

(2015) 04 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 3116 of 2014

The Airport Director

APPELLANT

Vs

Ramesh Shankarrao Nandgave

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 17-B

Citation : (2015) 04 BOM CK 0053

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : S.S. Ghate, for the Appellant; M.A. Jafry, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.—Heard Shri S.S. Ghate, the learned Advocate for the petitioner and Shri M.A. Jafry, the learned Advocate for the respondent.

2. Rule. Rule made returnable forthwith.

3. The petitioner/employer takes exception to the order passed by the Central Government Industrial Tribunal answering the reference in favour of the respondent/employee holding that the action of the petitioner in terminating the services of the respondent/ employee is illegal and unjustified.

4. The relationship of the employer and employee between the petitioner and the respondent is not in dispute. It is not in dispute that the respondent was in the employment of the petitioner.

According to the petitioner, the respondent was absent from his duties from 05-06-1996 till 13-11-1998 without any intimation and therefore, his services were terminated with effect from 07-04-1999. The respondent moved the application for reference in 2007 and the Central Government referred the industrial dispute to the Central Government Industrial Tribunal on 27-08-2007.

The Tribunal, by the impugned order, has concluded that the action of the petitioner in terminating the services of the respondent is illegal and unjustified and directed that the respondent be reinstated in service with continuity and all consequential benefits and directed the petitioner to pay 25% back wages. The petitioner being aggrieved by the Award passed by the Central Government Industrial Tribunal has filed this writ petition.

5. Shri S.S. Ghate, the learned Advocate for the petitioner has submitted that the services of the respondent were terminated on 07-04-1999 and after the termination of his services, the respondent requested the petitioner to release the terminal benefits and the request of the respondent was considered and the employee's subscription and the employee's contribution on the arrears of IDA, Unified Pay Scale etc. were released as per the communication dated 07-01-2003. The learned Advocate has submitted that the respondent had made the representations dated 12-05-1999 and 27-05-1999 requesting for the terminal benefits which were accordingly released. It is submitted that the gratuity receivable by the respondent was forfeited as per the regulations as the services of the respondent were terminated. To substantiate this, the learned Advocate has pointed out the communication dated 11-11-2004. It is submitted that this decision to forfeit the gratuity is not challenged by the respondent and it has become final. It is submitted that the respondent had accepted the termination order which is clear from the above mentioned facts and then after eight years, he moved the application for referring the industrial dispute, which is not permissible. It is submitted that the Central Government Industrial Tribunal has committed an error by allowing the reference and directing the reinstatement of the respondent with the other benefits. In support of the submission, the learned Advocate has relied on the judgment given in the case of *The State of Maharashtra and The Executive Engineer, Laghu Patbandhare Vibhag Vs. Shri Anil Eknath Kharat*, (2008) 4 ALLMR 868 : (2008) 3 BomCR 669 : (2008) 110 BOMLR 669 : (2008) 117 FLR 663 : (2008) 4 MhLj 652 . It is submitted that the respondent attained the age of superannuation in 2000 and therefore, the controversy in effect now is about the payment of 25% back wages. It is submitted that the respondent has nowhere pleaded that he was not gainfully employed during the period after his services were terminated. The learned Advocate for the petitioner has submitted that the respondent has admitted in the application filed by him under Section 17-B of the Industrial Disputes Act, 1947 that he had been gainfully employed and therefore, the grant of 25% back wages to the respondent is unjustified. It is prayed that the impugned order be set aside and it be held that the respondent is not entitled for the reliefs as granted by the Central Government Industrial Tribunal.

6. Shri M.A. Jafry, the learned Advocate for the respondent has submitted that the respondent was facing extreme hardships and was nearing the age of superannuation and therefore, the applications were made by the respondent for the release of the terminal benefits. It is submitted that the claim for the terminal benefits has nothing to do with the challenges as raised by the

respondent. It is submitted that the respondent was a regular and permanent employee and his services have been terminated without conducting any enquiry. It is submitted that the Central Government Industrial Tribunal has rightly answered the reference and the impugned order does not require any interference by this Court.

7. The challenge as raised on behalf of the petitioner about the tenability of the reference after eight years, cannot be accepted in the facts of the present case. The petitioner/employer ought to have challenged the reference in 2007 itself if it was aggrieved by the decision of the Central Government to refer the industrial dispute to the Central Government Industrial Tribunal for adjudication. The learned Advocate for the petitioner has not been able to point out any circumstance which prevented the petitioner from challenging the decision of the Central Government to refer the industrial dispute. The petitioner conceded to the jurisdiction of the Central Government Industrial Tribunal and contested the matter. In the reply filed before the Central Government Industrial Tribunal the petitioner has not objected to the adjudication of the industrial dispute by the Central Government Industrial Tribunal on the ground that the reference cannot be proceeded with, in view of the inordinate delay. In the judgment given in the case of *The Executive Engineer, Public Works Department Vs. Namdeo Govindrao Nandurkar*, (2011) 4 ALLMR 611 : (2011) 129 FLR 1037 : (2011) 4 MhLj 33, this Court has held that the reference cannot be dismissed merely on the ground of delay and the Court dealing with the reference will have to hold an enquiry and record its finding on the question whether the reference should be dismissed on the ground of delay and in appropriate cases, the Court may mould the relief either by reducing the back wages or denying the back wages completely. In the present case, the petitioner has not raised any objection about the delay before the Central Government Industrial Tribunal and therefore, there was no occasion for the Tribunal to consider all these aspects. The petitioner cannot be permitted to raise this ground at this stage.

8. It is undisputed that the respondent was a regular and permanent employee and his services were terminated without conducting any enquiry. The petitioner has not brought on the record any statutory rule which enables it to terminate the services of the permanent employee without conducting any enquiry if the employee fails to attend the duties for considerable time. The Tribunal has rightly considered this aspect in paragraph 15 of the impugned order. The findings recorded by the Tribunal cannot be said to be illegal or perverse.

9. As far as the directions given by the Tribunal to the petitioner to pay 25% back wages are concerned, they are also not required to be interfered by this Court. Though the respondent has not pleaded that he was not gainfully employed during the period when his services were terminated, in view of the judgment given in the case of *Jasmer Singh Vs. State of Haryana* (2015) 2 AD 215 : (2015) 144 FLR 837 : (2015) 1 SCALE 360 : (2015) 4 SCC 458 : (2015) 2 SCJ 391 : (2015) 2 SCT 91 : (2015) 1 SLJ 389, the order passed by the Tribunal

directing the petitioner to pay 25% back wages cannot be faulted with. The submission made on behalf of the petitioner that the employee has admitted in the application filed under Section 17-B of the Industrial Disputes Act that he was gainfully employed, is not correct.

10. In view of the above, I see no reason to interfere with the impugned order. The writ petition is dismissed with costs quantified at Rs. 5,000/-, to be paid by the petitioner to the respondent within two months.

11. In view of the dismissal of the writ petition, the Civil Application No. 2427 of 2014 and Civil Application No. 3774 of 2014 do not survive and are disposed accordingly.