

(2004) 05 AHC CK 0135
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 181 of 1995 and 10591 of 2004

U.P. State Electricity Board

APPELLANT

Vs

Presiding Officer, Labour Court and Others
Kanpur
Electricity Supply Company Limited Vs Presiding Officer,
Labour Court-I. and Another

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F, 33C(2)

Citation : (2004) 102 FLR 22 : (2004) 2 UPLBEC 1370

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; K.P. Agrawal and Satish Chaturvedi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—Civil Misc. Writ Petition No. 181 of 1995 has been filed by U.P. State Electricity Board through Kanpur Electricity Supply Administration, Kanpur seeking a writ, order or direction in the nature of certiorari quashing the order dated 12th September, 1994/19th September, 1994 passed by the Labour Court-I, U.P., Kanpur in Misc. Case No. 28 of 1994, filed as Annexure 9 to the writ petition and other consequential reliefs. Vide order dated 12th September, 1994/19th September, 1994, the Labour Court has allowed the application for review filed by Arvind Kumar Tiwari, respondent No. 2, and after setting aside the order dated 1st September, 1994, had directed the petitioner to pay a sum of Rs. 2,56,498.50 paise being the amount of back wages for the period 6th March, 1982 to 31st July, 1993, pursuant to the order of reinstatement.

2. Civil Misc. Writ Petition No. 10591 of 2004 has been filed by Kanpur Electricity Supply Company Limited, through its Managing Director, KESCO, Kanpur seeking a writ, order or direction in the nature of certiorari quashing the award dated

21st May, 2003 passed by the Labour Court-I, U.P., Kanpur, respondent No. 1, which has been published on 23rd August, 2003, filed as Annexure 7 to the writ petition and other consequential reliefs. By means of the aforesaid award, the Labour Court had held that Arvind Kumar Tiwari, respondent No. 2, is entitled for back wages, revision of pay scale from 8th April, 1980 as also seniority and promotion to the post of the JSD from the date when his juniors have been promoted, pursuant to the order dated 14th May, 1993 passed by this Court directing for reinstatement of the respondent No. 2.

3. Since in both the writ petitions the order passed by the Labour Court, pursuant to the judgment and order dated 14th May, 1993, relating to the same workman, is the subject matter, both the writ petitions have been heard together and are being decided by the common judgment.

4. Briefly stated, the facts giving rise to both these writ petitions are as follows :

Arvind Kumar Tiwari, respondent No. 2, was appointed on 8th April, 1980 on the post of the Clerk for preparation of electricity bills in Kanpur Electric Supply Administration. His service was terminated on 6th March, 1981. He raised an industrial dispute which was referred to the Labour Court for adjudication by the State Government, vide reference dated 19th June, 1982. The Labour Court, vide award dated 27th July, 1983, upheld the order of termination, The award dated 27th July, 1983, was challenged by Arvind Kumar Tiwari by means of the Civil Misc. Writ Petition No. 15316 of 1983 before this Court. This Court, vide judgment and order dated 14th May, 1993, found that the workman had worked for more than 240 days, thus, he is entitled to be reinstated because the procedure u/s 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was not followed and the award of the Labour Court is liable to be quashed. Accordingly, this Court while allowing the writ petition, quashed the award of the Labour Court with the following directions :

"Allowing this writ petition I hereby quash the award of the Labour Court whereby the industrial dispute raised by the petitioner was dismissed. By a writ of mandamus I direct that the petitioner shall be reinstated as workman within two months from the date of supply of a certified copy of this judgment by the petitioner before the respondents. From the date of reinstatement the petitioner shall be entitled to receive wages as are admissible to his under rules. Since the respondents have not appeared, therefore, there will be no order as to costs."

