U.P.S.R.T.C. LTD. A

v.

SARADA PRASAD MISRA AND ANR.

APRIL 13, 2006

[DR. AR. LAKSHMANAN AND C.K. THAKKER, JJ.] B

Labour Laws:

U.P. Industrial Disputes Act, 1947: C

Section 2-A—Reinstatement in service—Back wages—Award of—Workman was appointed as a conductor with the Corporation on purely temporary basis—Even thereafter, he was appointed from time to time on temporary basis as and when the Corporation was in need of his services—Finally, the workman was appointed as a conductor on purely **ad-hoc** *basis* D *temporarily for a period of one month—It was expressly stated in the order of appointment that his services would be terminated at any time without prior notice—Since the services of the workman were no longer required, his services were terminated—The Labour Court held that since the workman had not been paid retrenchment compensation, the action of the Corporation was illegal—The Labour Court further held that the workman was entitled* E *to reinstatement with full back wages from the date of his termination till the date of his reinstatement—The High Court upheld the said award—Correctness of—Held: No precise formula can be adopted nor 'cast iron rule' can be laid down as to when payment of full back wages should be allowed by the Court or Tribunal—It depends upon the facts and circumstances of* F *each case—The question regarding payment of back wages would be independent of the question as to entitlement of reinstatement—In the instant case, workman is allowed back wages to the extent of 50% from the date of the award till he was reinstated in service.*

The first respondent-workman was appointed as a conductor with the G **appellant-Corporation on purely temporary basis. According to the appellant, even thereafter, he was appointed from time to time on temporary basis as and when the appellant was in need of his services. Finally, the first respondent was appointed as a conductor on purely *ad-hoc* basis temporarily for a period**

H

A of one month. It was expressly stated in the order of appointment that his services would be terminated at any time without prior notice. Since the services of the first respondent were no longer needed, in accordance with the terms and conditions of the order of the appointment, the services of the first respondent were terminated.

B

After about seven years from the date of termination, the first respondent filed an application under Section 2-A of the U.P. Industrial Disputes Act, 1947 before the Conciliation Officer making grievance against the action of termination of his services by the appellant-Corporation. The appellant-Corporation raised a preliminary objection that the application filed by the C first respondent was belated and deserved to be dismissed on the ground of delay and laches. The Conciliation Officer condoned the delay and submitted a 'failure report'. Pursuant to the 'failure report' by the Conciliation Officer, the State Government referred the dispute to the Labour Court.

The Labour Court held that the first respondent was appointed in 1973 D and since he had completed 240 days of continuous service his services could not have been terminated except in accordance with the provisions of the Act. The Labour Court held that since the first respondent had not been paid retrenchment compensation, the action of the Corporation was illegal. The Labour Court further held that the first respondent was entitled to E reinstatement with full back wages.

Being aggrieved the appellant preferred a writ petition before the High Court. The High Court dismissed the writ petition and directed reinstatement of the first respondent with 50% back wages from the date of his termination till the date of his reinstatement. Hence the appeal.

F

Disposing of the appeal, the Court

HELD: 1. No precise formula can be adopted nor 'cast iron rule' can be laid down as to when payment of full back wages should be allowed by the Court or Tribunal. It depends upon the facts and circumstances of each case. G The approach of the Court/Tribunal should not be rigid or mechanical but flexible and realistic. The Court or Tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding

H

payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the Court or Tribunal would consider all relevant circumstances and, keeping in view the principles of justice, equity and good conscience, should pass an appropriate order. [9-D-G]

P.G.I. of Medical Education & Research **v.** *Raj Kumar,* **[2001] 2 SCC 54,** *Hindustan Motors* **v.** *Tapan Kumar Bhattacharya,* **[2002] 6 SCC 41,** *Kendriya Vidyalaya Sangathan* **v.** *S.C. Sharma,* **[2005] 2 SCC 363,** *M.P. State Electricity Board* **v.** *Jarina Bee,* **[2003] 6 SCC 141,** *Allahabad Jal Sansthan* **v.** *Daya Shanker Rai,* **[2005] 5 SCC 124,** *Haryana State Coop. Land Development Bank* **v.** *Neelam,* **[2005] 5 SCC 91 and** *General Manager, Haryana Roadways* **v.** *Rudhan Singh,* **[2005] 5 SCC 591, relied on.**

2. The respondent-workman is not entitled to back wages from the date when his services were terminated. The ends of justice would be met if the workman is allowed back wages to the extent of 50% wages from the date of the award till he was reinstated in service. [9-G; 10-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2024 of 2006.

