

(1968) 07 MAD CK 0036
In the Madras High Court

Rangarathinam Pillai

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 11-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 33A, 33C

Citation : (1969) 2 LLJ 416

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Judgement

Ramakrishnan, J.—The petitioner, Rangarathinam Pillai, was employed as an accountant under respondent 2, the management of Coimbatore Murugan Mills, Ltd., Coimbatore. The management terminated the services of the petitioner with effect from 25 September 1958. As an industrial dispute was pending at that time before the industrial tribunal, Madras, the petitioner filed an application before the same industrial tribunal u/s 33A of the Industrial Disputes Act, 1947, challenging the termination order. The industrial tribunal, after going into the merits of the case, passed an award on 23 January 1959, holding that the termination of the petitioner's service was in contravention of Section 33 of the Act, and directed that the petitioner should be reinstated with back-wages. This award was published in the Fort St. George Gazette on 18 February 1959, and under the rules, the management ought to have enforced it by 18 March 1959, but it did not do so. It filed Writ Petition No. 273 of 1959 in this Court challenging the award, and this writ petition was dismissed on 16 September 1960. The writ appeal held by the management was also dismissed on 8 November 1960. A petition filed by the management before this Court for grant of leave to appeal to the Supreme Court was also dismissed. Then respondent 2 management filed a petition before the Supreme Court for grant of special leave. During the pendency of the petition for special leave, the Supreme Court at the instance of respondent 2 granted stay of the award on condition that respondent 2 should deposit one-half of the back-wages due to the petitioner from the date when the

award became enforceable (18 March 1959) till the disposal of the appeal before the Supreme Court along with interest at the rate of 6 per cent per annum on the balance of the amount due to the petitioner, in case the appeal fails. The Supreme Court dismissed the appeal on 11 November 1964 with costs of the petitioners. Respondent 2 reinstated the petitioner in service with effect from 12 January 1965 since all his attempts to set aside the award failed.

2. Thereafter, the petitioner filed an application before the labour court, Coimbatore, u/s 33C(2) of the Industrial Disputes Act claiming the following reliefs:

3. The labour court, after an elaborate enquiry, disallowed the claim for bonus and leave-salary, but allowed the claim for costs in the High Court and costs in the Supreme Court. In regard to the claim for back-wages, the labour court found, after taking evidence, that the petitioner during the period between the date when the award became enforceable (18 March 1959) and the date when he was reinstated in service (12 January 1965) had been employed in several other places and had received salary. The finding of the labour court was that in computing the back-wages, besides one-half of the back-wages already deposited, the petitioner would be entitled to recover from respondent 2 the balance of the amount if other earnings for the particular month are less than half of his wages. If it is more, the petitioner will not be entitled to the half back-wages for the month, nor could he take the excess which he had earned during that month into consideration towards deduction of his claim for another month.

4. In regard to the claim for interest, the labour court awarded interest on the balance of the amount thus found payable to him after excluding half of the back-wages deposited by respondent 2 but no interest was payable in respect of the one-half of the amount of back-wages deposited by respondent 2 in pursuance of the Supreme Court's order.

5. Aggrieved against the above order, the petitioner has filed this writ petition under Article 226 of the Constitution praying for the issue of a writ of certiorari. The petitioner has attacked in the writ petition the disallowance by the labour court of the several items claimed by him whether in whole or in part, as the case may be. According to his affidavit as against the total claim of Rs. 21,881.05, a revised calculation made in accordance with the award of the labour court gave him relief only in a sum of Rs. 5,659.89, and he is entitled to relief in respect of the balance of the amount.

6. I will take up for consideration first, the claim for back-wages which relates to the period from 18 March 1959 when the award became enforceable up to 12 January 1965 when the petitioner was reinstated. After taking evidence, the labour court found that during this period the petitioner had earned Rs. 9,405.69 by employment under other employers and this should be deducted from the claim for back-wages. On the other hand, overruling the objections of the management for the computation of back-wages, the labour court added the

amount which the petitioner would have obtained by way of increments if he had been actually employed during the period and had been granted the increment by the management from time to time.

7. Learned Counsel Sri Ramaswami, appearing for the petitioner, urges that on a strict computation of the award of the industrial tribunal granting to the petitioner the relief of "reinstatement with back-wages" the labour court ought to have interpreted the award of back-wages, all the arrears of pay which the petitioner would have earned if the management had employed him in their service, in immediate compliance with the award, but there is no scope in such a case for making a deduction in the salary which the worker might have actually earned from other sources of employment or which he might have earned if he had been diligent. The petitioner's learned Counsel relies upon the observations of a Bench of this Court of Rajamannar, C.J., and Panchapakesa Ayyar, J., in *East India Industries (Madras), Ltd. v. Industrial Tribunal, Madras*, and Anr. 1955 L.L.J. 470.

