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MP-4189-2021

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 25th OF FEBRUARY, 2025MISC. PETITION No. 4189 of 2021*THE STATE OF MADHYA PRADESH AND OTHERS**Versus**AMIT GAUTAM*

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Appearance:

*Shri A.S. Baghel - Govt. Advocate for petitioners-State.**Shri Sanjay Verma - Advocate for respondent-workman.*
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ORDER

This petition has been filed assailing the Award dated 19.11.2019 passed by the Presiding Officer, Labour Court, Satna (M.P.) in Case No.83 of 2016 whereby the respondent-workman was reinstated in service with 50% back wages.

2. The facts of the case, in short, are that the respondent-workman was appointed as a security worker on daily wages at the office of respondent No.3-department and worked from 01.09.2012 till 30.04.2014 continuously. The management used to pay him on Collectorate rate. He had worked for a period of more than 240 days. His services were terminated from 30.04.2014 without assigning any reason. He has not been given notice of retrenchment and retrenchment compensation. The termination was bad in terms of Sections 25-N and 25-F of the Industrial Disputes Act, 1947. The workman claimed reinstatement in service and back-wages. The workman in his statement of claim as well as in his affidavit by way of evidence deposed that



he is unemployed since the date of his illegal termination despite his best efforts.

3. The Labour Court, after considering the pleadings and evidence led by the parties, came to the conclusion that the respondent's working of more than 240 days in a calendar year stood proved and it held that there was master-servant relationship between the department and the respondent-workman. It further drew adverse inference against the department for not filing attendance register/muster-roll for the period the respondent worked and accordingly, directed for reinstatement with 50% back-wages. Hence, this petition.

4. Placing reliance on the judgments rendered in *Incharge Officer vs Shankar Shetty*, reported in (2010) 9 SCC 126, *Telegraph Deptt. vs Santosh Kumar Seal*, reported in (2010) 6 SCC 773 and *Jagbir Singh vs Haryana State Agriculture Mktg. Board*, reported in (2009) 15 SCC 327, it is argued that the reinstatement should not be awarded as a matter of routine in all the cases. The total facts of the case has to be assessed in its proper perspective. In the present case, compensation should have been directed. The Labour Court grossly erred in reinstating the respondent-workman and granting 50% back wages. No appointment order was ever issued to him and he was never appointed against any vacant or sanctioned post. He has prayed for quashment of the impugned Award.

5. The counsel appearing for respondent-workman denies the stand taken on behalf of the petitioners-department. It is urged that the impugned Award does not suffer any illegality or perversity as the same is based on the cogent



material evidence on record. He has prayed for dismissal of the petition.

6. Heard learned counsels for the parties and perused the record.

7. The record reveals that the respondent-workman had continuously worked from 01.09.2012 till 30.04.2014 and that no retrenchment compensation is paid before terminating him, nor is there any enquiry conducted. It is observed that the workman had categorically deposed of being unemployed after his termination. There is no evidence led by the petitioner's counsel contradicting the same.

8. In the case of Hindustan Tin Works vs Employees, reported in (1979) 2 SCC 80, the Hon'ble Supreme Court has held as follows :

"9. ...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 his 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. ..."

9. Further, in the case of Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya, reported in (2013) 10 SCC 324, it is held thus :

"38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is



required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the



employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees .

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80], [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

10. Insofar as the issue regarding entitlement of a daily wager for reinstatement or back-wages is concerned, the Hon'ble Supreme Court in the case of Krishan Singh vs Haryana State Agricultural Mktg. Board reported in (2010) 3 SCC 637 passed an award in favour of a person who was said to be engaged as a daily wager and directed his reinstatement as a daily wager with 50% back wages.

11. If the aforesaid proposition of law is applied to the facts of the present case, then it can be inferred that no illegality has been committed by the



learned Labour Court in reinstating the respondent-workman with 50% back wages. As no flaw could be pointed out by the petitioner-department in the findings returned by the learned Labour Court, the reliefs as sought cannot be granted. There is nothing on record to point out that the provisions of Sections 25-N and 25-F of the Industrial Disputes Act, 1947 are complied with prior to dispensing with the services of respondent-workman. The impugned Award is upheld.

12. The petition *sans* merit and is accordingly **dismissed**. No order as to costs.

(VISHAL MISHRA)
JUDGE