
(2015) 03 BOM CK 0284
In the Bombay High Court
Case No : Writ Petition No. 1148 of 2014

Salimuddin

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2015) 03 BOM CK 0284

Hon'ble Judges : S.V. Gangapurwala, J;V.L. Achliya, J

Bench : Division Bench

Advocate : Momin Mustafa, for the Appellant; D.B. Bhange, A.G.P., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

1. The present petitioner had filed Original Application before the Maharashtra Administrative Tribunal against the order of termination dated 19.03.1996 on 11.03.2002. During the pendency of said original application, the petitioner filed Misc. Civil Application No. 375 of 2006 practically for the same relief. The Tribunal partly allowed the said original application. It set aside the termination and directed the respondent authorities to reinstate the petitioner. However, negated the claim of the petitioner for backwages and also did not grant any relief with regard to continuity in service and other consequential benefits. Aggrieved by non grant of relief to the extent of backwages, continuity in service and other consequential benefits, the present petition is filed.

2. Mr. Mustafa, the learned counsel for the petitioner submits that, the Tribunal in para 18 of the impugned judgment has observed that, it is convinced about the grievous trauma that has been caused both to the person and human dignity of the applicant and the same needs to be redressed. The order of termination is not justified, however, has refused to award backwages only on the ground that the petitioner has not actually rendered service from March 1996. The learned counsel submits that, the petitioner was not at fault for the delay in deciding the

legal proceedings. The original application was filed before the Tribunal in the year 2002. The same was admitted and it was decided only on 04th August, 2011. The petitioner cannot be held responsible for the delay in deciding the said original application. The principle deduced by the tribunal that no backwages should be awarded to the petitioner, as the petitioner has not actually rendered service with the Government is erroneous. The learned counsel relies on the judgment of the Apex Court in a case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, (2013) 6 ABR 304 : (2013) 10 AD 89 : (2013) 139 FLR 541 : (2013) LabIC 4249 : (2013) 4 LLN 417 : (2013) 11 SCALE 268 : (2013) 10 SCC 324 : (2013) 4 SCT 716 . The learned counsel submits that, the Apex Court in the said case has held that, if the employer has acted in gross violation of statutory provisions or is guilty of victimizing employee or workman, then the Court is justified in directing payment of full backwages. In the present case also the respondent/employer was not justified in terminating the services of the petitioner. The petitioner was granted clear acquittal in the criminal case. Even without holding departmental enquiry only because the criminal cases were pending, the authority was not justified in terminating the services of the petitioner. The learned counsel also relies on the judgment of the Apex Court in a case of Tapash Kumar Paul Vs. BSNL and Another, AIR 2015 SC 357 : (2014) AIRSCW 5816 : (2014) 7 JT 589 : (2014) 3 SCT 106 and submits that, the petitioner during the relevant period at no material point of time was gainfully employed. The learned counsel further submits that, the Tribunal has granted reinstatement from the date of the order. No relief of continuity in service has been granted. The same is bad, when the order of termination is set aside the petitioner is entitled for the continuity in service.

3. The learned Assistant Government Pleader submits that, criminal case U/Sec. 307 of the Indian Penal Code was lodged against the petitioner. Even charge sheet was filed, so also criminal case of theft was lodged against the petitioner, wherein the charge sheet was filed. There were other instances also such as absenteeism , etc. because of which the order of termination dated 19.03.1996 was issued with effect from 21.09.1993 i.e. the date when the petitioner was suspended. The learned Assistant Government Pleader submits that, mere acquittal in the said criminal case would not ipso facto justify the case of the petitioner. Considering the serious allegations against the petitioner, the order of termination was issued. No illegality has been committed in the order of termination issued against the petitioner. The petitioner was not in service during this period, as such was not entitled for any backwages. Even continuity has been properly denied. The learned A.G.P. relies on the judgment of the Apex Court in a case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, (2007) 112 FLR 1049 : (2007) 3 JT 1 : (2007) 2 LLJ 128 : (2007) 2 SCALE 382 : (2007) 2 SCC 433 : (2007) 1 SCC(L&S) 651 : (2007) 2 SCR 60 : (2007) 3 SLJ 101 .

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. It is not disputed that, the petitioner was terminated without any departmental enquiry being conducted. The petitioner had joined the service with the respondents as constable on 04.07.1973. Thereafter was promoted as Head Constable and in the year 1992 again promoted to the next higher post as security guard. It is evident that on the date of termination, the petitioner had rendered almost 20 years of service. The ground for termination was two criminal cases filed against the petitioner and other charges such as absenteeism, etc. which was for the period mid 1980"s. It is also not disputed that, the petitioner has been acquitted in the said criminal cases subsequently. The Tribunal has discussed the same in detail. The petitioner was terminated in the year 1996. It is stated that, he had filed an appeal and some representations and the same is not considered and in the year 2002 had filed original application. There was delay on the part of petitioner in approaching the Courts of law. It is only after six years of the termination, the petitioner approached the Courts of law. The Tribunal has held the order of termination to be illegal. The State has not challenged the said finding. The said finding has become final. The question would be awarding continuity in service and other consequential benefits and the backwages.

6. The award of backwages cannot be axiomatic. In a case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and others* referred supra, relied by the learned counsel for the petitioner, the Court was conscious of the fact that, the statement is made by the appellant therein that she was not gainfully employed and the said statement was not controverted by the management. It was in the light of the same the Court awarded full backwages. The payment of backwages has a discretionary element involved in it and has to be dealt with in the facts and circumstances of each case and no straight jacket formula can be evolved.

7. The petitioner was not diligent in approaching the Court. He approached the Court only after six years of termination and even for claiming the backwages has approached this Court and filed the present writ petition after three years of the judgment of the Maharashtra Administrative Tribunal. No sufficient reason is given for delay of three years in filing the present writ petition after the judgment of the Tribunal disallowing backwages. The reason put forth for filing this writ petition belatedly is that after order of Tribunal the petitioner joined service on 10.09.2010 and approached the authorities for backwages on 23.12.2010 it was decided on 23.03.2011. Naturally when the Tribunal had rejected the claim of backwages, certainly, the respondent authorities could not have sanctioned backwages from the date of termination. So also reason given in para 8 of the memo of writ petition that after making arrangement and the result of the department that the backwages will not be paid except for the period from 21.09.1993 to 18.06.1996 that is suspension period. In fact, the respondent authorities did not have any jurisdiction to pay the backwages when the same was specifically disallowed by the Tribunal. The delay caused in filing the writ petition is unacceptable. There cannot be a dispute that delay in finalization of

litigation cannot be a ground to deny backwages, but other attending circumstances will have to be considered. The Apex Court in a case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and others referred supra has specifically observed that, for claiming of backwages, employee must plead that he was not gainfully employed. In the present petition also, there is no statement in the petition that, petitioner during the interregnum was not gainfully employed.

8. In the light of that, we are not inclined to consider the prayer for backwages.

9. As far as continuity in service and other consequential benefits are concerned, once the order of termination is set aside, the claim of continuity in service is as a right, so also would be entitled for other consequential benefits, that would flow from continuity in service.

10. In the light of the above, the writ petition is partly allowed to the extent that, the petitioner would be entitled for continuity in service and all other consequential benefits arising therefrom save and except the petitioner is not entitled for backwages.

Rule accordingly is made absolute in above terms. No costs.