
(2007) 10 MP CK 0044
In the Madhya Pradesh High Court

Y. Yohannan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 6

Citation : (2008) 1 JLJ 16 : (2008) 2 MPHT 226 : (2008) 2 MPLJ 553

Hon'ble Judges : S.R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.

In this intra-court appeal preferred u/s 2(1) of the M.P. Uchcha Nyaylaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 the appellant has called in question the sustainability of the order dated 10.11.2005 passed by the learned Single Judge in W.P. No. 6002/2003.

The appellant entered the services in the Police Department as an L.D.C. on 5.5.1964 and was promoted to the post of U.D.C. with effect from 30.9.1983. He was posted in Central Police Motor Transport (for short "CPMT") as UDC which is also known as Contingent Clerk. Three clerks, namely, Ravindra Kumar, Om Prakash Shakya and Ms. Asha Manekar were working under him during the period August, 1985 to March, 1986 whereas he was only entitled to one LDC. However, whenever there was heavy work more hands were provided. Such L.D.Cs were required to pass the bills. Contingency section was a part of Accounts Branch and the Accountant was the In-charge of the same having the supervisory control over the appellant and other clerks. The appellant was never declared the Incharge of contingency section at any point of time. While working the appellant learnt that some mischief was being done by O.P. Shakya in respect of passing of bills and, therefore, to satisfy himself he made an enquiry and thereafter moved a note-sheet on 17.7.86 which was supported by the Head Clerk and forwarded to the higher authorities by the Superintendent of Police of CPMT Workshop. However, an enquiry was initiated against the appellant,

O.P.Shakya and Ms.Asha Manekar by issuing a charge-sheet dated 07.5.1987. The appellant submitted his reply to the aforesaid charge-sheet on 18.5.1987. It is worth noting that Ravindra Kumar was already dismissed in another case. The appellant faced enquiry for the charge "In spite of being in-charge of the contingency section, the appellant seriously neglected his duties and responsibilities as a result of which, between the period August'85 and March'86, bogus bills were forwarded to the treasury, amount was drawn thereunder and payments were made." Thus, the only charge against the appellant is failure to discharge the duties of supervisory control. The enquiry officer submitted his report holding the carelessness of the appellant towards his duties and responsibilities. The Deputy Inspector General of Police issued a show-cause notice dated 25.5.1989 to which the appellant submitted his reply on 02.6.1989. However, the respondent No.4 passed the final order dated 08.9.1989 dismissing the appellant from service. Feeling aggrieved the appellant preferred an appeal before the respondent No. 2 on 23.9.1989 who modified the punishment from dismissal from service to compulsory retirement with effect from 08.9.1989.

It is averred that four persons were charge-sheeted, namely, the appellant, O.P. Shakya, Asha Manekar and Ravindra Kumar Singh and, therefore, joint enquiry ought to have been conducted against all of them in terms of Rule 18 of M.P. Civil Services (Classification, Control and Appeal) Rules inasmuch as Police Regulation are silent in this regard. The result was that all the aforesaid three persons whose bills were dubious have been allowed to go scot free and the appellant has been compulsorily retired. It is put forth that the appellant was never negligent towards his duties and responsibilities and even otherwise Upper Division Clerks never remain Incharge of a section. It is also put forth that the appellant demanded inspection of documents and supply of copies which were never supplied and the same were also not produced before the Enquiry Officer and hence, the defence of the appellant was highly prejudiced. It is also submitted that serial numbers were changed and interpolation were made by the aforesaid three persons and not by the appellant. The appellant also took objection with regard to conducting of enquiry by an officer subordinate to the Deputy Inspector General of Police.

Being aggrieved by the orders dated 08.9.89 and 18.11.89 the appellant filed Original Application No. 97/1990 which on abolition of the M.P. Administrative Tribunal, stood transferred to this Court and formed the subject-matter of W.P. No. 6002/2003. The learned Single Judge partly allowed the aforesaid writ petition on 10.11.2005 and quashed the Disciplinary proceedings and further quashed the punishment orders and directed the respondents therein to take the appellant in service forthwith. As is manifest, the learned Single Judge granted 50% backwages from the date of the order passed in the aforesaid writ petition.

We have heard Mr. Udayan Tiwari, learned Counsel for the appellant and Mr. T.S. Ruprah, learned Additional Advocate General for the respondents.

It is submitted by Mr. Tiwari that the learned Single Judge while granting 50% backwages has stated that backwages should be granted from the date i.e. the date of passing of the order which is contradiction in terms. It is urged by him that the learned Single Judge ought to have indicated that 50% backwages would mean the backwages from the date of dismissal from service.

Mr. T.S. Ruprah, learned Additional Advocate General for the State fairly stated that though the direction is not correct but the appellant cannot claim backwages as a matter of right and, therefore, what the learned Single Judge really meant is that the salary shall be due from the date of the order.

