

(2004) 07 AHC CK 0074

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18641 of 2003

Prabhakant Shukla

APPELLANT

Vs

Presiding Officer, Labour Court (3) and Another

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Citation : (2004) 5 AWC 4907 : (2004) 3 UPLBEC 2992

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Satish Chaturvedi and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—By means of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ, order or direction amending the award dated 27th September, 2002 given by the Labour Court (3), Kanpur Nagar, respondent No. 1, filed as Annexure 1 to the writ petition and other consequential reliefs. Vide award dated 27th September, 2002, the Labour Court has held the termination of the services of the petitioner to be illegal and the petitioner is entitled for reinstatement with effect from 12th June, 1987. However, it had not granted relief of back wages and had further directed the employer to reinstate within two months and the petitioner would be entitled for wages from the date of the award. The present petition challenges the award insofar as it denies the relief of backwages.

2. Briefly stated, the facts giving rise to the present writ petition are as follows :-

"M/s. Reetu Marbals, respondent No. 2, is carrying on ;the business in marbles and other allied products at Kanpur. It had engaged the petitioner as Accountant on 1st March, 1986. From 11th June, 1987, it stopped taking work from the petitioner whereupon an industrial dispute was raised, which has been referred by the State Government for adjudication to the Labour Court, Kanpur. The State

Government had referred the following dispute for adjudication -

"KYA SEWAYOJAKON DWARA AP. _ SHRAMIK SHRI PRABHAKANT SHUKLA PUTRA SHRI CHANDRA KANT SHUKLA, PAD ACCOUNTANT KI SEWAYEN DINANK 11.6.1987 SE SAMAPT KIYA JANA UCHIT TATHA/ATHAWA VAIDHANIK HAI? YADI NAHI, TO SAMBANDHIT SHRAMIK KYA LABH/ ANUTOSH (RELIEF) PANE KA ADHIKARI HAI TATHA ANYA KIS VIVRAN SAHJT ?"

3. The reference was registered as Adjudication Case No. 92 of 1989, Before the Labour Court, the petitioner as also the respondent No. 2 filed their written statement, Prabhakant Shukla and R.K. Tripathi on behalf of the petitioner gave their oral evidence, however, on behalf of the employer-respondent No. 2, Rakesh Kumar Bajpai. Clerk, gave his oral statement. Before the Labour Court, it was submitted on behalf of the petitioner, that he had been appointed as Accountant in the establishment of the respondent No. 2 on 1st March, 1986 and was getting Rs. 1,200.00/- p.m. as wages. He worked continuously till 10th June, 1987 and from 11th June. 1987 he had been stopped from doing the work. The case set up by the employer before the Labour Court was that the petitioner was not a full time employee but only a part time employee and therefore, he is not entitled to raise any industrial dispute. The Labour Court after examining the evidence and material on record, had come to the conclusion that the petitioner was a full time employee of the respondent No. 2 and that his termination was illegal and contrary to law. The petitioner is entitled for reinstatement. However, it has not given the relief of back wages. It may be mentioned here that the respondent No. 2 had accepted the award.

4. I have heard Sri Prabhakant Shukla who has appeared in person and Sri Satish Chaturvedi, learned Counsel appearing for respondent No. 2.

5. The petitioner vehemently argued that the Labour Court has committed a manifest error of law in not granting the back wages as he has been out of job since 1st June, 1987. The reference was made in the year 1989 and the award was given in the year 2002 and therefore, for the long period of 15 years., he cannot be denied his lawful claim of backwages.

6. Sri Satish Chaturvedi, learned Counsel appearing for respondent No. 2, however, submitted that before the Labour Court there was no averment that the petitioner, was out of job. Moreover, the petitioner did not lead any evidence to show that he remained out of job during this long period and thus, the Labour Court was perfectly justified in not granting the relief of backwages.

7. Having heard the petitioner in person and the learned Counsel for the respondent No. 2, I find that the position in law is well settled by the Hon'ble Supreme Court in the case of Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, , that ordinarily a workman whose service has 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 and that is the normal rule. The

Hon"ble Supreme Court has held as follows :-

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus, the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is question as invalid or illegal and the workman has to be through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such as awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full backs 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 litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rules, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation upto the Apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the

employer, there is no justification for not awarding them full backwages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal (1971) a Lab LJ 508 and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow (1971) 1 Lab LJ 327, have taken this view and we are of the opinion that the view taken therein is correct."

8. The Apex Court approved the decision of this Court in the case of Postal Seals Industrial Co-operative Society Limited v. Labour Court, Lucknow (1971) 1 Lab LJ 327.

9. The Hon'ble Supreme Court further held that the full back wages would be the normal rule and party objecting to it, must establish the circumstances necessitating departure and at that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. Thus, this Court directed that the respondent No. 2 shall be entitled to received wages as a admissible to him under the Rules. The intention was that he would be entitled for the backwages as well as continuity in service as it was the normal Rule at that time.

10. In the case of S.G. Chemicals and Dyes Trading Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, , the Apex Court has directed for payment of full back wages to the concerned workman where the closure of the undertaking was held to be illegal by observing that it is difficult to see why these 84 workmen should be put to further harassment for the wrongful act of the company.

11. In the case of The Punjab National Bank Ltd. Vs. Its Workmen, , the Hon'ble Supreme Court has held that if the bank has failed to establish its specific case against any one of the 36 employees, there is no reason why the normal rule should not prevail and the employees should not get the relief of reinstatement. The mere fact that the bank may have employed some other person in the meanwhile, will not necessarily defeat such a claim for reinstatement. As held by the Hon'ble Supreme Court in the case of M/s. Hindustan Tin Works Pvt. Ltd. (supra), once the termination is held to be illegal and the reinstatement is ordered, the workman is entitled for entire back wages and continuity of service unless it is proved by the person objection that the workman was gainfully employed elsewhere.

12. In the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , the Hon'ble Supreme Court has referred to the decision of the Apex Court in the case of M/s. Hindustan Tin Works Pvt. Ltd. (supra), and has held that the payment of backwages having a discretionary element involved in it, has to be dealt with in the circumstances of each case and no strait jacket formula can be evolved. However, there is statutory sanction to direct payment of back wages in its entirety.

13. Applying the Principles laid down by the Hon'ble Supreme Court in the case of M/s. Hindustan Tin Works Pvt. Ltd. (supra) and Hindustan Motors Ltd.,

(supra), to the facts of the present case, I find that it was not the case of respondent No. 2 that the petitioner had been gainfully employed elsewhere after 11th June, 1987 till the Labour Court gave its award. In this view of the matter, the Labour Court ought to have followed the normal rule to award full backwages. Instead of remitting the matter to the Labour Court for fresh consideration after a long interval of about more than 17 years, the Court is of the considered opinion that the issue relating to payment of back wages should be settled finally. Thus, the award of the Labour Court insofar as it declines to grant full back wages to the petitioner, is illegal. Accordingly, the award stands modified and it is held that the petitioner shall be entitled for full back wages from the date of termination till the date of reinstatement.

14. In view of the foregoing discussion, the writ petition succeeds and is allowed. However, the parties shall bear their own costs.