5. In compliance of the aforesaid judgment of this Court, the present petitioner reinstated the workman, respondent No. 2, as daily rated Clerk in GPF cell under the Deputy Chief Accounts Officer, Kesa House, Kanpur, vide order dated 7th September, 1993. However, the petitioner did not pay the back wages. The respondent No. 2 filed a claim petition u/s 33C(2) of the Act before the Labour Court-I, U.P., Kanpur, which was registered as Misc. Case No. 28 of 1994. The Labour Court, vide order dated, 1st June, 1994, rejected the application on the ground that the High Court has no doubt reinstated but had directed that from

the date he is reinstated, he shall be entitled to wages in accordance with law and, therefore, there is no order for payment of back wages. Subsequently, a review application was filed on 2nd June, 1994. The petitioner filed its objection. The Labour Court, vide order dated 19th September, 1994, directed the petitioner to pay a sum of Rs. 2,56,498.50 paise being the amount of back wages for the period 6th March, 1981 to 31st July, 1993. This order is under challenge in Civil Misc. Writ Petition No. 181 of 1995 and this Court, vide order dated 4.1.1995, stayed the operation of the said order.

6. It appears that as the respondent No. 2 workman was reinstated only on 7th September, 1993, as a daily rated Clerk and was not given the back wages nor continuity, of service nor seniority nor any revision of pay scale, the respondent No. 2 once again raised an industrial dispute for redressal of his grievances. The State Government, vide order dated 31st March, 2001, referred the following dispute for adjudication to the Labour Court:

"KYA SEWAYOJAKO DWARA APNE KARMCHARI ARVIND KUMAR TIWARI PUTRA SHRI UMASHANKER TIWARI, R.G.C., LEKHA VIBHAG, KESA HOUSE KO MANNIYA UCHCHA NYAYALAYA, ALLAHABAD KE NIRNAYA/ADESH DINANK 14.5.1993 KE PHALSWAROOP USKE SEWA ME BAHAL KIYE JANE PER USKI NIYUKTI KI TITHI DINANK 8.4.80 SE SAMAY SAMAY PER VETAN PUNRIKSHAN KA LABH PRADAN KARTE HUE USE BAKAYE VETAN KA BHUGTAN NA KIYA JANA TATHA USKI JYESSHTATA KE ADHAR PER USASE KANISTHA KARMACHARIYON KI PADONNATI KIYE JANE KI TITHI SE J.S.D KE PAD PER PADONNATI NA KIYA JANA UCHIT WA WAIDHNIK HAI? YADI NAHI TO SAMBANDHIT KARMACHARI KYA LABH/ANUTOSH PANE KA PATRA HAI KIS THITHI WA ANYA VIVRANO SAHIT?"

7. Before the Labour Court, written statements were filed by the respective parties. In the written statement filed by the respondent No. 2, it was specifically stated that he was senior to at least 30 employees and 6 persons were appointed on RGC (daily rated). The pay scale has been revised from time to time and those persons have been adjusted in the RGC cadre. Since his writ petition has been allowed by this Court, the termination having been set aside, he is entitled to back wages, revision of pay scale, seniority, promotion etc.

8. The petitioner in its written statement, however, submitted that the respondent No. 2 was employed, as a daily rated Clerk on 8th April, 1980, and he worked till 28th February, 1981. In compliance with the judgment of this Court, he has been reinstated as a daily rated Clerk on a salary of Rs. 1,100.00 p.m. Thus, he has been paid the revised pay scale. This Court has not directed for payment of back wages and other benefits and, therefore, there is no question of payment of any back wages or any other benefits. There is no dispute which has to be adjudicated and, therefore, the reference is to be returned unanswered.

9. The Labour Court after considering the evidence and material on record has held that after the appointment of the workman, respondent No. 2, 30 other

person were appointed. However, the respondent No. 2 was terminated from service for which he approached this Court and vide judgment and order dated 14th May, 1993, this Court had directed for reinstatement. Even though the respondent No. 2 has been reinstated, he has not been paid wages from 6th March, 1981 to 31.7.1993 nor he has been regularized nor given time scale even though his juniors have been given. The intention of the judgment and order of this Court was that the workman is entitled to full back wages and other benefits as the order of termination has been set aside. Accordingly, the Labour Court has held that the workman, respondent No. 2, is entitled for revision of pay scale as also promotion from the date his juniors have been promoted and also for back wages. The award dated 21st May, 2003 is under challenge in Civil Misc. Writ Petition No. 10591 of 2004.