...When a dismissed workman challenges the validity of the dismissal and the matter is adjudicated upon by an industrial tribunal and the tribunal arrives at the conclusion that the dismissal was not valid, the position is that the workman must be deemed never to have been dismissed at all and so continues in service. It may be that an ordinary Court of law would only award damages to the dismissed workman. But nothing prevents the tribunal from giving the alternative relief of a declaration that the dismissal was wrongful and the consequential relief that he be continued in service....

From this point of view it is urged by the learned Counsel that the petitioner ought to have been treated as having been in service when the award was passed in his favour and back-wages should be granted to him as part of the award for the entire period without any deduction.

8. No doubt the powers of the tribunal which ordered reinstatement of the worker in the matter of granting relief are quite wide, and it could, in a proper case, direct that along with reinstatement, only a part of the back-wages should be paid instead of full wages, after taking into account relevant factors including the circumstances of the petitioner having been employed elsewhere at that period. Such was the case in the decision in *M.L. Bose & Co. (Private), Ltd. v. its employees* 1961 L.L.J. 107 where, after directing the reinstatement of certain dismissed workers, the labour court ordered the management to pay them one-third of their total emoluments for the period from the date of dismissal till reinstatement. The Supreme Court pointed out that this direction was made because it appeared to the tribunal that the workmen had earned from time to time by different works in that period, But after the award became operative in the above terms, the workmen were entitled to reinstatement by the management, but the management obtained an order of stay from the Supreme Court unconditionally. The Supreme Court observed that, in such circumstances, the Supreme Court was justified in awarding the workman full wages from the

date when the award became operative, to the date of their reinstatement.

9. It is urged by the learned Counsel for the petitioner that the position in this case is stronger than that visualized by the Supreme Court in the above judgment, because the award of the tribunal itself directed the payment of full back-wages and therefore the labour court, while interpreting the award, had no jurisdiction to reduce the quantum of back-wages for the period, when due to the action of the management in obtaining stay from the higher tribunals, the award could not be implemented. I am of the opinion that this argument has a great deal of substance behind it.

10. On the other hand, learned Counsel, Sri Narayanaswami Ayyar for the management, relied upon the wide powers of the Court dealing with an application u/s 33C(2) of the Act, when the worker's claim to a benefit which can be computed in terms of money is denied by the management and the worker has come before the labour court for relief, u/s 33C(2) of the Act. In *Central Bank of India, Ltd., and Ors. v. Rajagopalan (P.S.) and Ors.* 1963 L.L.J. 89 the Supreme Court has outlined the principles which should be applied by the labour court when dealing with a claim u/s 33C(2) [vide head note at p. 90]:

Besides, there can be no doubt that when the labour court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well-settled that it is open to the executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provisions of the decree. These limitations apply also to the labour court; but like the executing Court, the labour court would also be competent to interpret the award or settlement on which a workman bases his claim u/s 33C(2). Hence it must be held that for the purpose of making the necessary determination u/s 33C(2) it would, in appropriate cases, be open to the labour court to interpret the award of settlement on which the workman's right rests.

While the view thus expressed and relied on by the learned Counsel for the petitioner, regarding the wide powers which the labour court can exercise while interpreting the terms of an award, is unexceptionable and binding on this Court, at the same time the learned Counsel is not right in his submission that in construing an award like the one in the present case, the labour court should view the non-implementation of the award as a breach of contract by the master, in which case damages, which will be payable to the workman, will be the amount as computed under the common law of master and servant. The position of the common law of master and servant, in such cases is succinctly summarized by Halsbury thus:

The measure of damages for wrongful dismissal is the loss thereby incurred, and this will be subject to the duty of the plaintiff to mitigate his loss by taking other employment which is both suitable and available. Normally by the wage due and

payable for the agreed period of service.... Damages awarded to an employee for wrongful dismissal, although they are thus given in restitution of lost earning, are payable without deduction for income tax "[Paragraph 414 at p. 244 of Halsbury's Laws of England, 3rd Edn., Vol. 1.]...damages are to be measured by the amount of wages, which the servant has been prevented from earning by reason of his wrongful dismissal, including the value of any other benefit to which he is entitled by virtue of his contract and of which he is deprived in consequence of its breach, after taking into consideration the probabilities of his obtaining employment elsewhere. If, therefore, he obtains other employment immediately after his dismissal, the amount which would otherwise be payable as compensation must be reduced by the amount of remuneration which he receives in respect of such employment, and if he is paid the same or higher wages, his loss is merely nominal. Moreover, it is his duty to minimize his loss, and he must therefore use due diligence in endeavouring to obtain employment. If, but for his own default or neglect, he could, immediately after his dismissal, have obtained suitable employment at similar wages, he cannot recover more than nominal damages against the master.... In assessing the damages the jury is entitled to take into consideration all that has happened, or is likely to happen to increase or mitigate the servant's loss down to the day of trial.

[See Para, 995 at pp. 523 and 524 of Halsbury's Laws of England, 3rd Edn., Vol, 25.]