From the Final Judgment and Order dated 8.7.2003 of the High Court of Judicature at Allahabad in C.M.W.P. No. 4084 of 1985.

Pradeep Misra for the Appellant.

Pawan Kumar Bahl, Harish Kumar and Goodwill Indeevar for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. Leave granted.

This appeal is directed against the judgment and order dated July 8, 2003 passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 4084 of 1985. The facts necessary for determining the controversy in the appeal may now be stated:

The appellant U.P. State Road Transport Corporation was constituted in 1972 succeeding the erstwhile U.P. Government Roadways. On November 20, 1973, the first respondent herein Sarada Prasad Misra was appointed as

A Conductor on purely temporary basis. According to the appellant, even thereafter, he was appointed from time to time on temporary basis as and when the appellant was in need of his services. Finally, the first respondent was appointed by order dated September 1, 1975 as Conductor on purely *ad-hoc* basis temporarily for a period of one month from September 1, 1975 to September 30, 1975. It was expressly stated in the order of appointment that his services B will be terminated at any time without prior notice. Since the services of the first respondent were no more needed, in accordance with the terms and conditions of the order of the appointment, the services of the first respondent were terminated by an order dated 6th September, 1975. It was stated in the order of termination that he would be entitled to one month's salary in lieu C of notice. It is the case of the appellant that the first respondent accepted the order of termination along with salary of one month in lieu of notice without protest.

It appears that thereafter, the first respondent preferred a departmental appeal against the order of termination issued by the Corporation, but the D appeal was dismissed. After about seven years from the date of termination, the first respondent filed an application under Section 2A of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') before the Conciliation Officer, Allahabad making grievance against the action of termination of his services by the appellant Corporation. It was stated that though he was E appointed by the Corporation in November, 1973, he was illegally retrenched without following the provisions of law. Since his appeal had also been dismissed, he had approached the Conciliation Officer for reinstatement, continuity of past services and for payment of wages. When the notice was issued on the appellant-Corporation, it raised preliminary objection that the application filed by the workman was belated and deserved to be dismissed F on the ground of delay and laches. According to the Corporation, the services of the workman were terminated in 1975 in accordance with the terms and conditions of the order of appointment and though he had accepted one month's salary without any protest, he had made an application before the Conciliation Officer making grievance after long time and the application was not maintainable. In spite of the objection, the Conciliation Officer condoned G delay and submitted 'failure report'. Pursuant to the 'failure report' by Conciliation Officer, the State Government referred the dispute to the Labour Court, Allahabad for adjudication. The dispute which had been referred to read thus:

H "Whether action of employers in terminating the services of their

workman Sarada Prasad Misra S/o Sh. Ajab Sukh Misra, Conductor w.e.f. 06.09.1975 is legal and/or valid? If not, then to what relief the concerned workman is entitled? And with what further details?" A

The appellant Corporation contested the matter by filing written statement contending that the workman was engaged purely in a temporary capacity on *ad-hoc* basis from time to time as and when need and necessity arose and his engagement was continued or discontinued on that basis. His services were terminated even in past in accordance with the conditions of the orders of appointment and no grievance could be made against such action. So far as the last appointment was concerned, it was the case of the Corporation that the workman was appointed for a period of one month from September 1, 1975 to September 30, 1975. Since the services of the workman were no more required, an order was passed on September 6, 1975. But, as per the order of appointment, he was paid one month's salary for the period between September 1, 1975 and September 30, 1975. The workman, without any protest, accepted the amount. Thereafter it was not open to him to raise a dispute. It was also contended that the workman had raised the dispute after about seven years and the same should not be entertained. A prayer was, therefore, made to dismiss the claim. B C D