10. I have heard Sri Ranjit Saxena, the learned Counsel for the petitioner, and Sri K.P. Agrawal, the learned Senior Counsel, assisted by Sri Satish Chaturvedi, on behalf of the respondent workman, in both the writ petitions.

11. As the counter affidavits and rejoinder affidavits have been exchanged between the parties, with the consent of the learned Counsel, the writ petitions are being finally disposed of at the admission stage itself in accordance with the Rules of Court.

12. Sri Ranjit Saxena, learned Counsel, submitted that this Court while allowing Civil Misc. Writ Petition No. 15316 of 1983, filed by the workman, had not directed for payment of any back wages as it had only directed for payment of the wages from the date of reinstatement. He, thus, submitted that the Labour Court had committed an error of law in allowing the application filed u/s 33C(2) of the Act and also giving an award directing for payment of the back wages, continuity of service, revision of pay scale and promotion etc. He further submitted that the Labour Court has no power of review and once it has rejected the application made u/s 33C(2) of the Act, vide order dated 1st June, 1994, it should not have reviewed its earlier order and pass an order on 12th September, 1994/19th September, 1994, directing for payment of Rs. 2,56,498.50 paise, being the arrears of back wages from 6th March, 1981 to 31st July, 1993. In any event he submitted that there being no material on record to establish that the respondent No. 2 workman had not been gainfully employed during the long period of 12 years, the Labour Court was not justified in directing for payment of the back wages. He relied upon a decision of the Hon'ble Supreme Court in the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, .

13. Sri K.P. Agrawal, learned Senior Counsel, on the other hand, submitted that once the order of termination has been set "aside by this Court and reinstatement has been directed, the necessary corollary is that the position as on the date of termination is restored and the concerned workman, herein the respondent No. 2, is entitled for the wages from the date when he was illegally terminated, till the reinstatement as he would be deemed to have continued in service. According to him, for no fault of the workman, he was prevented and not

allowed to do any work and, therefore, the workman concerned (respondent No. 2) cannot be allowed to suffer on this illegal act of the petitioner. According to him, where a dismissal is held to be wrongful, the normal rule is that the dismissed employee must be reinstated. He relied upon a decision of the Hon''ble Supreme Court in the case of *The Punjab National Bank Ltd. Vs. Its Workmen*, . He further submitted that where a termination is held to be wrongful, the normal rule is to award full back wages. In support of his aforesaid submission, he relied upon a Division Bench decision of this Court in the case of *Postal Seals Industrial Co-operative Society Limited, Aligarh v. Labour Court-II, Lucknow and Ors.* 1971 (22) FLR 38 and *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, . He further submitted that the Hon''ble Supreme Court in the case of *S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another*, , has directed for payment of full back wages from the date of the closure where it has found the closure of the undertaking to be illegal. The Hon''ble Supreme Court has held that it is difficult to see why the workman should be put to further harassment for the wrongful act of the company. According to Sri Agrawal, the Labour Court having directed for payment of the full back wages under the impugned award, this Court should not interfere with the discretion exercised by the Labour Court. He relied upon a decision of the Hon''ble Supreme Court in the case of *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, .

14. So far as the decision of the Hon''ble Supreme Court in the case of *Hindustan Motors Limited* (supra) is concerned, Sri Agrawal submitted that before the Labour Court it was the specific plea taken by the respondent No. 2 workman that he was not employed anywhere after his service was retrenched till the date of his reinstatement and, therefore, he was entitled to full back wages.

