

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6201 of 1999

- =====
1. Prabha Devi wife of late Sri Parikhan Singh, resident of village Bania, Yadupur, P.O. Nagmatia, P.S. Madanpur, District-Aurangabad
 2. Manoj Kumar Singh,
 3. Mukesh Kumar Singh
 4. Rakesh Kumar Singh, all sons of late Sri Parikhan Singh

.... Petitioner/s

Versus

1. The State of Bihar
2. The Managing Director, Bihar State Road Transport Corporation, Sultan Place (Paribhan Bhawan) Beerchand Patel Patha, Patna
3. The Special Officer (Special Office), Bihar Stand Road Transport Corporation, Sultan Place (Paribahan Bhawan), Beerchand Patel Path, Patna
4. The Divisional Manager, Bihar State Road Transport Corporation, Dhanbad

.... Respondent/s

=====

Appearance :

For the Petitioner/s Mr. Rajendra Prasad Singh, Sr. Advocate
 With Mr. Naujot Yesu, Mr. Mukesh Kumar Singh
 Mr. Rishi Raj.

For the State : Mr. Sanjay Mandal, AC to SC-6

For BSRTC : Mr. P.K. Verma, Sr. Advocate

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 24-07-2015

1. The only question which is involved in the present writ application under Article 226 of the Constitution of India is as to what would be the effect of non-approval by the Industrial Tribunal, of an order of dismissal of a workman from service, passed by the Management, on an application filed by the said Management, seeking such approval, under Section 33 (2) (b) of

the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. The writ application was filed by one Parikhan Singh (hereinafter referred to as the workman), who died during the pendency of the writ application and has accordingly, been substituted by his heirs/legal representatives vide order dated 29.04.2014.

3. The facts are not at all in dispute. The workman was employed as Conductor under the Bihar State Road Transport Corporation (hereinafter referred to as the Corporation). Upon certain charge of misconduct, a disciplinary proceeding was initiated against him, which finally culminated into issuance of an order dated 17.03.1993 passed by the Managing Director of the Corporation, imposing upon the workman, punishment of dismissal from service. The Corporation thereafter, filed an application under Section 33(2) (b) of the Act before the Industrial Tribunal for approval of the said action of the dismissal of workman from the service of the Corporation. The application gave rise to Miscellaneous Case No. 20 of 1993 before the Presiding Officer, Industrial Tribunal, Patna. The Industrial Tribunal, Patna vide its order dated 18.08.1997

rejected the application filed by the Corporation, seeking approval of the action of dismissal from service of the employee and thus, did not approve the said action.

4. It is the case of the petitioners that as consequence of the said order dated 18.08.1997 disapproving order of dismissal from service, the workman ought to have been reinstated in the service of the Corporation since the decision of the Corporation to dismiss him from service became inoperative from its very inception. It is their case that the workman had approached the Corporation through representations regularly with a request to reinstate him and pay him back wages. Since the authorities did not give any heed to such request, he preferred the present writ application, seeking quashing of the order dated 06.04.1993, whereby, he had been dismissed from service, on the plea that the Industrial Tribunal refused to approve the said order of dismissal by rejecting the application filed by the Corporation, seeking approval under Section 33(2) (b) of the Act.

5. Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioners has relied upon a three judge Bench decision of the Supreme Court in case of *Straw*



Board Manufacturing Co. Ltd. Saharanpur vs. Govind (AIR 1962 SC 1500) and has contended that as a result of disapproval of the order of dismissal, the workmen would be deemed, never to have been dismissed or discharged from service and would remain in service of the employer, as if no such order was ever issued.

6. He has also relied on five Judge Bench decision of the Supreme Court in case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and others reported in* (2002) 2 SCC 244, in support of the said contention, by which judgment another three Judge decision of the Supreme Court in case of *Punjab Beverages Pvt. Ltd. Vs. Suresh Chand and another* (AIR 1978 SC 995) came to be overruled, wherein a view, contrary to the view taken in the case of *Straw Board Manufacturing Co. Ltd. (supra)*, was taken.

7. He has further contended that workman was not entitled only for his reinstatement, in the light of refusal by the Tribunal to approve the order of dismissal, but also for entire back wages for the period during which he had to remain out of service, because of such illegal order of dismissal. In support of his submission, he has placed reliance upon a recent

Supreme Court decision in case of *Jasmer Singh Vs. State of Haryana and another reported in (2015) 4 SCC 458*.

8. Mr. P.K. Verma, learned senior counsel appearing on behalf of the respondent Corporation, on the other hand, while not disputing the legal proposition as regards entitlement of an workman to be reinstated upon disapproval by the Industrial Tribunal of the order of dismissal under Section 33(2) (b) of the Act in the light of Supreme Court decisions in case of *Straw Board Manufacturing Company (supra)* and *Jaipur Zila Sahkari Bhoomi Bank Limited (supra)*, has contended that as on the date when the order imposing punishment of dismissal was passed on 06.04.1993, the Supreme Court decision in case of *Punjab Beverages (supra)* was in force and was, therefore, required to be followed by every one including the Tribunal and the Corporation. He has contended that the action of the Corporation in not reinstating the petitioner, despite disapproval of the order of dismissal by the Tribunal under Section 33(2) (b) of the Act cannot be said to be unjustified, in view of the Supreme Court decision in case of *Punjab Beverages (supra)* which was subsequent to the Supreme Court decision in case of *Straw Board Manufacturing Limited*

(*supra*). He has contended that if there are two conflicting decisions of the Supreme Court delivered by Bench of equal strength, the subsequent judgment is required to be followed as binding precedent and it was rightly followed by the Corporation in the present case, despite the fact that in the subsequent decision, earlier decision of the Supreme Court of equal strength was not noticed.

