RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11 A
Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (1998) 79 FLR 390 : (1997) ILR (Kar) 1271 : (1997) 3 KarLJ 375

Hon'ble Judges : R.P. Sethi, C.J;G. Patri Basavana Goud, J

Bench : Division Bench

Judgement

R.P. Sethi, C.J.—Services of the respondent-workman were terminated w.e.f. July 30, 1982 by the appellant. It was alleged that the respondent workman had preferred the funds to the extent of Rs. 10,000/- in order to suppress or conceal and to play fraud on the Bank in the year 1979. The workman alleged that he had been working honestly to the satisfaction of his superiors for a period of 17 years but was wrongly charge-sheeted on September 6, 1980 on frivolous ground and without any material. The action of the appellant was stated to be amounting to victimisation and unfair labour practice initiated with mala fide intention. The Government of Karnataka by its Order No. SWL 418 LLD 84, dated May 10, 1984 referred the dispute for adjudication to the Labour Court. On the basis of the pleadings of the parties the Labour Court framed the following issues.

1. II Party to prove that Section 70 of K.C.S. Act bars the jurisdiction of this Court and hence, the reference is not maintainable.
2. II Party to prove that domestic enquiry is valid and proper.
3. II Party to prove justification of dismissal order.
4. I Party to prove unfair labour practice by II Party.
5. I Party to prove that punishment is too harsh.

6. To what relief ?

2. The Labour Court vide its order dated October 22, 1986 held that the domestic enquiry was not fair and proper. The appellant employer examined Sri M. Venkategowda and Sri P. Venkoba Rao. Number of documents were also produced. The workman also produced his own witnesses. On critical examination of the statement of witnesses, perusal of the record and taking note of the acquittal of the workman from a criminal case, the Labour Court concluded that the respondent workman was not guilty of the charges levelled against him. The reference was allowed. Dismissal of the termination order passed against the respondent was set aside with direction to the appellant to reinstate him into service with continuity and other benefits. The respondent was also held entitled to backwages from the date of dismissal or termination till his reinstatement. The writ petition filed by the appellant was dismissed vide the order impugned in this appeal.

3. The Learned Counsel appearing for the appellant has vehemently argued that the findings of the Labour Court were contrary to record and based upon mis appreciation of evidence. It is further contended that even if the respondent was to be reinstated, the appellant could not be burdened with the responsibility of paying him with the full backwages.

4. It is settled position of law that writ jurisdiction of the High Court is not a substitute of an appeal. The exercise of the jurisdiction is only supervisory. The Court would normally interfere with the awards of the Labour Court, Board or Tribunal only if it is satisfied that such award was without jurisdiction or vitiated by the error of law apparent on the face of the record. The Court may also interfere if the award is found to have been passed in violation of principles of natural justice. The Supreme Court in *State of Orissa and Another v. Murlidhar Jena* AIR 1963 SC 404 held that in proceedings under Articles 226 and 227 of the Constitution, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal in a departmental enquiry held by it. It cannot re-appreciate the evidence in exercise of such jurisdiction. However, if it is shown that the impugned findings recorded by the Tribunal were not supported by any evidence, the High Court may be justified in setting aside such findings. In exercise of the writ jurisdiction, this Court would not interfere only on the ground that the decision was wrong. The question of the sufficiency of the evidence cannot be raised in the writ proceedings. In appropriate cases the Court may consider the case on facts if it is shown that the findings returned by the Tribunal were based upon no evidence, or were arrived at upon by such evidence which was not an admissible evidence or that the findings apparently appear to be perverse. The mere possibility of arriving at a different conclusion would not authorise the Court to disturb the findings of the fact arrived at by the Tribunals against which the issuance of writ of certiorari is claimed.

5. In the instant case, the Labour Court is not alleged to have returned the findings without evidence or upon such evidence which was not admissible or the

findings returned *ex facie* were allegedly perverse. The Labour Court, after critical examination of the oral testimony of the witnesses and document recorded produced @o in the case came to a definite conclusion that the charges levelled against the respondent were not proved. Such finding of facts arrived at by the Labour Court would not be disturbed in exercise of the writ jurisdiction, as was rightly done by the learned Single Judge vide order impugned in this appeal.