The Labour Court, Allahabad, vide its award dated September 17, 1984 held that the workman was appointed in 1973 and he had completed 240 days. His services, therefore, could not have been terminated except in accordance with the provisions of the Act. Since he had not been paid retrenchment compensation, the action of the Corporation was illegal. He was, therefore, entitled to reinstatement with full back wages. Accordingly, the appellant-Corporation was directed to reinstate the workman in service with full back wages. E F

Being aggrieved by the award of Labour Court, the appellant preferred a writ petition in the High Court of Judicature at Allahabad. Initially, notice was issued on March 25, 1985 and award passed by the Labour Court was stayed. On February 4, 1988, however, the earlier order was modified by the Court. The workman was ordered to be reinstated and 50% wages was ordered to be paid to him. The interim order was made "subject to such final orders as may be passed" at the final hearing of the petition. It was the case of the appellant-Corporation that in compliance with the order passed by the High Court, the workman was reinstated on February 9, 1988. He was, however, found carrying passengers without tickets and after holding an inquiry, his services were again terminated on July 31, 1991. But without considering the G H

A relevant facts and circumstances including the action of terminating the services of the workman in July, 1991, the High Court disposed of the petition on July 8, 2003 by dismissing the writ petition observing that the findings recorded by the Labour Court did not warrant interference in exercise of the power under Article 226 of the Constitution. Accordingly, the petition was disposed of and interim relief was vacated. It is this order which is challenged B in the present appeal.

On January 27, 2004, the petition was called out for admission hearing and notice was issued to the respondent "confined to payment of back wages only". Thereafter, the matter was heard from time to time.

C

We have heard the learned counsel for the parties.

Learned counsel for the appellant-Corporation submitted that services of the respondent-workman were terminated in accordance with the terms and conditions of the order of appointment and the authorities had committed an D error in entertaining the dispute and in passing the award against the Corporation. It was also submitted that there was gross delay and laches on the part of the workman in approaching the Conciliation Officer and the Labour Court. The action of termination of services was taken in 1975, but an application was made for the first time before the Conciliation Officer in July, 1982 *i.e.* almost after seven years. Neither the Conciliation Officer should E have submitted 'failure report', nor the State Government should have referred the matter for adjudication to Labour Court. The Labour Court ought not to have passed an award of reinstatement with continuity in service and back wages. The said order, therefore, deserved to be set aside. The High Court also ought to have considered all these facts and allowed the petition filed F by the Corporation. In any case, even if this Court is of the view that the order of reinstatement does not deserve interference, the workman is not entitled to back wages and to that extent, the appeal deserves to be allowed.

The learned counsel for the first respondent, on the other hand, supported the award made by the Labour Court and the order passed by the G High Court. He submitted that the contentions as to the nature of appointment and delay in initiation of proceedings by the workman may not be permitted to be raised by this Court in view of limited notice issued by this Court as to payment of back wages. It was stated that there was no delay on the part of the workman in approaching Labour forum. Immediately after termination of services, the workman filed departmental appeals and after the orders in

H

the appeals, he invoked jurisdiction of Labour Authorities. On merits, it was submitted that when the action was held to be bad by the Labour Court, the workman was entitled to back wages and even that part deserves no interference. He, therefore, submitted that the appeal is liable to be dismissed.

Having heard the learned counsel for the parties, we are of the opinion that the appeal deserves to be partly allowed. There is considerable force in the contention of the learned counsel for the appellant-Corporation that the appointment of the workman was *ad-hoc* and purely temporary. He was paid one month's salary on September 6, 1975 when his services were terminated. But, it appears that the workman made grievance against the said action by filing departmental appeals and thereafter approached Labour forum and a reference was also made by the State Government. Since this Court has issued limited notice as to payment of back wages, it would not be appropriate now to hold that there was delay on the part of the workman and the action was not maintainable and no relief ought to have been granted by the Labour Court or by the High Court.