While these principles can be validly applied when the dispute before the Court is one of computing damages payable to a workman for breach of contract of the conditions of employment by the employer, there is no scope for importing those principles, in a case where the matter has been decided finally by the industrial tribunal in its award, and the question has been raised before the labour court acting u/s 33C(2) for computing the money value of the benefit payable to the worker because of the master's action in not implementing the award. That in such cases there is no jurisdiction to import the common law principle for computing damages for breach of contract, under the law of master and servant, is clearly laid down by the Supreme Court in its decision in *Shetty (S.S.) v. Bharat Nidhi, Ltd.* 1957 L.L.J. 696:

The monetary value of the benefit of such reinstatement is therefore to be computed not on the basis of a breach of the contract of employment nor on the basis of the tort alleged to have been committed by the employer by reason of the non-implementation of the direction for reinstatement contained in the award.

It may be pointed out that the observations mentioned above were made in a case arising u/s 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950, which is in pari materia with Section 33C(2) of the Industrial Disputes Act, 1947. This decision was followed by the Supreme Court in *Victor Oil Co., Ltd. v. Amarnath Das and Ors.* 1961 L.L.J. 113 which is also a case u/s 33C(2).

11. But another principle was laid down in the two decisions of the Supreme

Court last cited. Both these cases dealt with an award of the tribunal for reinstatement with back-wages, but the management had totally failed to implement it at any time. Then the workers applied to the labour court u/s 33C(2) for the computation of their money benefit on the footing that if the award had been implemented they would have continued in the employment even upto their period of superannuation. Therefore, the computation of the back-wages claimed by the workers in those cases was on the notional basis of their serving out a long term of employment under the employer, retirement being the limiting point. Such an approach was repelled in both the decisions of the Supreme Court. In *Shetty (S.S.) v. Bharat Nidhi, Ltd.* 1957 L.L.J. 696 (vide supra) the Supreme Court observed that in such a case the industrial tribunal would have to take into account the terms and conditions of the employment, the tenure of service, the possibility of the termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial tribunal in the event of industrial disputes arising between the parties in the future. In view of these considerations, the Supreme Court observed that it was Impossible to compute the money value of the benefit of reinstatement with mathematical exactitude in that case, and that the best that any tribunal or Court would do under the circumstances would be to make as correct an estimate as is possible bearing of course in mind all the relevant factors pro and con. Therefore, the Supreme Court, bearing these principles in mind computed the money benefit of reinstatement in that particular case at a lump sum of Rs. 12,500. These principles first now mentioned were again relied on by the Supreme Court in the decision In *Victor Oil Co., Ltd. v. Amarnath Das and Ors.* 1961 L.L.J. 113 (vide supra) where also the workers complained of non-reinstatement in pursuance of the award for reinstatement with back-wages. The Supreme Court again referred to the principles laid down in *Shetty (S.S)* case 1957 L.L.J. 696 (vide supra) and held that taking into account the fact that the workers were temporary and not permanent it would be an equitable measure of monetary value of the benefit in that case if one year's salary was allowed.

12. But in the present case none of the above difficulties for making a reasonable calculation of the benefit due to non-reinstatement exists. There is a defined interval between the date when the award ought to have been implemented, namely, 18 March 1959, and the date when the petitioner was reinstated, namely, 12 January 1965. None of the uncertain factors which weighed with the Supreme Court greatly, for the purpose of making a notional estimate in both the decisions cited, exist in the circumstances of this case. Further there is the circumstance, that the Supreme Court when the special appeal came before it, directed no doubt as a measure of security to the petitioner that one-half of the back-wages should be deposited, from the date when the award became enforceable till the date of the disposal of the appeal by the Supreme Court and

this the management had done. Therefore there is no difficulty at all in making an exact computation of the quantum of back-wages for the period in question. I am, therefore, of the opinion that the back-wages payable should be computed without making any deduction for the remuneration which the worker earned elsewhere in that period as the labour court had done. In allowing for such deduction there is a manifest error of law in the award of the labour court.

13. In regard to interest, the labour court has, in my opinion, adopted the right principles, The award of interest was in its discretion. It has disallowed interest on the amounts which have been deposited by the management in pursuance of the Supreme Court's order. It has allowed on the other hand interest only for the period of pendency of the Supreme Court appeal and the Court has also allowed interest on a part of the salary excluding the amount deposited by the management in pursuance of the Supreme Court order. I do not see any grounds for granting further relief in regard to interest.

14. In regard to bonus, the same principle which I have referred to above for disallowing the interest will apply. Bonus, as observed by the labour court, is based upon the principles of labour and management jointly contributing to the earning of profits but when the worker has not been actually in service and has made no contribution for the earning of profits, it is but right that in computing the money value of the benefit bonus should be excluded.

15. The order of the labour court is modified as stated above and the labour court is directed to make a revised calculation of monetary benefit payable to the workers by the management in accordance with the directions above. The writ petition is allowed in part as mentioned above. No order as to costs.