

(2022) 07 CHH CK 0046
In the Chhattisgarh High Court
Case No : Writ Appeal No. 435 Of 2020

Ram Kumar Vishwakarma

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 13-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 226

Citation : (2022) 07 CHH CK 0046

Hon'ble Judges : Arup Kumar Goswami, CJ; Parth Prateem Sahu , J

Bench : Division Bench

Advocate : Pawan Kesharwani, Meena Shastri

Final Decision : Allowed

Judgement

1. Heard Mr. Pawan Kesharwani, learned counsel for the appellant.

Also heard Ms. Meena Shastri, learned Additional Advocate General, appearing for the respondents.

2. The question which arises for consideration in this appeal, which is filed against the order dated 08.11.2019 passed by the learned Single Judge in WPS No. 4910 of 2017, is as to whether the learned Single Judge has committed any error of law in not granting back-wages while setting aside the order of compulsory retirement dated 05.09.2017, though, observing that benefits shall be given to the petitioner by giving him notional benefits and fixation.

3. No appeal has been preferred by the State challenging setting aside of the order of compulsory retirement.

4. The learned Single judge recorded findings to the effect that none of the Annual Confidential Reports (for short, 'ACRs') for the last 10 years reflects any unsatisfactory performance on the part of the petitioner and that integrity of the petitioner is also not considered to be doubtful. The ACRs for the last 10 years as a whole is 'Good' and there had been no adverse entries. The learned Single

Judge also noted that the State had, by Circular dated 25.04.2017, formulated 8 major conditions to be considered for passing an order for compulsory retirement and none of the conditions were considered by the respondents while considering the case of the petitioner.

5. The reason assigned in the order of compulsory retirement was "public interest".

6. Mr. Kesharwani relies on a decision of the Hon'ble Supreme Court in *Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited & Others* passed in Civil Appeal No. 11325 of 2011, which was also a case of compulsory retirement, to contend that the petitioner is entitled to back-wages. In the said case, the view taken by the High Court that the principle of "no work, no pay" shall apply was rejected by the Hon'ble Supreme Court and it was held that the fault lies with the respondents in not having utilized the services of the appellant for the period from 01.01.2003 to 31.12.2005. It was further observed that having restrained the petitioner from rendering his services with effect from 01.01.2003 and 31.12.2005, the respondents cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay".

7. Ms. Shastri relies on a decision of the Hon'ble Supreme Court in *Gopal Dutt Shukla V. Bihar State Road Transport Corporation and Others*, reported in (2019) 13 SCC 323, to contend that in the aforesaid case, on the ground that the appellant had not worked during the period he was out of service, he was denied actual wages for the period he had remained out of service while ordering the respondents to treat the service of the appellant between the date of compulsory retirement and the date of reinstatement as continuous for all other purposes.

8. A perusal of the said order would go to show that the order of the compulsory retirement was passed as a major punishment, which is not the case in the present case. In that view of the matter, the aforesaid judgment has no application in the facts of the present cases.

9. In the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Others*, reported in (2013) 10 SCC 324, the Hon'ble Supreme Court at paragraphs 38.1 and 38.5 stated as under:

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different

opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

10. Present is a case where the appellant was compulsory retired arbitrarily without there being any material on record for passing such an order. The appellant was unjustifiably prevented by the employer from rendering his service and such action amounts to victimisation of an employee.

11. In the facts and circumstances of the case and having regard to the decisions of the Hon'ble Supreme Court in Shobha Ram Raturi (supra) and Deepali Gundu Surwase (supra), we are of the opinion that the order of the learned Single Judge so far as it relates to denial of back-wages, requires interference.

12. Accordingly, it is directed that the appellant shall be paid his pay and allowances for the period during which he was kept out of service. The order of the learned Single Judge is modified to that extent.

13. The writ appeal is allowed. No cost.