

Neutral Citation No. - 2024:AHC-LKO:22799

Court No. - 5

Case :- WRIT - C No. - 1002969 of 2009

Petitioner :- U.P.State Road Transport Corporation Gomti Nagar
Lucknow

Respondent :- Anwar Ali S/O-Late Ahmad Hussain

Counsel for Petitioner :- Dharmendra Gupta,Akhilesh Kumar
Srivastava

Counsel for Respondent :- C.S.C.,Abdul Samad,Avdhesh Shukla
and

Case :- WRIT - C No. - 1004069 of 2009

Petitioner :- Anwar Ali

Respondent :- U.P.State Road Transport Corporation Gomti Nagar
Lko.

Counsel for Petitioner :- Jagdish Prasad Maurya,Avdhesh
Shukla,Chandra Bhanu Singh,Firdaus Bano

Counsel for Respondent :- C.S.C.,Akhilesh Kumar Srivastava

Hon'ble Abdul Moin,J.

1. Heard Sri Akhilesh Kumar Srivastava, learned counsel for the petitioner and Sri Avdhesh Shukla, learned counsel appearing on behalf of the respondent no.1.
2. At the very outset, Sri Akhilesh Kumar Srivastava, learned counsel for the petitioner states that despite the substitution application having been allowed by this Court vide order dated 24.09.2019, he could not incorporate the legal heirs of the respondent. He prays for and is permitted to substitute the legal heirs of the respondent during the course of the day.
3. There is consensus at the bar that the connected petition namely Writ-C No. 1004069 of 2009 which has been filed by the respondent Workman challenging the same award also has the same facts and can be decided together. Accordingly, the Court proceeds to decide both matters. The facts of Writ-C No.1002969 (MS) of 2009 are being taken to decide the matters.
4. Instant writ petition has been filed praying for the following main reliefs:-

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"(i) Issue a writ of Certiorari quashing the impugned award dated 25.04.2008 passed by Opp. Party No. 2 in Adj. Case No. 414/2016 contained in Annexure No. 1 to the writ petition.

(ii) Issue a writ of certiorari quashing the impugned recovery notice dated 15.05.2009 issued in pursuance of impugned award dated 25.04.2008 passed by Opp. Party No. 2 in Adj. Case No. 414 of 2006 contained in Annexure No. 13 to the writ petition.

*(iii) Issue a Writ of Mandamus commanding the Opp. Parties not to proceed further in pursuance of impugned award dated 25.04.2008 passed by Opp. Party No. 2 in Adj. Case No. 414*2016 contained in Annexure No. 1 to the writ petition."*

5. The main reliefs of Writ Petition No. 1004069 of 2009 are as follows:-

(i) Issue a writ, order or direction in the nature of mandamus thereby commanding opposite party no. 1 to 3 to make up-to-date payment of service benefits alongwith 18 % interest till date of actual payment is made to the petitioner with effect from date of termination order dated 31.05.1990 till his reinstatement in service.

(ii) Issue, a writ, order or direction in the nature of mandamus thereby directing opposite party no. 4 to award full backwages with effect from 31.05.1990 to 12.01.2001 and rest 50 % backwages with effect from 12.01.2001 till reinstatement and other retiral monetary benefits computed in accordance with law under the facts and circumstances of the case.

(iii) Issue writ, order or direction in the nature of certiorari to quash the order dated 25.04.2008 passed by opposite party no. 4 to extent of refusal of full backwages with effect from 31.05.1990 to 12.01.2001 and further rest of 50 % backwages part with effect from 12.01.2001 till reinstatement in service.

6. The case set forth by the petitioners is that the respondent Workman was working in the Corporation when his services were terminated vide order dated 31.05.1990, a copy of which is annexure 11 to the petition. Being aggrieved, a reference was made on 12.01.2001 which resulted into an adjudication Case vide Case No. 414 of 2006 Inre; Seva Prabandak, U.P.S.R.T.C and Anr Vs. Anwar Ali being registered before the learned Industrial Tribunal (hereinafter referred to as "Tribunal").