9. I must indicate at this juncture, that no dispute has been raised on behalf of the Corporation that approval of the action taken by the Corporation to dismiss the workman from service was required under Section 33(2) (b) of the Act. The said provision reads thus:-

“33. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman)---

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be

discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

10. A three Judge Bench of Supreme Court, interpreting the said provision i.e. Section 33 (2) (b) in case of ***Straw Board Manufacturing Limited (supra)*** held in paragraph 8 as follows:-

"8..... If the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense the order of discharge or dismissal passed by the employer does not become final and conclusive until it is approved by the tribunal under Section 33 (2)."

11. The said provision under Section 33(2) (b) of the Act

came to be considered again by another Three Judge Bench of the Supreme Court in case of *Punjab Beverages (supra)*. The Supreme Court took a view contrary to the view taken in case of *Straw Board Manufacturing Company (supra)* and held in paragraph 13 as follows:-

“13..... Whether the employer should be able to justify the order of discharge or dismissal on merits would depend upon what remedy is pursued by the workman, whether under Section 33A or under Section 33C (2). Such a highly anomalous result could never have been intended by the legislature. If such an interpretation were accepted, no workman would file a complaint under Section 33A, but he would always proceed under Section 33C(2) and Section 33A would be reduced to futility. It is, therefore, impossible to accept the argument that the contravention of Section 33 renders the order of discharge or dismissal void and inoperative and if that be so, the only remedy available to the workman for challenging the order of discharge of dismissal is that provided under Section 33A, apart of course from the remedy under Section 10, and he cannot maintain an application under Section 33C (2) for determination and payment of wages on the basis that he continues

to be in service. The workman can proceed under Section 33C(2) only after the Tribunal has adjudicated, on a complaint under Section 33A or on a reference under Section 10, that the order of discharge or dismissal passed by the employer was not justified and has set aside that order and reinstated the workman."

12. I must point out here that the three Judge Bench decision in case of *Punjab Beverages (supra)* did not notice the earlier three Judge Bench decision in case of *Straw Board Manufacturing company (supra)*.

13. There being conflicting views of two co-ordinate benches of equal strength of Supreme Court in case of *Straw Board Manufacturing Company (supra)* and *Punjab Beverages (Supra)*, the matter came to be referred to a larger Bench of five Judges of Supreme Court in case of *Jaipur Zila Sahkari Bhoomi Vikash Bank Ltd. (supra)*. The Supreme Court while overruling the decision in case of *Punjab Beverages (supra)* held in paragraph 14 as follows:-

"14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine

whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2) (b) dismissed or discharging an employee brings an end of relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate of specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightway make a complaint before the very authority where the industrial dispute is



already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2) (b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to section 33(2) (b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted."

14. The Supreme Court also took note of the fact that earlier decisions in case of ***Straw Board Manufacturing Company (Supra)*** and in case of ***Tata Iron and Steel Company Limited (supra)*** reported in AIR 1966 SC 380 were not noticed

in case of *Straw Board Manufacturing Company Ltd. (supra)*.

15. There is thus, no dispute and there cannot be over the legal proposition that once an action dismissing a workman from service, required to be approved under Section 33(2) (b) of the Act by the Industrial Tribunal, is not approved by the Tribunal, his reinstatement is a natural consequence and the Management in that circumstance, required to proceed, as if no order of dismissal was ever passed.

16. Mr. P.K. Verma, learned Senior counsel appearing on behalf of the Management has, on the other hand, submitted that as on the date when the order of dismissal was passed and on the date when the Tribunal refused to approved the order of dismissal, the Supreme Court decision in case of Punjab Beverages (*supra*) was not overruled and, therefore, the ratio decidendi of the case was the law within the meaning of Article 141 of the Constitution of India.

