

Court No. - 8

Case :- WRIT - C No. - 1004960 of 2011

Petitioner :- Baijeet Ram

Respondent :- Central Govt. Industrial Tribunal Cum Labour Court Thro. Its

Counsel for Petitioner :- P.K. Srivastava, Ankit Mishra, Mohd. Ali, Piyush Mishra, Renu Misra

Counsel for Respondent :- Prasant Kr Srivastava, Sharad Tiwari

Hon'ble Pankaj Bhatia, J.

1. Heard learned Counsel for the petitioner and learned Counsel for the respondent-Bank.

2. The present petition has been filed challenging an order dated 16.03.2011, whereby the Central Government Industrial Tribunal has passed an award granting compensation of Rs.30,000/- to be paid to the petitioner along with interest @ 8% per annum.

3. The claim of the petitioner is that he was retrenched contrary to the mandates of Industrial Disputes Act. It was claimed that he had worked with the Bank on a daily wage basis from 24.06.1997 to 03.01.2003 and was being paid initially @ Rs.30/- per day. Subsequently, he was paid @ Rs.40/- per day. The Tribunal after exchange of pleadings recorded that prior to the termination i.e. 03.01.2003, the petitioner had worked for 240 days in a calendar year, however, considering the various decision of the Hon'ble Supreme Court, the Tribunal was of the view that as the petitioner had worked for a short period, he was not entitled for reinstatement with back wages and the Tribunal proceeded to award a damage of Rs.30,000/- in favour of the petitioner.

4. The contention of the Counsel for the petitioner is that once the Tribunal had recorded that the petitioner had worked for 240 days in a calendar year. It was incumbent upon the Tribunal to have reinstated the petitioner with back wages. In support of the said submission, he places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Pradeep vs Manganese Ore (India) Limited and others; (2022) 3 SCC 683***. He emphasizes on paragraph 12 of the said judgment, which reads as under:

"12. It is, undoubtedly, true when the question arises as to whether the back wages is to be given and as to what is to be the extent of back wages, these are matters which will depend on the facts of the case as noted in Deepali Gundu Surwase [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] . In a case where it is found that the employee was not at all at fault and yet, he was visited with illegal termination or termination which is actually activated by malice, it may be unfair to deny him the fruits of the employment which he would have enjoyed but for the illegal/malafide termination. The effort of the Court must be to then to restore the status quo in the manner which is appropriate in the facts of each case. The nature of the charges, the exact reason for the termination as evaluated and, of course, the question as to whether the employee was gainfully employed would be matters which will enter into the consideration by the Court."

5. The Counsel for the petitioner next argues that even otherwise, the Tribunal awarding the damages is based upon a perception that the petitioner was being paid Rs.40/- per day, which is contrary to the evidence led by the petitioner and was not controverted.

6. The Counsel for the respondent-Bank, on the other hand, argues that the petitioner had worked on day to day basis as and when the work arose and the reinstatement was not a natural consequences of Tribunal holding that the petitioner had worked for 240 days in a calendar year. He places reliance on the judgment referred to by the Tribunal in the award. As regards the second submission of the Counsel for the petitioner, he states that there is no evidence led by the Management to demonstrate that the petitioner was not paid daily wages @ Rs.80/- day.

7. In view of the rival claims and the arguments as recorded above, what transpires is that in the impugned award, the Tribunal had specifically recorded that the petitioner had worked for 240 days prior to his termination on 03.01.2003.

8. Considering the law laid down and referred to by the Tribunal, it is fairly well settled that violation of a condition would not automatically result in reinstatement. The judgment referred to by the Counsel for the petitioner in the case of *Pradeep (Supra)* would of no avail, as the Hon'ble Supreme Court had clearly held that reinstatement and restoration of status quo would be an appropriate relief, if the termination is actuated by malice, for which, no foundation in the present case exists, as such, as far as, the denial of the relief is concerned, the matter does not require any interference, however, as there is no foundation for the Tribunal to hold that the petitioner was getting an amount of Rs.40/- per day in exercise of powers under Article 226 of the Constitution of India, I deem

appropriate to enhance the compensation with a direction to the respondent-Bank to further pay an amount of Rs.7,5000/- to the petitioner in addition to the amount awarded by the Tribunal.

9. The amount shall be paid within a period of six weeks from the date of production a certified copy of this order, failing which, the same would carry interest @ 8% per annum from today till actual payment/ realization.

10. In terms of the aforesaid observations/ directions, the writ petition is ***disposed off***.

Order Date :- 14.12.2023

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