7. During the course of the proceedings, an issue was framed by the learned Tribunal which was as to whether the termination of the service of the workman on 31.05.1990 was legal and valid and if not, as to what reliefs he was entitled to.

8. The said issue was decided vide order dated 12.09.2007, a copy of which has been filed as annexure SA 1 to the supplementary WRIT - C No. - 1002969 of 2009

affidavit dated 08.01.2024 filed in connected Writ-C No.1004069 of 2009.

9. While deciding the issue, the learned Tribunal came to the specific finding that the inquiry held against the workman was totally illegal and unjustified.

10. Thereafter, the learned Tribunal, after hearing the parties, passed the impugned award dated 28.04.2008, a copy of which is annexure 1 to the petition per which the workman has been held entitled for being reinstated in service and was also awarded back wages of 50 % w.e.f 12.01.2001 till his reinstatement.

11. It has been stated at bar that the respondent Workman has died on 11.11.2016 and his legal heirs have been brought on record. Sri Shukla, learned counsel for the respondents also states that the respondent-Workman would have retired in the year 2009 but he had not been reinstated in service on account of the stay order dated 29.05.2009 passed by the Court which required the petitioner employer to comply with the provisions under Section 17 B of the Industrial Disputes Act, 1947 (hereinafter referred to as "Act, 1947") for staying the award.

12. Sri Akhilesh Srivastava, learned counsel for the petitioner fairly states that as the provisions of Section 17 B of the Act, 1947 are not applicable consequently, there was no requirement of compliance of the said provision and thus, the stay order being conditional, the effect may be examined by the Court.

13. Sri Srivasava, learned counsel for the petitioners while raising a challenge to the impugned award has raised three grounds namely (a) that there was a delay of nine and half years in making of the reference by the workman i.e he having been terminated in 1990 and the reference having been made in the year 2001 which itself entailed the dismissal of the case by the learned Tribunal which has not been examined in its proper perspective (b) the wages as have been

awarded by the learned Tribunal have been awarded w.e.f the date of reference i.e 12.01.2001 rather should be from the date of award & (c) that the learned Tribunal has failed to appreciate that the inquiry was held in accordance with law and thus it patently erred in law in initially holding that the inquiry was a farce and thereafter interfering in the order of termination.

14. No other ground has been urged.

15. Learned counsel for the petitioner states that so far as the delay of nine and half years in making of the reference by the workman is concerned, he is placing reliance on the judgment of the Apex Court in the case of **Assistant Engineer, Rajasthan State Agriculture Marketing Board Vs. Mohan Lal** reported in **2003 Law Suit (SC) 725**.

16. So far as the grant of back wages is concerned, reliance has been placed by the learned counsel for the petitioners on the judgment of the Apex court in the case of **U.P.S.R.T.C Ltd Vs. Sarda Prasad Misra and Anr** reported in **2006 AIR SCW 3216**.

17. Per contra, Sri Awadesh Shukla, learned counsel appearing on behalf of the Workman argues that the learned Tribunal had passed a detailed order with regard to the issue i.e as to whether the inquiry which was held against the workman was in accordance with law. Thereafter, learned Tribunal had passed a detailed order dated 12.09.2007 per which it was held that the inquiry held against the respondent-Workman was a total farce, unjustified & illegal. The reason which prevailed on the learned Tribunal to arrive at the said finding would be apparent from the fact that the learned Tribunal has specifically recorded that despite a date of 14.07.1988 being fixed in the inquiry and the Inquiry Officer having required a notice to be sent to the respondent-Workman yet no notice was ever sent to the workman. Subsequent thereto, the inquiry proceeded ex-parte and despite various other dates again having been fixed, the workman

failed to appear and thus, once the inquiry itself proceeded without any date being informed to the workman and he failed to appear, which fact has also been admitted by the Senior Foreman, Raibareilly who appeared before the learned Tribunal and whose statement was also recorded and who admitted of no information of the date of inquiry being sent to the respondent-Workman consequently, it emerges that the inquiry held against the respondent-Workman was held in gross violation of rules of natural justice and without affording any opportunity to him which is clearly a farce in the eyes of law and could not be said to be legal or justified and thus any punishment order which has been passed on the basis of said inquiry including the termination order dated 31.05.1990 cannot be said to be legal and justified in the eyes of law. He further argues that this reason prevailed on the learned Tribunal to pass the award impugned.