6. Upon setting aside order of dismissal of the workman, generally he is entitled to the grant of full backwages. In *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, , it was held that after a declaration is given by the Tribunal established under the industrial law, that the termination of the workman was bad, the consequence is that the workman is treated to be continuously in service. The spectra of common law doctrine that the contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages do not haunt the field of industrial jurisprudence. On finding that the termination was invalid, the relief of reinstatement with continuity of service is required to be granted which would mean declaring that the employer had taken away illegally the right to work of the workman contrary to the relevant law or in breach of the contract and simultaneously deprived him of his earnings. If the employer is found to be in the wrong and the workman is directed to be reinstated the employer cannot be permitted to shirk his responsibility of paying the wages of which the workman was deprived of by the illegal and invalid action of the employer. If on account of the illegal action of the employer, a workman is subjected to harassment of litigation and deprivation of his earnings, he cannot be denied his backwages upon his reinstatement. Protracted and energy consuming litigation to which workman is subjected to cannot confer a right upon the employer to pray for non payment of the backwages on account of the, delay in disposal of the case. In this case the Apex Court held, ordinarily, therefore, a workman whose service had been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted imitative activity of the employer. The same view was reiterated in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, .

7. In *Mohan Lal v. The Management of M/s. Bharat Electronics Limited* (1981 II LLJ 370) it was held at P. 78 :

"If the termination of service is void *ab initio* and inoperative there is no question of granting "reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as *Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra*, and *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*, It was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which

rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, with consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in this case."

8. In Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, it was held by allowing the reference and while directing reinstatement, the Tribunal cannot direct withholding of any part of the backwages, which in law would amount to penalty which can be imposed only on proof of misconduct. In the absence of the misconduct the workman upon reinstatement was held entitled to grant of full back wages.

9. This Court in Syndicate Bank Vs. B.A. Bhat, , held :

"As a consequence of setting aside of the dismissal order, reinstatement in service will be the normal rule; and unless it is proved that the delinquent was gainfully employed elsewhere during the relevant period, he will be entitled to be paid the entire salary for the period during which dismissal order prevented him from earning his salary. However, law nowhere provides that a dismissed employee should be reinstated and he be paid all back salary/wages, as a condition precedent before, the disciplinary proceedings are continued from the stages of its nullification by the Court. No such principle, derived from any enacted law or subordinate legislation, nor from any judicial pronouncement, was brought to our notice. To what extent, the deprivation of livelihood, by the non-payment of salary during the period of enquiry, would vitiate the enquiry is an altogether different question, this question operates while considering the adequacy of opportunity to the delinquent, to defend himself properly in the disciplinary proceedings. However, in an appropriate case, depending upon circumstances Court may impose the condition of reinstatement/payment of arrears of salary, for the period when he was under the cloud of illegal dismissal order, while setting aside such an order and reserving liberty to the employer to proceed with the enquiry again in such a situation, the condition imposed by the Court operates on the exercise of the liberty to hold fresh/further enquiry by the employer, not because of any general principle of service jurisprudence, but, because of the limitation imposed by the judicial order which permitted the fresh or further enquiry."

10. Relying upon the judgment of Supreme Court in H.M.T. Limited Vs. Labour Court, Ernakulam and Others, it has been argued on behalf of the employer that on account of the lapse of time from the date of dismissal till the date of award, the workman should not have been awarded full backwages. In that case the Apex Court upon, "taking all facts into consideration" found that the award of 60% of the backwages would meet end of justice. It was not laid down that in all cases of delay, the workman be deprived of the full backwages. The plea of

depriving the workman of the backwages, if it is stretched to the extent as desired by the appellant would defeat the very purpose for which the Industrial Disputes Act (for short "the Act") was legislated. It cannot be disputed that the Act was legislated with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour Hindustan Antibiotics Ltd. Vs. The Workmen and Others, . The Act is not intended only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system it is intended to achieve co-operation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workman and to prevent disputes between the employer and the employees so that the large interest of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the legislature contemplated in the statement of object and reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, to secure, industrial peace and to provide machinery to secure that end. Conciliation is most important and desirable way to secure that end. In dealing with industrial disputes the Courts have always, emphasized doctrine of social justice, which is founded on basic ideal of socio economic equality as enshrined in the preamble of our Constitution. While construing the provisions of the Act, the Courts have to give them a construction which should help an achieving the object of the Act.

