
(1996) 06 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 2655 of 1984

Nand Kumar Kushwaha

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Madhya Pradesh Sahakari Kendriya Bank Karmachari Tatha Karya Sthiti Niyam, 1965
— Rule 43, 44(1), 45(3)

Citation : (1997) 2 MPLJ 68

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; P.R. Bhawe, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

The petitioner an employee of the District Co-operative Central Bank Limited, Seoni/respondent No. 4 aggrieved of the order dated 27- 4-1984 (Annexure-N) passed by the Board of Revenue in Appeal No. 14-2/84 preferred against the order dated 1-6-1983 (Annexure-L) passed in appeal No. 77/17 of 1982 by the Joint Registrar, Co-operative Societies, Jabalpur has filed this petition under Articles 226 and 227 of the Constitution of India.

Facts giving rise to this petition are these. The petitioner was working as a Salesman who was transferred vide order dated 24-8-1976 (Annexure-A) from Ghansore Consumer Store to Ugli Consumer Store. The petitioner did not join in compliance of the order of transfer at Ugli hence an order was passed on 19-10-1976 (Annexure-C) directing the petitioner to join within seven days failing which he will, face action, but, in spite of this the petitioner did not join. Therefore, an order dated 29-10-1976 (Annexure-D) was passed terminating the services of the petitioner from the date of the order of transfer, i.e. 24-8-1976. On the representation of the petitioner the order Annexure-D was withdrawn and

the petitioner was asked to join his duties as salesman at Pandya Chhapar. The petitioner after joining his duties on 30-12-1976 applied for leave from 31st December, 1976 till 2-1-1977 with permission to leave headquarter for bringing his luggage which was granted. The petitioner after the expiry of leave so granted did not join and remained continuously absent, hence the respondent No. 4 terminated his service vide order dated 15-4-1977 (Annexure-H). The petitioner raised a dispute u/s 55(2) of the M.P. Co-operative Societies Act, 1960 (for short "the Act") before the Assistant Registrar, Co-operative Societies, Seoni, which was contested by the respondent No. 4. After appreciation of evidence the Assistant Registrar, Co-operative Societies dismissed the dispute so raised vide order dated 3-3-1982 (Annexure-J). Aggrieved of that the petitioner preferred an appeal u/s 77 of the Act before the Joint Registrar, Co-operative Societies, Jabalpur. The Joint Registrar, Co-operative Societies held that as the act of the petitioner amounts to misconduct under rule 43 of the M.P. Sahakari Kendriya Bank Karmachari Tatha Karya Sthiti Niyam, 1965 (for short the "Rules"), hence, services of the petitioner could only be terminated under rule 44(1) of the Rules after following the procedure as laid down in rule 45 (3) which was not followed, therefore, set aside the order of termination and directed reinstatement without back wages with liberty to respondent No. 4 to proceed against the petitioner for the misconduct committed by the petitioner in accordance with the Rules. The respondent No. 4 did not challenge the order of reinstatement. However, the petitioner in pursuance of the order of reinstatement did not join his duties and preferred a second appeal u/s 77(2) of the Act before the Board of Revenue. As the petitioner did not join his duties, the respondent No. 4 issued a letter dated 5-7-1983 (Annexure R-4) directing the petitioner to join his duties at Kanhaiwada. On that the petitioner made a representation on 13th July, 1983 (Annexure R-5) that he may not be asked to deposit security amount. The representation of the petitioner was accepted, therefore, another letter dated 26-7-1983 (Annexure R-6) was issued directing the petitioner to join his duties without furnishing security, but, in spite of that, the petitioner did not join.

Meanwhile, the Board of Revenue dismissed the appeal of the petitioner and affirmed the order of Joint Registrar, Co-operation Societies passed in appeal observing that it was the petitioner who absented himself after the expiry of leave, therefore, the petitioner is not entitled for back wages on the principle of "no work no pay." The respondent No. 4 after the order of the Board of Revenue issued another letter dated 18-7-1984 (Annexure R-7) asking the petitioner to join his duties within seven days, but, in spite of this the petitioner did not report for duty and made a grievance vide letter dated 25-7-1984 (Annexure R-8) that he be allowed to join not as salesman but as Samiti Sevak. The respondent No. 4 vide letter dated 29-8-1984 (Annexure R-9) made the position clear that as he was working as salesman vide order dated 6-5-1975 on fixed-pay and his services were terminated as such, therefore, he should join within seven days his duty as salesman, but, again the petitioner did not join, therefore, another letter dated 12-11-1984 (Annexure R-10) was sent to the petitioner to join his duties

within a week failing which it would be deemed that the petitioner is not interested in his reinstatement and has abandoned his employment.

Shri R. K. Gupta, learned counsel for the petitioner submitted that once the order of termination is held to be illegal and is set aside, normally an employee is entitled to reinstatement with full back wages and it is for the employer to plead and prove circumstances which may disentitle the employee to benefit of full back wages and justify and deduction therefrom. The Joint Registrar of Co-operative Societies when once set aside the order holding it illegal and ordered reinstatement the petitioner ought to have been awarded full back wages as reinstatement follows back wages. The petitioner aggrieved of that part of the order preferred a second appeal. The Board of Revenue did not award back wages on the principle of "no work no pay" which has no application as the order of termination was held to be illegal, reliance was placed on a Division Bench decision of this Court in case of *Singeshwar Prasad v. General Manager, Bhilai Steel Plant*, Bhilai, 1979 MPLJ 773.