17. The further argument of Sri Awadesh Shukla, learned counsel appearing on behalf of the respondent-Workman is that the learned Tribunal had itself granted ample opportunity to the Corporation to produce its evidence in support of the charges against the workman but the Corporation failed to produce any evidence. This would be apparent from a perusal of paragraphs 11 & 16 of the award whereby the learned Tribunal has categorically recorded that despite various opportunities having been given to the Corporation to prove the charges against the Workman, they failed to produce any evidence to prove the said charges against him.

18. In this regard, reliance has been placed on the judgment of the Apex Court in the case of **Neeta Kaplish Vs. Presiding Officer, Labour Court, and anr** reported in (1999) 1 SCC 517 to contend that if despite opportunity being given by the learned Tribunal, the Management failed to produce any evidence against the Workman then no fault can be found in the award of the learned Tribunal which held the case to be of no evidence against the workman.

19. The further argument of Sri Shukla is that the learned Tribunal has only awarded 50 % of the back wages despite the learned Tribunal having itself observed that the inquiry held against the workman was a farce and totally unjustified and as such, the back wages merit to be enhanced, as per prayer made in the connected petition filed by the Workman.

20. In this regard, reliance has been placed on the judgment of the Apex Court in the case of **Gowramma C (Dead) by Lrs Vs. Manager (Personnel), Hindustan Aeronautical Limited** reported in **AIR Online 2022 SC 460** to argue that the Apex Court has held that if the employee is not at fault and was kept out of work by reasons of the decision taken by the employer then the denial of fruits after being vindicated at the end of day would be unfair to the employee. He further states that after considering the same, the Apex Court has enhanced the back wages from 50 % to 75 % of the full back wages and in the instant case also once the inquiry itself has been held to be a farce as such, the back wages be enhanced by this Court in the petition which has been filed by the respondent-Workman challenging the award wherein the enhancement of the amount of the back wages has been prayed for by the respondent-workman. He further argues that once the entire inquiry has been held to be a farce consequently, the workman would also be entitled for full back wages from the date of his termination i.e 31.05.1990 till the making of a reference i.e 12.01.2001 which has not been awarded by the learned Labour Court.

21. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

22. From the arguments as raised by the learned counsels appearing on behalf of the contesting parties and perusal of records it emerges that the services of the workman Sri Anwar Ali were terminated vide order dated 31.05.1990. Sri Anwar Ali was a regular employee who had initially been appointed as a Cleaner in the year 1969 and

thereafter had been promoted as Fitter in the year 1975. A reference was made on 12.01.2001 pertaining to the termination of Sri Anwar Ali which was referred to the learned Tribunal and was registered as Adjudication Case No. 414 of 2006. Admittedly, the reference was made after 11 years of the termination of Sri Anwar Ali.

23. During the course of the proceedings, the learned Tribunal had framed an issue which was as to whether the termination of the services of the Workman on 31.05.1990 was legal and valid and if not, as to what relief he was entitled to. The said issue was decided by the learned Tribunal vide order dated 12.09.2007 and the learned Tribunal came to the specific finding that the inquiry held against the Workman was totally illegal and unjustified. The learned Tribunal gave an opportunity to the employer namely the Corporation to prove the charges against the Workman by leading of evidence but the employer/Corporation failed to lead any evidence with regard to the charges against the Workman. Thereafter, the learned Tribunal vide award dated 28.04.2008 held that the termination of the Workman to be illegal and he has been held entitled for being reinstated in service along with back wages of 50 % w.e.f 12.01.2001 i.e the date of reference till his reinstatement.

24. It has been stated at bar that the Workman would have retired in the year 2009 but he was never reinstated in service and has also died on 11.11.2016 and his legal heirs have been substituted.

