

(2016) 08 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 2536 of 2015. (L-TER).

**S. Swamy - Petitioner @HASH Dr. B.R. Ambedkar Medical College,
Bangalore**

Date of Decision : 08-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(4-A)

Citation : (2017) 152 FLR 341 : (2016) 6 KantLJ 283 : (2016) 4 LLN 714

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : Sri V.S. Naik, Advocate, for the Petitioner; Sri S.L. Kamathar,
Advocate, for the Respondent

Final Decision : Allowed

Judgement

Raghvendra S. Chauhan, J. - With the consent of the learned Counsel for both the parties, this case is being decided at this point itself.

2. The petitioner has challenged the legality of the award dated 25-8-2014, passed by the Presiding Officer, II Additional Labour Court, Bangalore, whereby the learned Labour Court has directed the respondent to reinstate the petitioner with all consequential benefits including continuity of service, but without back wages. The petitioner is aggrieved by the fact that the learned Labour Court has denied the benefit of back wages without any rhyme or reason.

3. The brief facts of the case are that on 7-1-1982, the petitioner joined the respondent-Dr. B.R. Ambedkar Medical College, as Peon/Attender. During the Course of his service, in April 1989, he completed S.S.L.C. as a private candidate. Therefore, he produced the S.S.L.C. Certificate obtained from Karnataka Secondary Education Examination Board to the Principal of the College showing his date of birth as 1-2-1961. At the time of his appointment in 1982, the same date of birth was recorded.

4. Considering the service rendered by the petitioner, in 1991, the petitioner was

promoted to the post of Junior Technician. However, by memo dated 13-1-2012, the respondent called upon the petitioner to furnish a copy of the Transfer Certificate issued by the High School, where he studied 10th Standard, and also from the Institution where he last studied, in order to verify his date of birth. The petitioner, immediately, replied to the said memo. On 23-1-2012, he was again served with the memo to submit the Transfer Certificate. The petitioner also replied to the said memo, and produced a copy of the S.S.L.C. for verification.

5. Since the respondent was not satisfied with the reply submitted by the petitioner, the respondent decided to initiate a departmental enquiry against him. During the course of the departmental enquiry, the respondent examined three witnesses and relied upon five documents to support the charges. During the course of the proceedings, the respondent denied the petitioner's salary from 1-1-2012 and onwards. The petitioner requested that not only proceedings be dropped, but also his salary be released forthwith. Instead of considering the request made by the petitioner, he was informed that the enquiry will continue and the next date of enquiry was on 24-2-2012. During the course of enquiry proceedings, the petitioner not only asked for certain documents, but also requested for the relevant Service Rules. However, without supplying the relevant documents sought for, by order dated 5-5-2012, the petitioner was dismissed from service, and was directed to return the entire salary paid to him from 31-1-2010 till the date of his dismissal.

6. Since the petitioner was aggrieved by the dismissal order, he filed claim statement under Section 10(4-A) of the Industrial Disputes Act, 1947. After hearing both the parties, by award dated 25-8-2014, the learned Labour Court allowed the claim made by the petitioner, and passed the award as aforementioned. Since the petitioner is aggrieved by the fact that he was denied the benefit of back wages, although he has been reinstated, he has filed the present petition before this Court.

7. Mr. V.S. Naik, the learned Counsel for the petitioner, has relied upon the case of Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited 2014 (3) LLJ 478 (SC), in order to buttress his plea that once a workman has claimed that after he was dismissed from service, he was gainfully unemployed, the burden of proof lies on the employer to plead and prove the fact that the workman was, indeed, employed after his dismissal. In case, it is concluded that the; dismissal is illegal one, in such circumstances, the workman would be entitled to full back wages from the date of his dismissal till the date of his reinstatement. Similarly, the learned Counsel has relied upon Shiv Nandan Mahto v. State of Bihar and Others (2013) 11 SCC 626, in order to buttress his plea that in case the, workman was illegally kept out of service, then he cannot be denied the benefit of back wages.