The history of the legislation with respect to the industrial disputes would show that for the first time in the year 1920 the Trade Disputes Act was enacted which provides for Courts of Inquiry and Conciliation Boards and forbade strikes in public utility service without a statutory notice in writing. The Act did not make provision for any machinery for settling of industrial disputes. The said Act was repealed and replaced by the Trade Disputes Act, 1929 which started the state intervention in the settlement of industrial disputes and armed the Government with the power which could be used whenever considered fit to intervene in industrial disputes. This Act was amended in the year 1938, authorising the Central and Provincial Governments to appoint Conciliation Officers for mediating in or promoting the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81-A gave powers to the Government to intervene in industrial disputes and was intended to provide speedy remedies for industrial disputes by referring them compulsorily to

conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes or lockouts during the pendency of the conciliation or adjudication proceedings. Industrial Employment (Standing Orders) Act, 1945 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on October 8, 1945 which embodied the essential principles; of Rule 81-A of the Defence of India Rules and also certain provisions of Trade Disputes Act, 1929 concerning industrial disputes. The bill was passed by the Assembly in March 1947 and became the law w.e.f. April 1, 1947. The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes their settlement for purposes of analogous and incidental thereto. The emergence of the concept of Welfare State implies an end to exploitation of workman and as a corollary to that collective bargaining came into its own. The Legislature had intended to protect workman against victimisation and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner.

11. Dealing with the object of the Act are Division Bench of the Punjab and Haryana High Court in Management of Haryana Development Authority v. Neelam Kumari and Another 1993 (5) SLR 134, observed as under :

"There is no gainsaying, the object of the Industrial Disputes Act is to give succor to weaker section of the society which is pre requisite for a Welfare State. It Provides means for industrial peace and preempt industrial tension. It further aims at enhancing the industrial production which is essential life blood of a developing society. It provides a machinery for investigation, and settlement of industrial disputes shown of legal technicalities of civil law with a view to avoid proverbial delay caused in granting justice by heavily loaded Civil Courts. Its object is to provide social justice to the illiterate or semi-literate workers free from technical considerations. Worker has been defined by the Act. It envisages conscientious negotiation, conciliation and adjudication as demanded by the society animated by industrial disputes keeping in view the fast changing social norms of the present day society."

12. Not allowing backwages to the workman, merely on the ground of delay, would in effect and essence amount to double jeopardy to him. The employer on terminating the services of the workman can successfully prolong the litigation with the object of frustrating the object of the social welfare legislation primarily made for the benefit of the workman. Under normal circumstances no workman can be presumed to be interested in prolonging the disposal of the industrial dispute. If, however, on facts it is found that the workman himself has been guilty of protracting the litigation for extraneous reasons, the Labour Court can in that event appropriately mould the relief. Similarly, failure on the part of workman to sleep-over his rights and approach the Court at a belated stage can be a consideration in moulding the relief of backwages.

13. Keeping in view the aim and object of the Act, the social purpose which is intended to be achieved by it, various pronouncements of the Apex Court and the scheme of the Act it can safely be held that :

(1) Upon reinstatement the workman would generally be entitled to the grant of full backwages. Withholding of full backwages would be an exception.

(2) Grant of such basic wages can be directed normally from the date of service of the demand notice till the date of reinstatement of the workman.

(3) Grant of backwages can be withheld or so denied upon proof of the fact that during the period of termination the workman had been gainfully employed. The burden of proving the gainful employment or the period of such employment shall always be upon the employer.

(4) The grant of backwages is however subject to the provisions of Section 11A of the Act. Under the peculiar circumstances of any case the Court may appropriately mould the relief with respect to the grant of backwages.

(5) Payment of backwages shall be directed to be determined in accordance with the service conditions of the workman and the rules applicable thereto presuming the absence of the order of termination of the workman.

14. Having regard to the facts and circumstances of the case and keeping in view the position of law as enunciated hereinabove it cannot be said that either the Labour Court or the learned Single Judge committed any illegality or error of jurisdiction in directing that upon reinstatement the respondent-workman would be entitled to the continuity of service and full backwages. There is no merit in this appeal which is accordingly dismissed with costs assessed at Rs. 500/-