(1986) 08 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 931 of 1981

Satyapal APPELLANT

Vs

Wool and Woollen Export Promotion Council and another RESPONDENT

Date of Decision : 14-08-1986

Acts Referred:

Income Tax Act, 1961 — Section 89(1)
Income Tax Rules, 1962 — Rule 21A

Citation : (1987) 59 CTR 221 : (1988) 169 ITR 507 : (1987) 169 ITR 507 : (1987) 32 TAXMAN 145

Hon'ble Judges : S.K. Desai, J

Bench : Single Bench

Judgement

S.K. Desai, J.—This appeal is preferred against the decision of the writ judge given on September 11, 1984. The writ petition was one whereunder, the appellant-original petitioner challenged the termination order dated 21, 1981, issued to him by the 1st respondent purporting to act under rule 24 of the Service Rules. By an amendment made at the stage of appeal, the appellant has impugned the vires of the said rule on the ground that it is inconsistent with article 14 of the Constitution of India and hence ultra vires.

2. This contention of the appellant is required to be upheld in view of the recent decision of the Supreme Court in Central Inland Water Transport Corporation Ltd. v. B. N. Ganguly [1986] 53 FLR 523 . Rule 24, which is challenged before us, is identical with the rule which was under consideration by the Supreme Court and following the Supreme Court''s decision, we will have to declare the said rule invalid. If that be so, it would follow that the termination order issued under the said rule, without any inquiry or hearing, will be improper and will have to be set aside. Once the termination order is set aside, the usual consequences as set out by the Supreme Court, namely, reinstatement with full back wages and other attendant benefits on the footing that the appellant was in continuous service from April 21, 1981, till reinstatement must follow.

3. At this stage, the advocate for the appellant and counsel for the 1st respondent have brought to our attention the fact that on April 30, 1980, the appellant was directed to stand transferred to New Delhi. This order has not been challenged in the writ petition and, therefore, the order would still be effective. Accordingly, it is required to be made clear that when he gave relief of reinstatement to the appellant, it must imply reinstatement at the post to which he was in law last assigned, namely, at New Delhi. Accordingly, the appellant will have to report to New Delhi.

4. When this was pointed out, Mr. Shetye, who appears today on behalf of the appellant, informs us that the appellant is prepared to give up his employment with the 1st respondent with effect from today itself but without affecting his claims for full back wages and other terminal benefits on the footing of the continuity of service to be calculated up to August 14, 1986. He further informs us that during this period, that is, between April 21, 1981, and today, the appellant has earned about Rs. 21,200 from other employments. We think, the amount to the paid to the appellant under this order should be reduced to the round figure of Rs. 21,000. It is made clear that, although unnecessary to do so, the full back wages would include all allowances and if the appellant resigns today, the terminal benefits have to be computed as if the appellant was in service till today.

5. On inquiry made with Mr. Damania, he states that the appellant would be entitled to resign and that the 1st respondent will not contend that the resignation has to be tendered at New Delhi or any particular place. On that statement being made, we record the statement of Mr. Shetye made by him after taking instructions from the appellant and direct that the appellant be deemed to have resigned from the evening of today. The appellant will have over as soon as possible his written resignation and submit the same to the Bombay office within one week from today.

6. On the needful being done as indicated earlier, we direct the 1st respondent to pay to the appellant the full back wages and all other attendant benefits till today, that is, August 14, 1986. The appellant will also be entitled to terminal benefits on the footing of continuity of service till today. Mr. Damania states that it will take some time for the 1st respondent to make calculations and effect payment and states that the 1st respondent should be given time up to October 15, 1986, to effect the payment, the period sought for being not unreasonable. Accordingly, we direct that the payment of amount under our order both by way of full back wages and terminal benefits should be made on or before October 15, 1986. If the payment is delayed for any reason beyond that date, the appellant should be paid simple interest at the rate of 12% per annum on the amount due to him with effect from October 16, 1986, till actual payment is made. Only one question remains in respect of which we are required to give directions. As far as back wages are concerned, the appellant will be receiving a lump sum, but this, in fact, is towards his claim for salary for the period from

April 21, 1981, till today. We find that there is a provision for an income-spreading over this period. Accordingly, we direct the 1st respondent to take all steps to make an application to the Income Tax authorities for getting necessary exemption u/s 89(1) of the Income Tax Act, 1961, read with rule 21A of the Income Tax Rules, 1962, for this purpose. It is hoped that on such application being made in the proper form or forms, the same will be disposed of by the Income Tax Officer expeditiously. The 1st respondent will deduct tax, if any, on the footing that the amount is spread over this period.

7. Mr. Shetye has submitted that the appellant should get costs of this appeal. Bearing in mind the nature of the proceedings and the fact that the amendment was allowed in appeal, the proper order would be to direct the parties to bear their respective costs of the appeal.

8. Order accordingly.