15. Having heard the learned Counsel for the parties, I find that this Court, vide judgment and order dated 14th May, 1993 had quashed the award of the Labour Court and directed that the petitioner shall be reinstated as a workman within two months. It further directed that from the date of reinstatement, the petitioner shall be entitled to receive the wages as are admissible to him under the Rules. This order was passed in the year 1993. At that time, the position in law was well settled by the Hon''ble Supreme Court in the case of *M/s. Hindustan Tin Works Pvt. Ltd. (supra)* that ordinarily a workman whose service has been illegally terminated, either by dismissal, discharge or retrenchment, will be entitled to full back wages, except to the extent he was gainfully employed during the enforced idleness and that is the normal rule. The Hon''ble Supreme Court has held as follows :

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of

damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of this earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is question as invalid or illegal and the workman has to be through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such as awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full backs except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in *Dhari Gram Panchayat v. Safai Kamdar Mandal* (1971) 1 LLJ 508, and a Division Bench of the Allahabad High Court in *Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow* (1971) I LLJ 327, have taken this view and we are of the opinion that the view taken therein is correct."

16. The Apex Court approved the decision of this Court in the case of Postal Seals Industrial Co-operative Society Limited (supra).

17. The Hon"ble Supreme Court further held that the full back wages would be the normal rule and party objecting to it, must establish the circumstances necessitating departure and at that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. Thus, this Court directed that the respondent No. 2 shall be entitled to receive wages as are admissible to him under the Rules. The intention was that he would be entitled for the back wages as well as continuity in service as it was the normal Rule at that time.

18. In the case of S.G. Chemicals and Dyes Trading Employees" Union (supra), the Apex Court has directed for payment of full back wages to the concerned workman where the closure of the undertaking was held to be illegal by observing that it is difficult to see why these 84 workmen should be put to further harassment for the wrongful act of the company.

19. In the case of Punjab National Bank (supra), the Hon"ble Supreme Court has held that if the bank has failed to establish its specific case against any one of the 36 employees, there is no reason why the normal rule should not prevail and the employees should not get the relief of reinstatement. The mere fact that the bank may have employed some other person in the meanwhile, will not necessarily defeat such a claim for reinstatement. There is no dispute regarding the reinstatement of the respondent No. 2 workman in these proceedings. The/ only dispute is regarding the payment of back wages and also the continuity of service, seniority, revision of pay scale and promotion. As held by the Hon"ble Supreme Court in the case of M/s. Hindustan Tin Works Pvt. Ltd. (supra), once the termination is held to be illegal and the reinstatement is ordered, the workman is entitled for entire back wages and continuity of service unless it is proved by the person objecting that the workman was gainfully employed elsewhere.

20. In the decision in the case of Hindustan Motors Ltd., relied upon by the learned Counsel for the petitioner, the Hon"ble Supreme Court has referred to the decision of the Apex Court in the case of M/s. Hindustan Tin Works Pvt. Ltd (supra) and has held that the payment of back wages having a discretionary element involved in it, has to be dealt with in the circumstances of each case, and no strait jacket formula can be evolved. However, there is statutory sanction to direct payment of back wages in its entirety.

21. Applying the principles laid down by the Hon"ble Supreme Court in the case of M/s. Hindustan Tin Works Pvt. Ltd. (supra) and Hindustan Motors Ltd. (supra) to the present case, I find that the Labour Court, on the basis of the material and evidence on record, has held that the respondent No. 2 workman is entitled for full back wages, continuity of service, seniority, promotion and revision of pay scale which, in the facts and circumstances, cannot be said to be arbitrary or based on relevant material on record. It may be mentioned here that Sri Ranjit

Saxena, the learned Counsel for the petitioner, rightly did not have any objection to the respondent No. 2 workman being given the revision of pay scale, seniority, promotion and continuity of service. His only objection was regarding the payment of back wages from 6th March, 1981 to 31st July, 1993 because this Court had not specifically directed for payment of back wages in the earlier writ petition. The discretion exercised by the Labour Court, as held by the Hon''ble Supreme Court in the case of The Bharat Bank Ltd. (supra) and Punjab National Bank Limited (supra), should normally not be interfered with in exercise of the powers under Article 226 of the Constitution of India. In view of the conclusion arrived at that the award passed by the Labour Court does not suffer from any legal infirmity, it is not necessary to go into the question as to whether the Labour Court has the power to review its earlier order dated 12th September, 1994/19th September, 1994 or not. In view of the foregoing discussions, I do not find any merit in both the writ petitions. Both the writ petitions lack merit and are dismissed. However, the parties shall bear their own costs.