

(1994) 06 AP CK 0032
In the Andhra Pradesh High Court
Case No : W.A. No. 1265 of 1988

M.M. Baig

APPELLANT

Vs

A.P.S.R.T. Corporation and Another

RESPONDENT

Date of Decision : 29-06-1994

Acts Referred:

Citation : (1994) 2 ALT 575 : (1995) 1 LLJ 468

Hon'ble Judges : S.V. Maruthi, J;Lingaraja Rath, J

Bench : Division Bench

Judgement

1. The appellant was respondent No. 2 in Writ Petition No. 5994 of 1985 which had been filed by the 1st respondent assailing the award passed by the Labour Court on 17-12-1984 directing his reinstatement with full back wages. The judgment in the petition came on 9-12-1987 upholding the reinstatement as directed by the Tribunal but the direction regarding payment of back wages was reversed. That part of the judgment is assailed before us.

2. The brief facts relevant to the case are that the appellant's services were terminated, after disciplinary proceedings, on 7-8-1961 and his appeal preferred before the General Manager also failed on 28-8-1961. A move was made to raise an industrial dispute by asking the Government to refer it to the Labour Court but by communication made to the Union on 5-11-1962 the request was refused. On 20-3-1965, the Government again communicated the Union that it gave no reason to revise its orders of 5-11-1962 and 10-9-1963. It hence appears that on 10-1-1963 the Government had also refused the request for reference 10 years after, the Union precipitated the move again and communicated the Government of resorting to strike unless reference in respect of some other employees of the appellant is made. The Government communicated its having agreed to make the reference and made the reference by G. O. Ms. No. 736 dated 10-10-1980 to the Labour Court. The award came on 17-12-84. Prior to the making of the award, the 1st respondent challenged the reference by the Government before this Court in W. P. No. 8389 of 1983, but the case was

dismissed on 21-11-1988. It is the admitted fact that no appeal was preferred against the dismissal of the writ petition. The appellant was reinstated in service on 22-2-1985 and retired in April, 1988. The submission urged by the learned Counsel before us that as the termination of the services of the appellant was found illegal and the Court upheld the order of reinstatement, payment of back wages must follow as a normal rule as it is a case of the appellant having been willing to serve all along but to have been refused employment. It is conceded by him that though in principle, if sufficient time has elapsed in moving the Court, a reduced amount in lieu of the back wages may be given but, yet he argues that in the instant case the appellant has been throughout vigilant as was found in the award and hence full back wages cannot be denied. Contesting the stand the submission of Ms. Vani, the learned Counsel appearing for the 1st respondent is that since the Government refused reference thrice earlier in 1962, 1963 and 1965, and were made to refer only on threat of a strike, the management had no contribution to the delay and hence, should not be penalised to pay the back wages for nearly 22 years.

3. In *Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another*, , the view was taken that having regard to the circumstances that the workman raised an industrial dispute after considerable delay without doing anything in the mean while to question the termination of his service's award of half of the back wages from the date of termination of service until the date of the judgment and full back wages from the date till reinstatement would meet the ends of justice.

4. In *Pyare Lal Sharma v. Managing Director*, 1989 II CLR 293, the view taken was that when an order of termination is set aside the normal Rule is of entitlement to the full back wages and other consequential benefits but where the workman is found to have also contributed to the delay, payment of 60 per cent of wages was thought proper.

5. Keeping such authorities in view and considering the fact that there is nothing on record to show that the 1st respondent has in any way contributed to the delay and that on the contrary the State Government made the reference nearly 18 years after the first refusal, we hold that the ends of justice would be met if the appellant is paid 60 per cent of the back wages and we direct as such. It is brought to our notice that during the pendency of the writ petition the 1st respondent has deposited 50 per cent of the back wages and the amount was also withdrawn by the appellant without furnishing security. He hence is entitled to receive 10 per cent of the balance to back wages. We direct the payment of the amount to be made within a period of three months from the date of receipt of a copy of this order.

6. The appeal is allowed with costs. Advocate's fee Rs. 1,000/-.