17. This Court is, thus, left with only question in the present case is as to whether the Supreme Court decision in case of *Punjab Beverages (Supra)* delivered on 21.2.1998 can be said to have held the field till it came to be overruled by subsequent decision of larger Bench by Supreme Court in case

of *Jaipur Sahkari Bhoomi Vikash Bank (supra)*. This question needs to be considered in the backdrop of the admitted situation that the Supreme Court in case of *Punjab Beverages (supra)* did not notice the earlier decision of the Bench of equal strength in case of *Straw Board Manufacturing Company Ltd. (supra)*. I am not able to accept the contention on behalf of the respondent Corporation that in such circumstance, subsequent judgment of Supreme Court will be required to be followed despite the fact that the subsequent Supreme Court decision did not notice the earlier decision of a Bench of equal strength in case of *Straw Board Manufacturing Company Ltd. (Supra)*. In my opinion, the Supreme Court decision in case of *Straw Board Manufacturing Company Ltd. Supra*) was never overruled and held the field on the question of effect of non approval by the Tribunal of an action by the employer, under Section 33(2) (b) of the Act. The Supreme Court in case of *Union of India and others vs. S.K. Kapoor reported in (2011) 4 SCC 589* has held that the earlier decision of coordinate Bench of equal strength is binding and subsequent decision of the Bench of equal strength, without noticing the earlier decision will be a decision per incuriam. Paragraph 9 of the said

decision is extracted hereinbelow for quick reference:-

“9. It may be noted that the decision in S.N. Narual case 2 was prior to the decision in T. V. Patel case 1. It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narual case 2 was not noticed in T. V. Patel case 1, the latter decision is a judgment per incuriam. The decision in S.N. Narual case 2 was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.”

18. It is settled legal provision that a decision of Supreme Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency, because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from very inception. The Supreme Court, dealing with the issue where overruling of an earlier judgment should be prospective or retrospective, has laid down the law, explicitly in case of ***M.A. Murthy Vs. State of Karnataka [(2003) 7 SCC 517]***, paragraph 8 of which reads thus:-

“8. The learned counsel for the appellant submitted that the approach of the High Court is

erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in Golak Nath v. State of Punjab. In ECIL v. B. Karunakar the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. and Baburam v. C.C. Jacob). It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of

prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma Case. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.”

19. In case of ***Ravi S. Naik Vs. Union of India [(1994) Supp. (2) SCC 641]***, the Supreme Court has held that there is retrospective operation of the decisions of Supreme Court. In a recent decision in case of ***B. A. Linga Reddy and ors. Vs. Karnataka State Transport Authority and others [(2015) 4 SCC 515]***, the Supreme Court, relying upon the decisions in case of ***Ravi S. Naik (supra)*** and ***M.A. Murthy (supra)***, has reiterated

the said legal position. In the light of the said decisions of the Supreme Court, I have no hesitation in arriving at a definite conclusion that a law declared by the Supreme Court will always have a retrospective effect, unless otherwise stated to be so, specifically in the decisions itself.

20. Accordingly, I find substance in submission made on behalf of the petitioner that as a result of disapproval of the action of dismissal, by the Tribunal under Section 33(2) (b) of the Act, the workman was entitled to be reinstated forthwith and the Management was required to proceed as if no order of dismissal was ever passed.

21. Mr. Singh, learned senior counsel appearing on behalf of the petitioner has rightly relied upon the Supreme Court decision in case of *Jasmer Singh vs. State of Haryana and another reported in (2015) 4 SCC 458*, in support of his plea that the petitioner should be entitled for back wages also for the period during which the workman remained out of service because of the illegal order of dismissal, which was not approved by the Tribunal.

22. Mr. P.K. Verma, learned senior counsel appearing on behalf of the Corporation has placed reliance on Supreme



Court decisions of *J.K. Synthetics Ltd. Vs. K.P. Agrawal and another reported in (2007) 2 SCC 433* (with a special reference to paragraphs 12 and 13) and *U.P. State Brassware Corporation Ltd. Vs. Uday Narain Pandey reported in (2006) 1 SCC 479*, in support of his submission that the petitioner should not be made entitled to payment of full back wages for the period during which he remained out of service.

23. In my opinion, the Supreme court decisions in case of *J.K. Synthetics Ltd. (supra)* and *U.P. State Brassware Corporation (supra)* has no application in the facts and circumstances of the present case as I am of the view that the action of the Management in not reinstating the workman despite the disapproval of the order of dismissal under Section 33(2) (b) by the Tribunal is wholly unjustified and illegal. In terms of the law laid down by the Supreme Court in case of *Straw Board Manufacturing Company (supra)*, I have no hesitation in holding that the respondent Corporation ought to have proceeded in the matter of reinstatement and payment of back wages, as if no order of dismissal was ever passed against the workman.

24. Mr. P.K. Verma, learned Senior counsel appearing

on behalf of the Corporation has also contended that the petitioner has in the present application sought for quashing of the order of dismissal which goes to indicate that the workman knew disapproval by the Tribunal would not result into his automatic reinstatement or making the order of dismissal inoperative.

25. I do not find any force in such submission while exercising writ jurisdiction under Article 226 of the Constitution of India.

26. Since the workman died during the pendency of the writ application, there would be no question of any direction for his reinstatement. The Respondent Corporation is directed, however, to calculate entire back wages which the workman would have been entitled to, had there been no order of dismissal ever passed against him, till the date he would have attained the age of superannuation or the date of death whichever is prior.

27. The entire back wages, in terms of the direction of this Court should be calculated and paid to the petitioners within a period of six months from the date of receipt/production of a copy of this order. The petitioners will

be entitled for other consequential benefits also, if any.

28. This application is allowed with a cost of Rs. 5000/-
to be paid to the petitioners within the aforesaid period of six
months.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--