

CENTRAL COOPERATIVE CONSUMERS, STORE

A

v.

LABOUR COURT, H.P. AND ANR.

APRIL 30, 1993

[R.M. SAHAI AND N. VENKATACHALA, JJ.]

B

Illegal termination of service—Fruitless litigation—Satisfaction of misplaced ego—Responsibility.

Recovery of back wages—Financial viability of the employer—Justification for exercising favourable discretion by court. Whether reinstatement of the employee would come within bona fide conduct for modification of the order of back wages.

C

The private respondent was appointed as sales girl with the petitioner. The new manager not only insulted, humiliated and harassed her, he also terminated her services.

D

On her plea, the Assistant Registrar who decided the case after seven years, held the impugned order as illegal, arbitrary and passed without obtaining the requisite approval. He ordered reinstatement of the private respondent but did not grant back wages.

E

The petitioner informed the private respondent that her joining report could not be entertained. The latter was forced to approach the appellate and revising authorities, the labour court and finally the High Court for back wages and other benefits.

F

The petitioner approached this court to assail well reasoned finding recorded by the High Court, without the least regard of the financial implications. Meanwhile as the petitioner was unable to persuade this court on merits of the case, the petitioner made attempt to highlight the financial difficulties in payment of back wages.

G

Surendra Kumar Varma and others v. Central Government Industrial Tribunal- Cum-Labour Court, New Delhi & Anr. [1980] 4 SCC 443, referred to.

The petitioner urged that the private respondent had been pursuing the

H

A remedy for 16 years. And the profit margin of the petitioner being very low and the overhead expenses high. The State and the Centre who granted financial assistance for rehabilitation subject to the condition that the amount be not paid towards past debts, would be rendered in serious predicament.

B On facts this court found that it was the petitioner who was not complying with the orders passed by the authorities from time to time, so there was no justification for exercising discretion in favour of the petitioner.

Dismissing the SLP and upholding the order of the High Court, this Court,

C HELD: Public money has been wasted due to adamant behaviour not only of the Officer who terminated the services of the private respondent but also due to cantankerous attitude adopted by those who were responsible for pursuing the litigation, and literally persecuted her. Working life of the private respondent has been lost for more than twenty years. While considering the agony and suffering, the amount of back wages exceeding three lakhs could not be a proper recompense. And the reinstatement of the private respondent could not be considered as *bonafide* conduct for modification of the order of back wages. (480-D)

E Leaving it open to the petitioner to replenish itself and recover the amount of back wages from personal salary of its officers who were responsible for the endless litigation and for terminating the services of the private respondents this Court clarified that this permission shall have nothing to do with the direction and the step for recovery be taken only after payment of back wages to the private respondent. (480-G)

F CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 4460 of 1993.

From the Judgment and Order dated 15.1.1993 of the Himachal Pradesh High Court in Civil Writ Petition No. 566 of 1990.

G Arun Jaitley and Maninder Singh for the Petitioner.

The following Order of the Court was delivered:

H How statutory bodies waste public money in fruitless litigation to satisfy

misplaced ego is demonstrated by this petition.

The opposite party was appointed as Sales Girl by the petitioner, a cooperative society registered under Cooperative Societies Act, running a Super Bazar in Shimla. When one of the managers came there on transfer, her trouble started. Apart from insult, humiliation and harassment thrust on her, that manager terminated her services illegally without being authorised to do so and without obtaining permission of the Administrator and without giving any notice or hearing her. The opposite party who had been apprising her superiors of that manager's misbehaviour and of her apprehensions that he was out to get rid of her although was assured not only of his good behaviour and security of her services, immediately took recourse to legal action. To her misfortune the Assistant Registrar decided her case after seven years. It was held by him that the order of termination was illegal, arbitrary and was passed without obtaining approval of the Administrator. He directed the petitioner to reinstate her but did not grant any back wages. Even with this order which was prejudicial to her the opposite party was satisfied but the ego of petitioner was hurt. For eight months the order was not implemented by the petitioner as it was contemplating to file the appeal. And when the petitioner succeeded in obtaining the order it informed the opposite party that her Joining Report could not be entertained. Since then the opposite party has been knocking at the door of the petitioner but she was made to approach the appellate authority, the revising authority, the High Court, the Labour Court and finally the High Court again as the petitioner did not succeed anywhere but went on filing appeal and revision forcing the opposite party to file cross appeal or revision or even writ for her back wages and other benefits. Not one authority, even in the cooperative department found in favour of petitioner. Yet the petitioner had the obstinacy not only to approach this Court but to place the blame of inordinate delay on adjudicatory process. Such obstinacy without the least regard of the financial implications could only be indulged by a public body like the petitioner as those entrusted to look after public bodies affairs do not have any personal involvement and the money that they squander in such litigation is not their own.

Sri Arun Jaitley the learned senior counsel attempted to assail the finding recorded by the High Court and the Labour Court. Suffice it to say that the conclusions arrived at are not only well reasoned but are based on material on record and could not be demonstrated to be vitiated by any error of Law.

Having failed to persuade us on merits the Learned counsel attempted to highlight the financial difficulty of the petitioner and placed reliance on *Surendra Kumar Verma & Ors. v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Another* [1980] 4 SCC 443 in support of the submission that

A the Courts while directing payment of back wages should exercise discretion considering the financial viability of the employer. It was urged that the respondent has been pursuing her remedy for 16 years therefore the petitioner whose profit margin is very low and the overhead expenses are very high resulting in accumulation of losses for which financial assistance has been granted by State as well as the Central Government for rehabilitation subject to the condition that the amount shall not be utilised towards past debts, shall be rendered in serious predicament brought upon it by the respondent for which it is not responsible. Nothing is farther than truth. It was other way round. In fact it was the petitioner who had disputed the finding of the Registrar, directing reinstatement without back wages, and made respondent to run from court to court. When the petitioner did not reinstate her and filed an appeal she too filed a cross appeal for back wages. It is more than apparent that it was the petitioner who was not complying with the orders passed by the authorities from time to time and was leaving no stone unturned to see that an illegal order passed by its officer was upheld. We, therefore, do not see any justification for exercising discretion in favour of such a litigant.

D Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before the one or the other authority. They have literally persecuted her. Despite unequal strength the opposite party has managed to survive. We are informed that the opposite party has been reinstated. This was put forward as *bonafide* conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite party has been lost in this tortuous and painful litigation of more than twenty years. For such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite party. We may clarify that the permission given, shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite party as directed by the High Court.