

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.O. NO.1504/2015
IN
M.C.A. STAMP NO.14943/2015
IN
WRIT PETITION NO.1768/2010 (D)

1. Chief Conservator of Forests (T), Yavatmal.
2. Addl. Chief Conservator of Forests
(Production), Nagpur.
3. Principal Chief Conservator of Forests (MS),
Nagpur.
4. Divisional Forest Officer (Planning)
Yavatmal.

..Review Petitioners/Applicants
(Ori. Respondents)

..Versus..

Yashwant Manohar Naik,
aged 47 Yrs., Occu. Govt. Service,
R/o Rukhmini Nagar, Amravati,
Tah. & Distt. Amravati,
presently R/o Vanviharang Building
No.2, Type 4/6, Ravi Nagar,
Nagpur.

..Respondent.
(Ori. Petitioner N.As.)

Shri P.A. Gode, advocate for the applicants.
Shri M.R. Pillai, advocate for the non-applicant.

CORAM : Z.A. HAQ, J.
DATE : 2.9.2015

ORAL JUDGMENT

1. Heard Shri P.A. Gode, learned advocate for the applicants/original respondents and Shri M.R. Pillai, learned advocate for the non-applicant/original petitioner.
2. The applicants have filed the miscellaneous civil application praying for review of the judgment passed by this Court. There is a delay of about 223 days in filing the review application and, therefore, this civil application is filed. Accepting the reasons stated in the application and the fact that it is not opposed by the non-applicant inasmuch as reply is not filed, the delay in filing the review application is condoned. The civil application is allowed.

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3. Heard Shri P.A. Gode, learned advocate for the applicants/original respondents and Shri M.R. Pillai, learned advocate for the non-applicant/original petitioner.
4. **Rule.** Rule made returnable forthwith.
5. The applicants/original respondents are seeking review of the judgment passed by this Court on the ground that certain facts were not brought to the notice of this

Court at the time of the hearing of the writ petition. It is submitted that this Court has proceeded in the matter on the assumption that the Labour Court by the order dated 31st August, 1998 had granted stay to the order terminating the services of the non-applicant/employee. It is submitted that the order passed by the Labour Court on 31st August, 1998 was stayed by the Industrial Court in the revision filed by the applicants/employer, by the order dated 30th October, 1998. It is submitted that the revision was withdrawn by the applicants/employer on 20th February, 2001 as the complaint filed by the non-applicant/employee was dismissed in default on 16th December, 1999 and there was no cause subsisting to prosecute the revision application, and the interim order granted by the Industrial Court continued till then. It is submitted that the non-applicant/employee sought restoration of the complaint and the complaint was restored by the Labour Court on 14th October, 2003. The complaint filed by the non-applicant/employee came to be allowed on 17th November, 2005. It is submitted that the fact that Industrial Court had stayed the order passed by the Labour Court on 31st August, 1998 in favour of the non-applicant/employee was not brought to the notice of the Court and, therefore, this Court proceeded on the assumption that inspite of interim order passed by the Labour Court on 30th October, 1998 the non-applicant was not reinstated and, therefore, the non-applicant/employee is entitled for the back wages. The learned advocate for the applicants/employer has submitted that the non-consideration of the relevant facts has resulted in erroneous order. It is

submitted that the non-applicant/employee is not entitled for the back wages and the subordinate Courts had rightly rejected his claim for the back wages.

6. Shri Pillai, the learned advocate for the non-applicant/employee has submitted that the applicants/respondents ought to have brought on the record the facts which are now being argued. It is submitted that the applicants have not given any explanation for not bringing these facts on the record earlier. The learned advocate has submitted that this Court cannot take into consideration the facts which are now being pointed out for reviving the judgment. It is submitted that there is no apparent error on the face of the record which necessitates the exercise of review jurisdiction by this Court.

In the alternative, it is submitted that the claim of the non-applicant/employee for the back wages is justified. In support of his submission, the learned advocate for the non-applicant has relied on the following judgments :

(1) *Judgment given by the Hon'ble Supreme Court in the case of Deepali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others reported in (2013) 10 SCC 324 and*

(2) *Judgment given by the Hon'ble Supreme Court in the case of Sudarshan Rajpoot V/s. Uttar Pradesh State Road Transport Corporation reported in (2015) 2 SCC 317.*

The fact that the interim order passed by the Labour Court on 31st August, 1998 in favour of the non-applicant/employee was stayed by the Industrial Court on 30th October, 1998 and, therefore, the non-applicant/employee was reinstated by the

applicants/employer, can be taken into consideration at this stage also. However, considering the ratio laid down by the Hon'ble Supreme Court in the above referred judgments, in my view, the alternative submission made on behalf of the non-applicant/employee has to be accepted.

In paragraph no.22 of the judgment given in the case of *Deepali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others* (cited supra) the Hon'ble Supreme Court has recorded as follows :

"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. 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."

This ratio is followed by the Hon'ble Supreme Court in the case of *Sudarshan Rajpoot V/s. Uttar Pradesh State Road Transport Corporation* (cited supra) also. Considering the proposition of law laid down by the Hon'ble Supreme Court on the point of entitlement of the employee to receive the back wages, in my view, the prayer made by the applicants/employer for review of the judgment cannot be granted. The miscellaneous civil application is dismissed. Rule discharged. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.