

(2014) 03 P&H CK 0182
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 27600/2013

State Bank of India

APPELLANT

Vs

Central Govt. Industrial Tribunal-cum-Labour Court-II and
Another

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 11-A
Penal Code, 1860 (IPC) — Section 406, 409, 420

Citation : (2014) 141 FLR 1056 : (2014) 3 LLJ 275 : (2014) LLR 487

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Kapil Kakkar, Advocate for the Appellant

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The only argument that has been raised in the present writ petition by counsel for the petitioner is that the Labour Court is not justified in granting continuity of service and back-wages on account of the fact that the workman never contributed to the petitioner-bank for the period he remained out of service from 2001 till the passing of the award on 13.05.2013. The Labour Court, in its award, has noticed that the dismissal was on account of misconduct from March, 1997 to May, 1998 in respect of 27 Saving Bank Accounts. The bank had charge-sheeted the workman but none of the account holder was examined. A finding was recorded that the inquiry held was not fair and proper and the management was given the opportunity to prove the charges. The workman was also acquitted in the criminal case lodged under Sections 406, 409 and 420 IPC. Before the Labour Court also, the Management failed to prove that there was misconduct and misappropriation on the part of the workman and accordingly, reinstatement was ordered.

2. Once the workman has been kept out of employment due to the illegal acts of

the management and it has not resorted and complied with the principles of natural justice and the worker has been wrongly victimized, the Labour Court was well-justified in granting continuity of service and back-wages, which is the normal rule. The Apex Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others*, , after examining the case law, has culled out the following principles:--

33. The propositions which can be culled out from the aforementioned judgments, are:

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back-wages is the normal rule.

(ii) The aforesaid rule is subject to the rider that while deciding the issue of back-wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back-wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back-wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

(iv) The cases in which the Labour Court/Industrial Tribunal exercises power u/s 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back-wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back-wages.

(v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing, the employee or workman, then the concerned Court or Tribunal will be fully Justified in directing payment of full back-

wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back-wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back-wages.

(vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back-wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

(vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

3. Keeping in view the above principles, this Court is of the opinion that the Labour Court was justified in granting continuity of service and back-wages, which is the normal rule. In the present case, as noticed above, the workman was removed from service on the basis of an inquiry report dated 089.062001, which was found to be not fair and proper by the Labour Court. The management was given opportunity to prove the charges that there was misappropriation on the part of, the petitioner but it failed to do so in spite of the fact that it had even lodged an FIR in the criminal case. Some of the depositors have been examined to support the prosecution version but the proceedings had ended in favour of the workman as they had not supported the prosecution version. In such circumstances, once the workman has himself been kept away from his work without any reasonable basis, the submission that he was not entitled for back-wages for the period he remained out of job and would not be entitled to any wages on the principle of "no work no pay", would not be applicable in the facts

and circumstances of the case.

4. It has time and again been held by the Apex Court that while exercising the powers of writ jurisdiction under Article 226 of the Constitution of India, this Court is to exercise its power only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice has taken place. The High Court will not convert itself into a Court of appeal and indulge, appreciate or evaluate evidence and correct errors in drawing inferences or correct errors of mere formal or technical character. The said principle was laid down in *Surya Dev Rai Vs. Ram Chander Rai and Others*, . It is where the Tribunal has acted illegally in exercise of jurisdiction conferred on. It and decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice, this Court would interfere. The error of law has to be apparent on the face of the record and it has to be manifestly clear that the conclusion of law recorded by the Tribunal is in misinterpretation of the relevant statutory provisions or in ignorance in regard of the same. Thus, what can be corrected is an error of law, which would be of such character which is apparent on the face of the record and if the statutory provision is capable of two constructions and one of it had been adopted by the Tribunal, it may not be desirable to correct the same by way of writ of certiorari. In the present case, no such error of law or fact has been shown which would warrant interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India. Accordingly, there is no scope for interference in the well reasoned order of Labour Court and the writ petition is dismissed in limine.