Secondly, the respondent was not justified in dismissing the petitioner from service as according to the Service Rules, the date of birth has to be verified from the S.S.L.C. Certificate, and the date of birth shown in the S.S.L.C. Certificate would be taken to be final. According to the learned Counsel, once the

learned Labour Court has concluded that the dismissal was illegal one, it was duty bound to grant the benefit of full back wages to the petitioner.

Lastly, the Labour Court has not given any reason whatsoever for denying the benefit of full back wages to the petitioner. Therefore, the impugned award deserves to be set aside to a limited extent by this Court.

8. On the other hand, Mr. S.L. Kamathar, the learned Counsel for the respondent, has vehemently contended that despite giving numerous opportunities to the petitioner to submit the Transfer Certificate of the School, the petitioner had failed to do so. Therefore, the respondent was justified in concluding that the petitioner has played fraud on the Board, as well as on the respondent. Hence, the order of dismissal was legally valid.

Secondly, since the dismissal order was legally valid and since the petitioner did not work from the date of dismissal till the date of his reinstatement, he is not entitled for any back wages. Hence, the learned Labour Court was justified in denying the benefit of back wages to the petitioner. Therefore, the learned Counsel has supported the impugned award.

9. Heard the learned Counsel for the parties, and perused the impugned award.

10. In the case of Bhuvnesh Kumar Dwivedi (supra), the Hon''ble Supreme Court has clearly opined that once the workman has claimed that he was unemployed from the date of his dismissal/termination of his service, it is imperative to prove the fact that during the said interim period, the workman was employed. A bare perusal of the objections filed by the respondent to the petitioner's claim statement clearly reveals that the respondent has not even pleaded that the petitioner was gainfully employed after his dismissal from his service. Moreover, although the respondent was required to prove the fact that the petitioner was employed after his dismissal from the service, the respondent has not led any evidence to prove the fact that the petitioner was, indeed, employed after dismissal from his service. In similar circumstances, in the case of Bhuvnesh Kumar Dwivedi (supra), the Hon''ble Supreme Court has directed full back wages to the appellant therein.

11. The first contention raised by the learned Counsel for the respondent that the petitioner had neglected to produce the Transfer Certificate as demanded by the respondent, therefore, the respondent was justified in dismissing the petitioner, the said contention has merely to be uttered to be rejected. For, accordingly to the Service Rules, the S.S.L.C. Certificate is the final proof as to a person's date of birth. The petitioner had already produced the said Certificate before the respondent. Therefore, the respondent was not justified in insisting on the Transfer Certificate for the purpose of confirming the petitioner's date of birth.

12. Moreover, the issue before this Court is not whether the dismissal order was valid one or not, as the respondent has not challenged the impugned award. But the issue before this Court is whether the petitioner is entitled to payment of full

back wages or not?

13. Not only in the case of Bhuvnesh Kumar Dwivedi (supra), but also in the case of Shiv Nandan Mahto (supra), the Hon''ble Supreme Court has clearly held that in case a workman is dismissed due to a mistake committed by the employer, the workman would be entitled to full back wages. In the present case, the learned Labour Court has validly concluded that according to the Service Rules, the date of birth shown in the S.S.L.C. Certificate would be taken to be final. Therefore, the respondent's insistence that the petitioner ought to produce his Transfer Certificate is unreasonable on its part. Thus, apparently, the petitioner was dismissed from service for no valid reason. Hence, according to the opinion expressed by the Hon''ble Supreme Court in the case Shiv Nandan Mahto (supra), the petitioner would be entitled to full back wages.

14. Interestingly, the learned Labour Court has not given any reason for denying the back wages to the petitioner in the impugned award. Therefore, the impugned award suffers from the virus of being a non-speaking order so far as denial of back wages is concerned. In case, the learned Labour Court was of the opinion that the back wages were to be denied to the petitioner, it was duty bound to give cogent reasons for the denial of the said benefit. However, the learned Labour Court has failed to do so.

For the reasons stated above, this petition is allowed. The impugned award dated 25-8-2014 is hereby modified to the limited extent that the respondent is directed to pay full back wages to the petitioner from the date of dismissal till the date of reinstatement of the petitioner. The back wages shall carry interest at the rate of 6% per annum. The respondent is directed to pay the back wages, including the interest, within two months from the date of receipt of a certified copy of this order.