

(2009) 01 MP CK 0053

In the Madhya Pradesh High Court

Case No : W.A. No. 684 of 2008 and W.A. No. 178 of 2008

State of M.P. and Others

APPELLANT

Vs

H.R. Kanaskar
 H.R. Kanaskar Vs State of M.P. and
Others

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Citation : (2009) 1 MPJR 164

Hon'ble Judges : U.C. Maheshwari, J;R.S. Garg, J

Bench : Division Bench

Judgement

R.S. Garg, J.

This order shall dispose of Writ Appeal No. 684/08 The State of M.P. & Others Vs. H.R. Kanaskar and Writ Appeal No. 178/2008 H.R. Kanaskar Vs. The State of M.P. & Others, as both the appeals are arising out of the judgment dated 07.02.2008 passed by the learned Single Judge in Writ Petition No. 4576/2003 where-under the learned Single Judge has observed that the order of compulsory retirement stands quashed and the employee would be entitled to 50% of the back-wages. The State has challenged the direction to reinstatement and payment of 50% back-wages while the employee has challenged the order on the ground that 100% back-wages out to have been allowed.

The short facts necessary for disposal of the present Writ Petition are that somewhere in the year 1997 the employee/original petitioner was compulsorily retired from the service, therefore, he filed Original Application No. 1452/97. The petition came to be allowed on 22/04/1998, but the State Government being aggrieved by the said order passed by the State Administrative Tribunal filed Writ Petition No. 2043/98. The Writ Petition was disposed of by this Court with the following directions :

30. In the aforesaid view of the matter the petitioners are directed to get the cases of all the 559 employees re-examined by a validly constituted committee in

accordance with law within a period not later than six weeks and pass the appropriate orders within a period not later than two months.

The learned Government Advocate, representing the appellants, shall communicate this order to the State Government without any delay and the Registrar of this Court shall also ensure that a copy of this order is sent for compliance to the Secretary, Jal-Sansadhan Department, Government of Madhya Pradesh, Vallabh Bhawan, Mantralaya, Bhopal for strict compliance.

The Writ petition in the circumstances is dismissed with the directions indicated hereinabove.

After the matter was sent back to the authorities, they reconsidered the entire case and the authorities after reconsideration came to the conclusion that the direction of compulsory retirement was valid. The authorities accordingly directed compulsory retirement of the original petitioner. Again being aggrieved by the direction compulsorily retiring the petitioner, he came to the State Administrative Tribunal in Original Application No. 1892/ 92, which after the abolition of the State Administrative Tribunal came to this Court and was registered as Writ Petition No. 4576/2003. After hearing both the sides, the learned Single Judge came to the conclusion that in view of the track record of the petitioner for the period between April, 1979 to 31.12.1994 and as the petitioner was not awarded any adverse remark till July, 1983, the order of compulsory retirement was bad. The learned Single Judge accordingly set aside the direction of compulsory retirement but, however, order 50% of the back wages in favour of the employee. Both the parties being aggrieved by the said judgment are now before this Court.

Shri Sharma, learned counsel for the appellants after taking us through service record of the employee-original petitioner submitted that if for the period between April, 1979 to 31.03.1982 and for the period between 01.04.1994 to 31.12.1994 the petitioner was shown as average and had also been awarded certain adverse remarks, the authorities were justified in compulsorily retiring him. It is also submitted by him that assuming the direction for reinstatement was valid, then too the back-wages cannot be awarded in favour of the petitioner because he had not worked and the State Government had a justified cause to retire him compulsorily.

Shri Prakash Bararu, learned counsel for the petitioner-employee in Writ Appeal No. 178/08, however, submitted that the track record of the employee would show that since after April 1983 except for the period between 01.04.1994 to 31.12.1994 the petitioner was rated as good, very good or excellent. If there was a marked improvement in the work and working of the employee, then he could not have been removed from service for the adverse remarks for a period of four years while the track record for the next twelve years shows that he was treated to be an excellent or a very good employee. It is also submitted by him that the learned Single Judge was unjustified in awarding 50% of the back-wages only.

According to him if the petitioner although was submitting before the authorities that he has not become the dead wood or waste material, then he could not be thrown out of the service.

We have heard the parties at length.

So far as the question of setting aside the order of reinstatement is concerned, the service record of the petitioner is as under :

(1)

From 01.04.1994 to 31.12.1994

- Average

(2)

From 01.01.1994 to 31.03.1994

- Very Good

(3)

April 93 to December 93

- Good

(4)

09.1992 to 31.03.1993

- Good

(5)

06.1989 to 31.03.1990

- Very Good

(6)

04.1990 to 31.03.1989

- Excellent

(7)

Ending 31.03.1988

- Excellent

(8)

Ending 31.03.1987

- Excellent

(9)

Ending 31.03.1986

- Very Good

(10)

Ending 31.03.1985

- Very Good

(11)

Ending 31.03.1984

- Very Good

(12)

April 1983 to July 83

- Very Good

(13)

1983

- Average & adverse remark

(14)

1/4/1981 to 31/03/82

- Average & adverse remark

(15)

April 80 to March 82

- "Ga" and adverse remarks

(16)

April 79 to March 80

- Average & adverse remarks

From the above service record it would clearly appear that for the initial period of four years the confidential entries were not in favour of the petitioner, but for the period between 1983 to 31.03.1994 he was shown as good, very good or excellent, however, for a period of another nine months i.e., for a period between 01.04.1994 to 31.12.1994 he was shown to be an average worker. At this stage again it is to be noted that for the said period of nine months no adverse remarks were made against him. If such was the work and rating of the petitioner, then the petitioner certainly could not be held to be dead wood or waste material and could not be compulsorily retired.

The question for consideration further is that whether the learned Single Judge was justified in awarding 50% of the back-wages or should have directed non-payment of the back-wages or was he obliged to award 100% back wages. In the matter of M.L. Binjolkar Vs. State of Madhya Pradesh, , which was an outcome of the mass retirement of 559 employees (petitioner was also one of them), the Supreme Court had taken up the matter for consideration and observed as under:

6. We find that so far as the back wages issue is concerned, there are two periods involved. The first was from 01.10.1997 up to the High Court's order dismissing the writ petitions filed by the State while permitting fresh action. As noted above, the Tribunal had directed that the employees concerned were to be paid full back wages. The High Court had not interfered with that part of the order. Therefore, so far as this period is concerned, the High Court's direction in the impugned judgment for payment of 50% of the back wages does not appear to be correct. So far as the rest of the period is concerned, obviously that relates to the period upto the High Court's order i.e., 01.03.2002. Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g., Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya, Rajendra Prasad Arya Vs. State of Bihar, Sonapat Coop. Sugar Mills Ltd. Vs. Ajit Singh, Haryana State Coop. Land Development Bank Vs. Neelam, Manager, Reserve Bank of India Vs. S. Mani and Allahabad Jal Sansthan Vs. Daya Shankar Rai we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view. That being so, we do not think it appropriate to interfere with the quantum of 50% fixed by the High Court.

Both the appeals are disposed of with the direction that the order of reinstatement stands confirmed, the petitioner would be entitled to 50% back wages from the date of his compulsory retirement i.e., 01.10.1997 till the date of order passed by the learned Single Judge i.e., 07.02.2008 and he would be entitled to full salary, allowances etc. from 07.02.2008 till the date of his reinstatement.