Shri P. R. Bhawe, and Ku. Tripti Kholia who appeared for the respondent No. 4, supported the order of the Board of Revenue and contended that the petitioner in fact challenged the two orders of termination, i.e. one passed on 29-10-1976 Annexure-D which was withdrawn on the representation of the petitioner by allowing the petitioner to join his duties, and the order Annexure-H dated 16-4-1977 for remaining unauthorisedly absent after the expiry of leave from 3-1-1977. The respondent No. 4 did not challenge the order of reinstatement, hence the petitioner ought to have reported to join his duties but the petitioner did not join, hence he would be deemed to have abandoned his claim for reinstatement. The respondent No. 4 was no longer bound to provide him employment and to pay wages after the award. However, the respondent No. 4 after the order of Board of Revenue noticed the petitioner to join his duties, but, in spite of that the petitioner did not join his duties, therefore, cannot claim wages from the date of the order of the Joint Registrar as performance of duty by the employee being a condition precedent for earning remuneration. It was submitted that the two Courts below after setting aside the order of termination as illegal have exercised their discretion in not awarding back wages this Court would not interfere under Article 227 of the Constitution.

It is well settled that ordinarily, an employee whose services have been illegally terminated either by dismissal, discharge or retrenchment, will be entitled to full back wages, except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Except in special circumstances, the Court where a dispute is raised may slice off a part, if an employee is not wholly blameless or there are some special circumstances placed on record by the person who objects to modify and to depart from, the normal rule. See the decisions of the Supreme Court in *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, , *G. T. Lad and Others Vs. Chemical and Fibres of India Ltd.*, , and Division Bench decision of this Court

in Singeshwar Prasad's case (supra) and in case of State of M.P. v. Harilal, 1992 MPLJ347.

In the case in hand the Joint Registrar and Board of Revenue have exercised their discretion in not awarding back wages to the petitioner as the conduct of the petitioner was not blameless. The petitioner after obtaining leave with permission to leave headquarter to bring his luggage did not join his duties after the expiry of the leave and remained unauthorisedly absent for a period of three and half months, hence, the respondent No. 4 passed the order of termination. The order of the termination was set aside on the ground that the services of the employee could be terminated only after following the procedure prescribed in rule 45(3) of the Rules. After setting aside the order of termination the normal rule of reinstatement with back wages was departed in the circumstances of the case. The Board of Revenue affirmed the order of the Joint Registrar, Co-operative Societies and in the special circumstances of the case did not award back wages on the principles of "no work no pay". The discretion so exercised cannot be interfered under Article 227 as the order of refusal of back wages is neither manifestly illegal nor is without jurisdiction. See the decision of the Supreme Court in case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, .

As regards wages from the date of the order of Joint Registrar, Co-operative Societies till the date of joining, when once the order of termination of services is set aside, the employee should report for duty and offer his services within a reasonable time after the order of reinstatement is passed in his favour. If he fails to report for duty within a reasonable time, he should be deemed to have abandoned his claim for reinstatement and the employer will no longer be bound to provide employment for him. The employee would also be entitled to wages only from the date on which he has intimated his willingness to work, to the employer and is prepared to make his services available to him. Even if the order or the award of the Court or Tribunal is challenged in the High Court and if there is no order of stay of the implementation of the award or order the employee should report for work or should have at any rate expressed his willingness to work. It is not the duty of the employer to take steps to invite the employee in pursuance of the order of Court or Tribunal setting aside the termination order passed by the employer, but it is the duty of the employee concerned either to claim or inform in writing that he is ready and willing to join the service within a reasonable time or to give a notice that he should be reinstated failing which he would be taking legal proceedings against the employer. In the absence of any of these things, the employer is under no legal obligation to take steps to reinstate the employee who was dismissed by him but subsequently restored to his job by the order of the Tribunal or the Court nor the Court or Tribunal can direct payment of wages to an employee who did not report for duty after the order of reinstatement. See the decision of the Supreme Court in case of Bombay Steel Rolling Mills Ltd. v. Khemchand Rajkumar Steel Mills Ltd. and Pahorpur Yards Labour Union, Calcutta, 1964 II LLJ 120, a decision of the Madras High Court in case of Peer Mohd. and Co. v. Mond. Hussain, 1968 Lab.I.C. 1143 and a Division

Bench decision of Kerala High Court in case of Annamma Thomas v. Joseph, 1984 Lab.I.C. 1382.

In the case in hand though the respondent No. 4 was not bound to invite the petitioner to join his duties, in spite of that the respondent No. 4 intimated in writing and noticed the petitioner to join his duties. The last notice is dated 18-7-1984 directing the petitioner to join his duties within seven days as his appeal before the Board of Revenue stood dismissed but the petitioner did not report for his duty. Therefore, in the opinion of this Court, the petitioner cannot claim wages for the period from the date of the order of the Joint Registrar, Co-operative Societies till the date of his joining.

As a result of the above discussion, the petition is devoid of any merit and is dismissed with no order as to costs. Security amount, if any, be refunded to the petitioner.