25. The award was not complied with by the Corporation on the ground of a stay order having been granted by this Court vide order dated 29.05.2009 which was a conditional stay order requiring the employer to comply with the provisions under Section 17 B of the Act, 1947 for staying the award. As the employer failed to comply with the provisions of Section 17 B of the Act, 1947 consequently, it cannot be said that there was any stay order.

24. The award has been challenged by the Corporation/employer on

three grounds which the Court now proceeds to consider and decide.

25. The first ground raised by the employer is that there was a delay of nine and half years in making of the reference by the Workman i.e he having been terminated in 1990 and the reference having been made in the year 2001 which itself entailed the adjudication case to be dismissed.

26. The said ground is patently fallacious inasmuch as the learned Labour Court has itself considered this aspect of the matter in the award impugned dated 28.04.2008 by not awarding any back wages to the workman for the period between the date of his termination till the date of reference.

27. In this regard, reliance has been placed by the Corporation on the judgment of **Mohan Lal (supra)**. For the sake of convenience, the relevant observations of the Apex Court in the case of **Mohan Lal (supra)** are reproduced below:-

"20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh¹³ that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work- charged employee for a period from 01.11.1984 to 17.02.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.02.1986. The workman raised the industrial dispute in 1992, i.e., after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly.

Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum."

28. From a perusal of the judgment in the case of **Mohan Lal (supra)** it is apparent that the said case was of a work charged employee who had worked for a short period from 01.11.1984 to 17.08.1986 i.e 286 days. The Workman in the said case raised the industrial dispute in the year 1992 i.e after six years of his termination and ignoring this, the Workman was directed to be reinstated. In those circumstances, the Hon'ble Apex Court interfered and in lieu of reinstatement, compensation was granted by the Apex Court.

29. Thus, the judgment of the Apex Court in the case of **Mohan Lal (supra)** would have no applicability in the facts of the instant case wherein the Workman is a regular employee and had worked for a substantial long period of time having been appointed in the year 1969 and further on account of the delay, the learned Tribunal itself did not award any back wages from the date of termination till making of the reference.

30. So far as the ground of the wages having been awarded by the learned Tribunal w.e.f the date of reference i.e 12.01.2001 instead of date of the award , the said ground may also not detain the Court considering the fact that the learned Tribunal has clearly not awarded any back wages for the period from the date of termination till the date, the reference was made and has subsequently, awarded the back wages from the date of reference till the Workman was to be reinstated in service. The Court does not find any illegality or perversity with the award of the learned Tribunal in this regard.

31. So far as the judgment of the Apex Court in the case of **Sarada Prasad Misra (supra)** over which reliance has been placed by the learned counsel for the employer in order to to argue that no back wages should have been awarded from the date of reference rather the same should have been from the date of award, in order to examine

the said argument, the Court may reproduce the relevant observations of the Apex Court in this regard which are as under:-

"12. 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.

13. 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. "

32. From a perusal of the aforesaid judgment it emerges that the order of termination was passed in the year 1975 and an application before the Conciliation Officer was made in the year 1982 i.e after seven years from the date of termination. It also emerges that the said case pertains to an adhoc and temporary employee. The said judgment would have no applicability in the facts of the instant case more particularly when the Workman herein was a regular employee and had put long years of working from 1969 till his termination in the year 1990 i.e a working of 21 years as a regular employee.

33. So far as the ground that the learned Tribunal has failed to appreciate that the inquiry was held in accordance with law and that it patently erred in law in holding that the inquiry was a farce, it is to be seen that the said issue was decided by the learned Tribunal pertaining to the illegality of the inquiry which was held to be a farce vide order dated 12.09.2007. Incidentally, the said order was never challenged by the employer -Corporation before any Higher Court and thus, the said

finding has attained a finality. Subsequent thereto, the learned Tribunal gave ample opportunity to the employer to lead evidence to sustain the termination order of the Workman as stands recorded in paragraphs 11 & 16 of the award but the employer failed to lead any evidence and consequently, in absence of any evidence being led to sustain the termination order on the basis of the inquiry which was clearly held by the learned Tribunal to be a farce, as such, this Court does not find any infirmity and illegality with the said finding of the learned Tribunal.

