Court No. - 5

Case :- WRIT - C No. - 11692 of 2007

Petitioner :- Smt. Vidya Rawat
Respondent :- State of U.P. and Others
Counsel for Petitioner :- Y.K. Sinha,Akshat Sinha
Counsel for Respondent :- C.S.C.,Vivek Ratan Agrawal

Hon'ble Piyush Agrawal,J.

List has been revised. No one appears on behalf of the respondent no. 3.

Heard Shri Akshat Sinha, learned counsel for the petitioner and learned Standing Counsel.

The instant writ petition has been filed challenging the award dated 25.06.2006 passed by the Labour Court, 1st, Ghaziabad in Adjudication Case No. 240 of 1994 so far as it has not awarded back wages to the petitioner and grant full back wages from the date of termination till the actual reinstatement.

Learned counsel for the petitioner submits that the petitioner was appointed as Assembly Girl by the respondent no. 3 on 19.11.1985. On 14.08.1993, she was terminated from service without any opportunity of hearing or paying retrenchment compensation to her. Thereafter, a reference was made. After exchange of pleadings and evidence, the Labour Court, vide impugned award dated 25.06.2006, has held that the order terminating the services of the petitioner is illegal and directed for reinstatement of the petitioner in service, but did not award any back wages to the petitioner without assigning any reason. He further submits that the said award has not been challenged by the respondent no. 3 and she is discharging her duties without there being any complaint. He further submits that the Labour Court has not properly and legally considered the question of back wages while passing the award. He prays for allowing the writ petition.

After hearing the learned counsel for the petitioner, perused the record.

In the award, the order of termination was found illegal and therefore, the petitioner was reinstated. The Labour Court has recorded the argument of both the side and in paragraph no. 14, the arguments and pleadings of the petitioner have been recorded, in which prayer of the petitioner for reinstatement along with back wages has also been recorded. The award was passed holding the termination order as bad and directed for reinstatement of the petitioner. Further, the respondent no. 3 has never challenged the award. If a termination order is set aside being illegal, the consequence would be that the order of termination was never passed and therefore, reinstatement in service with full back wages is the natural consequence of setting

aside the order of termination. The Apex Court in ***State of U.P. Vs. Charan Singh*** [2015 AIR SCW 2615] has made the following observations:-

*"**17.** In the present case, there has been an absence of cogent evidence adduced on record by the appellant to justify the termination of the services of the respondent-workman, who has been aggrieved by the non-awarding of back wages from the date of termination till the date of passing the Award by the Industrial Tribunal. There is no justification for the Industrial Tribunal to deny the back wages for the said period without assigning any cogent and valid reasons. Therefore, the denial of back wages to the respondent even though the Industrial Tribunal has recorded its finding on the contentious question no.1 in the affirmative in his favour and in the absence of evidence of gainful employment of the respondent during the relevant period, amounts to arbitrary exercise of power by the Industrial Tribunal for no fault of the respondent and the same is contrary to law as laid down by this Court in a catena of cases. Hence, it is a fit case for this Court to exercise its power under Order XLI Rule 33 of the Civil Procedure Code, 1908, to award back wages to the respondent, even though the respondent has not filed a separate writ petition questioning that portion of the Award wherein no back wages were awarded to him by the Courts below for the relevant period. The respondent has got a right to place reliance upon the said provision of the Civil Procedure Code, 1908 and show to this Court that the findings recorded by both the Courts below in denying back wages for the relevant period of time in the impugned judgment and Award is bad in law as the same is not only erroneous but also error in law. Therefore, in accordance with the power exercised by this Court under Order XLI Rule 33 of this Civil Procedure Code, 1908 and in the light of the judgment of this Court in Delhi Electric Supply Undertaking v. Basanti Devi and Anr[3]., we hold that the State Government is liable to pay 50% of the back wages to the respondent from the date of his termination order dated 22.08.1975 till the date of the Award passed by the Industrial Tribunal, i.e. 24.02.1997. The relevant paragraphs of the above referred judgment reads thus:*

"17. In our approach we can also draw strength from the provisions of Rule 33 of Order 41 of the Code of Civil Procedure which is as under:

"33. Power of Court of Appeal.-The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is a part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the appellate court shall not make any order under Section 35- A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order."