In our opinion, however, the limited grievance of the learned counsel for the Corporation is well founded. Admittedly, the order of termination was passed on September 6, 1975. Admittedly, an application was made to the Conciliation Officer, Allahabad by the workman on July 17, 1982, that is, after about seven years from the date of termination. In the circumstances, therefore, the Corporation is justified in raising legitimate objection as regards payment of wages for the said period. Since the respondent had invoked jurisdiction of Labour forum after seven years, it would not be appropriate to direct the appellant-Corporation to pay wages for the intervening period.

But even otherwise, the award passed by the Labour Court as also the order of the High Court granting back wages deserves interference. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised keeping in view the facts and circumstances of each case and neither straight jacket formula can be evolved, nor a rule of universal application can be adopted [vide *P.G.I. of Medical Education & Research, Chandigarh* v. *Raj Kumar,* [2001] 2 SCC 54; *Hindustan Motors* v. *Tapan Kumar Bhattacharya,* [2002] 6 SCC 41]. In *Kendriya Vidyalaya Sangathan* v. *S.C. Sharma,* [2005] 2 SCC 363, this Court held that when question of determination of entitlement of back wages comes up for consideration, *prima facie*, it is for the employee to prove that he had not been gainfully employed. Initial burden is on the employee to show that he

A remained without any employment. In several cases, similar view has been taken by this Court in recent years. In *M.P. State Electricity Board* v. *Jarina Bee*, [2003] 6 SCC 141, it was observed that reinstatement in service and payment of back wages are two different things and payment of back wages is not a natural consequence of setting aside an order of dismissal. In *Allahabad Jal Sansthan* v. *Daya Shanker Rai*, [2005] 5 SCC 124, it was B indicated that the law is not in absolute terms that in all cases of illegal termination of services, a workman must be paid full back wages. In *Haryana State Coop. Land Development Bank* v. *Neelam*, [2005] 5 SCC 91, it was stated that the aim and object of Industrial Disputes Act is to impart social justice to the workman but keeping in view his conduct. Payment of back C wages, therefore, would not be automatic on entitlement of the relief of reinstatement. In *General Manager, Haryana Roadways* v. *Rudhan Singh*, [2005] 5 SCC 591, the Court reiterated that there is no rule of thumb that in each and every case, where the Industrial Tribunal records a finding that the order of termination of service was illegal that an employee is entitled to full back wages. A host of factors which are relevant, must be taken into account. D

The Court stated:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A E host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether *ad hoc*, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like F should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at G his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period *i.e.* from the date of termination till the date of the award, which our experience shows is often quite large, H would be wholly inappropriate. Another important factor, which requires

to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year." A

In *Allahabad Jal Sansthan* v. *Daya Shankar Rai,* [2005] 5 SCC 124, after considering the relevant cases on the point, the court stated: B

> "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." C D

From the above cases, it is clear that no precise formula can be adopted nor 'cast iron rule' can be laid down as to when payment of full back wages should be allowed by the court or Tribunal. It depends upon the facts and circumstances of each case. The approach of the Court/Tribunal should not be rigid or mechanical but flexible and realistic. The Court or Tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the Court or Tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order. E F G

Considering the case law on the point and applying the principles laid down therein to the facts of the present appeal, we are of the view that the respondent workman is not entitled to back wages from 1975 when his services were terminated. The award was passed in the instant case on September 17, 1984 but was stayed by the High Court vide interim order dated March 25, H

A 1985. The interim order was modified on February 4, 1988 and the first respondent was reinstated immediately on February 9, 1988. In our opinion, therefore, ends of justice would be met if the workman is allowed back wages to the extent of 50% from the date of the award till he was reinstated in service.

B For the foregoing reasons, the appeal is partly allowed and the award passed by the Labour Court, Allahabad as also the order passed by the High Court of Judicature, Allahabad is modified. The first respondent-workman is not entitled to back wages from 1975 to 1984. He is, however, held entitled to 50% back wages from the date of the award till the date of reinstatement. C Thereafter obviously, he is entitled to his wages in accordance with law. The appeal is accordingly disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

V.S.S. Appeal disposed of.