

(1995) 09 AP CK 0064
In the Andhra Pradesh High Court
Case No : W.A. No. 1786 of 1988

Sarangi Ramachandraiah

APPELLANT

Vs

Nagarjuna Grameena Bank, Khammam and Another

RESPONDENT

Date of Decision : 12-09-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (1996) 1 ALT 777

Hon'ble Judges : Lingaraja Rath, J;B.K. Somasekhara, J

Bench : Division Bench

Judgement

Lingaraja Rath, J.—The question falling for decision in this appeal is whether the Labour Court deciding an application u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") can refuse the claim of a reinstated workman for salary of the period from the date of the removal till the date of the judgment in the writ petition in which the removal is set aside, taking the view that such claim of the workmen is not an existing right implementable under the Section. A brief sketch of the facts are that the writ petitioner, who is the appellant before us, was a clerk-cum-cashier of the respondent-bank put under suspension on October 13, 1979 on account of his involvement in a criminal case and subsequently was removed from service on December 31, 1979 without any enquiry having been held. He was acquitted in the criminal case on November 27, 1980 and thereafter filed Writ Petition 6662 of 1980 in this Court claiming reinstatement in service. The writ petition was allowed on February 22, 1983 holding the removal to be illegal and directing his reinstatement but no orders were passed regarding the payment of the backwages. The appellant was reinstated in service on April 28, 1983 and thereafter made the application u/s 33-C(2) before the Labour Court for the relief of backwages for the period October 13, 1979 to April 28, 1983. The Labour Court divided the period into three phases, the first being October 13, 1979 to December 31, 1979, i.e., the period of suspension for which period it directed payment of full backwages less the subsistence allowance received. For the period January 1, 1980 to December

2, 1983 payment of backwages was refused taking the view as above said. The claim for the backwages for the period February 22, 1983 to April 28, 1983 i.e., the period intervening the judgment of in Writ Petition No. 6662 of 1980 and the actual reinstatement was also allowed. The decision of the Labour Court was assailed by the appellant in Writ Petition No. 11306/85 but the result having gone against him, this appeal has been preferred. The Labour Court in refusing the claim of the appellant took the view, pointing out that the appellant had not referred to any decision that once the order of dismissal is quashed the employee as a matter of course is entitled to backwages, that silence in the judgment of Writ Petition No. 6662 of 1980 regarding payment of backwages suggests that while quashing the order of reinstatement, payment of backwages can be disallowed. It further held that it is not for the Labour Court to determine in an application u/s 33-C(2) whether backwages should be allowed in full or part and, if so, to what extent. In simple terms, the Labour Court was taking the view that the amount of backwages being not a determined figure, an application u/s 33-C(2) was not maintainable.

2. The learned single Judge before whom the order of the Labour Court was assailed took the view that the normal rule is that if the employer is found to be wrong as a result of which the workman is directed to be reinstated, the workman whose services have been illegally terminated would be entitled to full backwages except to the extent he was gainfully employed during the enforced idleness. While saying so, the learned Judge, however, observed :

"When this Court has not made any order with regard to backwages, the proper remedy left to the employee in case of nonpayment of backwages is to get the matter referred u/s 33-C(2) of the Industrial Disputes Act. Section 33-C(2) of the Act does not strictly apply. If the Labour Court directs reinstatement, then the position is entirely different."

Probably, we venture to say, the reference to Section 33-C(2) when first made in the above quotation is a mistake for Section 10 of the Industrial Disputes Act which, if so read, discloses the view taken that where High Court has not made any order regarding backwages, the employee should seek a reference to the Tribunal and if the Tribunal directs reinstatement the matter would be entirely different. There is still some confusion left as if the High Court has already directed reinstatement but did not say anything regarding the payment of backwages, the question of the Tribunal again directing reinstatement may not arise. However, the view taken was that as while setting aside the order of removal no order was passed regarding backwages the Labour Court was justified in its views that it was not for it to determine u/s 33-C(2) as to whether the backwages should be allowed in full or part and if so, to what extent.