18. This provision was explained by this Court in Mahant Dhangir v. Madan Mohan in the following words:

"The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words 'as the case may require' used in Rule 33 of Order 41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see, may be these: That the parties [pic]before the lower court should be there before the appellate court. The question raised must properly arise out of the judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It may be urged by any party to the appeal. It is true that the power of the appellate court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on

mere technicalities."

18. *Further, the learned counsel for the respondent, in support of his legal submissions with regard to back wages has rightly placed reliance on the decision of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya[4], wherein this Court has held thus:*

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

(emphasis laid down by this Court)

19. *He has further placed reliance on the decision of Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.[5], wherein this Court has held thus:*

"36. On the issue of back wages to be awarded in favour of the appellant, it has been held by this Court in Shiv Nandan Mahto v. State of Bihar that if [pic]a workman is kept out of service due to the fault or mistake of the establishment/company he was working in, then the workman is entitled to full back wages for the period he was illegally kept out of service. The relevant paragraph of the judgment reads as under:

"8. ... In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the appellant could not have been denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the appellant was entitled to be paid full back wages for the period he was kept out of service."

37. Further, in Haryana Roadways v. Rudhan Singh, the three-Judge Bench of this Court considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The relevant paragraph reads as under:

"8. 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 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 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 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, 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."

20. *Thus, in view of the cases referred to supra, there was absolutely no justification on the part of the Industrial Tribunal to deny back wages to the respondent even when it is found that the order of termination is void ab initio in law for non-compliance of the mandatory provisions under Section 6-N of the Act. Keeping in view the fact that the period of termination was in the year 1975 and the matter has been unnecessarily litigated by the employer by contesting the matter before the Industrial Tribunal as well as the High Court and this Court for more than 40 years, and further, even after the Award/order of reinstatement was passed by the Industrial Tribunal directing the employer to give him the post equivalent to the post of Tube-well Operator, the same has been denied to him by offering the said post which is not equivalent to the post of Tube-well Operator and thereby, attributing the fault on the respondent for non reporting to the post offered to him, which is once again unjustified on the part of the employer.*

21. *Thus, the principle "no work no pay" as observed by this Court in the catena of cases does not have any significance to the fact situation of the present case as the termination of the services of the workman from the post of Tube-well Operator is erroneous in law in the first place, as held by us in view of the above stated reasons.*

22. *The respondent and his family members have been suffering for more than four decades as the source of their livelihood has been arbitrarily deprived by the appellant. Thereby, the Right to Liberty and Livelihood guaranteed under Articles 19 and 21 of the Constitution of India have been denied to the respondent by the appellant as held in the case of Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors[6]., wherein this Court has held thus:*

"32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which [pic]we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in Baksey that the

right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P."

(emphasis laid down by this Court)

***23.** Therefore, with respect to the judicial decisions of this Court referred to supra, we hold that the appellant is liable to pay 50% back wages in favour of the respondent from the date of the termination order dated 22.08.1975 till the date of the Award passed by the Industrial Tribunal, i.e. 24.02.1997."*

From the perusal of the aforesaid judgement, it is clear that once the award is passed treating the termination as illegal, the Labour Court ought to have granted back wages. The petitioner has brought on record the written statement filed before the Labour Court as Annexure No. 2 to the writ petition; wherein, in paragraph no. 14, it has specifically been prayed for back wages from the date of termination till the date of reinstatement, but the Labour Court, while passing the award, has only directed for reinstatement of the petitioner without assigning any reason for not granting back wages to the petitioner.

In view of the aforesaid facts & circumstances of the case as well as the law laid down by the Apex Court in ***Charan Singh*** (supra), the award dated 25.06.2006 passed by the Labour Court, 1st, Ghaziabad in Adjudication Case No. 240 of 1994 is modified to the extent that the petitioner shall be entitled to back wages from the date of her termination till the date of reinstatement.

The petitioner is at liberty to move an appropriate application under section 6-H(1) of the Industrial Dispute Act for calculating the amount of back wages within a period of three weeks from today and thereafter, the court concerned shall conclude the proceedings within a period of three months from the date of application after hearing all stake holders.

In the result, the writ petition succeeds and is allowed.

Order Date :- 8.8.2023
Amit Mishra