The singular question that emerges for consideration in this writ appeal is whether the appellant should be entitled to backwages. It is not disputed at the Bar that the appellant, during the pendency of the writ petition, has attained the age of superannuation. Hence, the question of his reinstatement does not arise. After setting aside the order of dismissal, he would only be entitled to pension as per rules. As far as backwages is concerned, without entering into the debate, what the learned Single Judge has meant, we think it appropriate to deal with the said facet independently. What would be the just percentage as regards grant of backwages in the case at hand is the fulcrum of the issue.

In this context it is appropriate to notice few decisions in the field. In *M.L. Binjolkar Vs. State of Madhya Pradesh*, it has been held as under:

6. We find that so far as the back wages issue is concerned, there are two periods involved. The first was from 1-10-1997 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 up to the High Court's order i.e. 1-3-2002. 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 and Another*, *Rajendra Prasad Arya Vs. State of Bihar*, *Management of Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh*, *Haryana State Coop. Land Development Bank Vs. Neelam*, *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, and *Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another*, 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.

In General Manager, Vijaya Bank and Another Vs. Pramod Kumar Gupta, their Lordships in paragraphs 6 and 11 held as under:

6. We have carefully perused the order passed by the High Court. A perusal of the order passed by the High Court would show that the High Court has not considered the question as to whether the respondent was gainfully employed or not during the relevant period in question. The High Court has also not adverted to the categorical finding recorded by the Tribunal on this aspect. The High Court directed the appellant bank to reinstate the respondent on the post held by him with continuity in service and that the respondent shall also be entitled to other consequential benefits to which he is entitled to in accordance with law. The High Court, in our opinion, without considering the relevant issue has ordered full back wages with all other consequential benefits which, in our opinion, is not correct. It is argued by Mr. K.T S. Tulsi, learned senior Counsel for the appellants that the respondent -workman has not discharged his burden by adducing any evidence that he was not gainfully employed. He has also now shown any acceptable material that he was not gainfully employed and, under these circumstances, ordering full back wages to the respondent by the High Court without considering the merits of the claim by the bank is not correct and that the approach made by the High Court in ordering full back wages cannot, at all, be countenanced in the facts and circumstances of this case.

We, therefore, remit the matter to the High Court to consider the question of payment of back wages for the period in question. We request the High Court to consider the matter afresh on the question of back wages only. The appellant bank is also free to hold any departmental enquiry against the respondent - workman for his absence from duty during the relevant period. Since the matter is remitted to the High Court on the question of back wages only, the respondent will not be entitled for payment of any back wages during the period in question which will depend upon the ultimate order that may be passed by the High Court. The order passed by the High Court ordering reinstatement shall stand.

In A.P.S.R.T.C. and Another Vs. B.S. David Paul, their Lordships referring to the decisions rendered in State of Uttar Pradesh and Another Vs. Brijpal Singh, ; Rajasthan SRTC v. Shyam Bihari Lal Gupta (2005) 7 SCC; Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, ; A.P.S.R.T.C. and Another Vs. S. Narsagoud, ; and State Bank of India v. Ram Chandra Dubey (2001) 1 SCC 73 expressed the view that back-wages cannot be granted as a natural consequence under the provisions of Industrial Disputes Act, 1947.

In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, a two-Judge Bench of the Apex Court opined as under:

17. Before adverting to the decisions relied upon by the learned Counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result

but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.

The judgments and orders of the Labour Court and the High Court are set aside and it is directed that the Respondent herein shall be entitled to 25% back wages of the total back wages payable during the aforesaid period and compensation payable in terms of Section 6N of the U P. Industrial Disputes Act. If, however, any sum has been paid by the Appellant herein, the same shall be adjusted from the amount payable in terms of this judgment.

In Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, their Lordships have expressed thus:

6. A law in absolute term cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and /or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that the Respondent No. 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24.1.1987. The Respondent No. 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned Counsel for the Appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the Respondent herein had been reinstated from 27.2.2001.

We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

In view of the fact that the Respondent had been reinstated in service and keeping in view the fact that he had not raised any plea or adduced any evidence to the effect that he was remained unemployed throughout from 24. 1.1987 to 27.2.2001, we are of the opinion that the interest of justice would be sub -served if the Respondent is directed to be paid 50 % of the back wages.

We are conscious, some of the judgments were delivered in the context of Industrial Disputes Act, 1947 and some directly in exercise of writ jurisdiction. The principle with regard to backwages, as is manifest, has gone a sea -change. The earlier view was that with the quashment of the order of termination consequent grant of full backwages were a logical corollary. Presently, as the law has been enunciated, it would depend upon many a factor. A pragmatic view has to be taken. The petitioner stood dismissed in the year 1989. Regard being had to the facts and the circumstances in totality, the law in the field, the financial crunch suffered by the State and keeping in view the concept of a pragmatic approach, we are of the considered opinion that grant of 25% backwages would meet the ends of justice.

In the result, the writ appeal is allowed in part. We direct that the appellant would be entitled to 25 % of the backwages. The same shall be paid to him within a period of three months hence. There shall be no order as to costs.