3. When the order of removal from service of an employee is set aside the normal consequence is of not only he being entitled to be reinstated in service but of him to be treated as having ever continued in service since the removal is found to be void in law. As the void order could not have operated adversely

against the interests of the person who was visited with it, the order must be taken to have had no consequence upon his service career. That is why, as has been rightly observed by the learned single Judge in his Judgment, the normal rule when order of removal is set aside and reinstatement is directed is the entitlement to the full backwages subject to deduction of the amount which might have been received by the workman for his having been gainfully employed during the period of his ouster from service. That was the law propounded by the Supreme Court in *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, . There has been of course later developments of law in which the entitlement to the full backwages has been subjected to considerations as to whether a reduction in the amount is necessary because of other supervening circumstances, apart from his gainful employment, like the employee's contribution to the fact of his ouster from service or his getting the benefit of reinstatement merely because of a technical flaw or the like. But that the normal rule, as propounded, has never been doubted. It would hence be necessary, when denial of the backwages or a portion thereof is sought for, to establish reasons for which the deductions have to be made. The onus of bringing such factors on record would of course lie upon the employer. Once it is understood that an employee whose removal is set aside illegal is deemed to be in service throughout, the objection taken by the Labour Court of the application being not maintainable as it is not in a position to compute the amount of backwages would not hold good as the employee would undoubtedly be entitled to the backwages in terms of his continued employment throughout. It is of course true that before the Tribunal the employer may not have the right or the occasion to point out any factors for a reduced entitlement to the backwages as the application u/s 33-C(2) being in the nature of an execution application the determination of such questions would not be within the scope of it. But once the order on the application is passed, the employer may approach this Court in its extraordinary jurisdiction against the order to plead with justifying factors for reduction of the amount.

4. Mr. Ramesh learned counsel for the first respondent, places reliance on the decision of the Supreme Court in *Management, RBI v. B. S. Panchal* (1994 1 LLJ 791) which explains that in an application u/s 33-C(2) the jurisdiction of the Tribunal is not to determine as to what is the amount of pay to be received by an employee who is reinstated after termination of the suspension as the amount due to be paid for the period of suspension is one which is to be determined by the employer under the relevant regulations. The decision has no application to the present case. Firstly the decision was rendered in face of the provisions of the Reserve Bank of India (Staff Regulations), 1948 wherein the provision is that when a suspended employee is reinstated the competent authority is to pass order regarding the payment to be received by him on reinstatement and in that context it was observed that such authority of the employer cannot be appropriated by the Labour Court. In the present case, no such regulations have been pleaded by the first respondent and such question was not raised at all.

Secondly the question presently before us is also not relating to the payment for the period of suspension but for the period after removal till the date of the judgment in Writ Petition No. 6662 of 1980. The Labour Court held the appellant as entitled to full backwages for the period of suspension and not only that, such direction has also not been challenged by the first respondent at any time and instead admittedly the amount has already been paid to the appellant. The decision hence has no bearing to the facts of the case. Mr. Ramesh also invited our attention to Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, in which the Court held that in an application under Article 226 of the Constitution of India if the dismissal of an employee is found to be illegal, the Court should ordinarily only quash the dismissal but should not give a further positive direction for payment to the employee of the full backwages. The view was taken since, although as a consequence of the annulment of the dismissal the position as was obtained before the dismissal is restored, the question whether the employee is to be reinstated with full backwages is a question of fact depending on the evidence to be produced before the Tribunal where the question as to whether the workman was gainfully employed elsewhere during the period could be gone into. The citation has, on the one hand, no application and, on the other hand, if at all, it only helps the appellant. It is true that where the dismissal of an employee is challenged before the Labour Court it can direct reinstatement as also whether it should be done with full backwages or not. But where the matter has not gone before the Tribunal but has come before the High Court in an application under Article 226 ordinarily an order should not be made regarding backwages as full facts relating to the decision of the question may not be available. It may also be that the Court may direct parties to place relevant materials before it.

5. Taking such view of the question we are of the opinion, while respectfully disagreeing with the view taken by the learned single Judge, that the application for backwages for the period in question was maintainable and that the Labour Court had to determine the wages. In that view of the matter, the appeal is allowed with costs, the impugned judgment is set aside and the matter is remanded to the Labour Court to decide the amount of backwages due to the appellant and pass order accordingly. Since the matter is already old we direct the Labour Court to dispose of the case within three months from the date of receipt of the records. Hearing fee Rs. 500/-