34. Now the Court proceeds to consider the arguments of the learned counsel for the workman pertaining to enhancement of back wages.

35. From the discussion made above, it is apparent that despite the specific finding of the learned Tribunal of the inquiry held against the Workman to be a farce and ample opportunity having been given to the Corporation to lead evidence, it failed to lead any evidence with regard to either justify the charges against the Workman or to somehow or the other justify that the termination order was legal and valid.

36. Here it would also be relevant to mention the judgment of the Apex Court in the case of **Neeta Kaplish (supra)** wherein the Apex Court has held as under:-

"24. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the Management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity, it cannot raise any ground at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the Management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

26. Learned counsel for the appellant contended that in spite of the direction by the Labour Court to the respondent-management to lead evidence, it was open to the Management to rely upon the domestic enquiry proceedings already held by the Enquiry Officer; including the

evidence recorded by him, and it was under no obligation to lead further evidence, particularly as the Management was of the view that the charges, on the basis of the evidence already led before the Enquiry Officer, stood proved. It was also contended that under [Section 11-A](#), the Labour Court had to rely on the "materials on record" and since that enquiry proceedings constituted "material on record", the same could not be ignored. The argument is fallacious.

27. The record pertaining to the domestic enquiry Would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of [Section 11-A](#) as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of [Section 11-A](#) of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences. "

37. From a perusal of the aforesaid judgment it clearly emerges that when the employer fails to justify the termination order despite the inquiry having been held be a farce and despite ample opportunity having been granted to the employer to justify the termination order and lead evidence as such, the Court finds that the learned Tribunal correctly held the termination order to be invalid in the eyes of law. As such, keeping in view the award of the learned Tribunal, the only conclusion which this Court reaches is that the inquiry held against the workman was a farce and totally illegal. Thus, once the workman was kept away from the work despite being willing to work and despite the award of the learned Tribunal having been conditionally stayed by this Court and the employer having failed to comply with the said condition, the workman having retired and died in the interregnum consequently, following the judgment of the Apex Court in the case of **Gowramma C (Dead) (supra)** the Court finds justifiable reasons to enhance the back wages from 50 % to 75 % of the full back wages to which the workman would have been entitled.

38. For the sake of convenience, the relevant observations of the Apex Court in the case of **Gowramma C (Dead) (supra)** are reproduced as under:-

"12. The most important question is whether the employee is at fault in any manner. If the employee is not at all at fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee. In such circumstances, no doubt, the question relating to alternative employment that the employee may have resorted to, becomes relevant. There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. As we have already noticed, this is a case where apart from the charge of the employee having produced false caste certificate, there is no other charge. Therefore, we would think that interests of justice, in the facts of this, would be subserved, if we enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. The appeals are partly allowed. The impugned judgments will stand modified and the respondents shall calculate the amount which would be equivalent to 75% of the back wages and disburse the amount remaining to be paid under this judgment within a period of six weeks from today to the additional appellants."

39. Keeping in view the aforesaid discussion, the Writ-C No. 1002969 of 2009 is dismissed. The Writ-C No. 1004069 2009 filed by the Workman is partly allowed. The back wages are enhanced from 50 % to 75 % to be paid from the date of reference i.e 12.01.2001 till the reinstatement of the petitioner. However, as the workman was never reinstated and retired in the year 2009, as such the back wages would be payable @ 75 % of the full wages from the date of reference i.e 12.01.2001 till the retirement of the workman in the year 2009. Other consequential benefits would follow.

40. As the workman has died and the legal heirs have been substituted and the matter also pertains to the year 2009 and the termination order is of the year 1990 i.e 34 years have been lapsed since the date of termination of the respondent-Workman who is no longer in the world as such, the Corporation is required to comply with this order within a period of two months from the date of receipt of a certified copy of this order failing which the back wages shall be paid with interest @ 9 % per annum till the date of actual payment.

Order Date :- 13.3.2024

Pachhere/-

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