

**THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

-
WRIT APPEAL Nos.190 and 838 of 2007

-
COMMON JUDGMENT: (per Hon'ble Sri Justice Dilip B.Bhosale)

These two writ appeals, one preferred by the employer-respondent Nos.2 and 3 in the writ petition (for short 'the employer') and, the second by the original petitioner-employee (for short 'the employee'), are directed against the order dated 20.12.2006 passed in Writ Petition No.9510 of 1997 whereby the employee's petition had been disposed of, directing the 2nd and 3rd respondents (i.e.appellants in W.A.No.190 of 2007) to pay a sum of Rs.2,00,000/- to the employee in lieu of reinstatement and minimum wages.

The writ petition was filed by the employee against the award dated 09.09.1996 passed by the Labour Court whereby he was directed to be reinstated with continuity of service, but was denied back wages applying the principle of 'no work no pay'. The employee was engaged as temporary librarian in HMT-WACO Education Society on 18.05.1981 on consolidated monthly wages which were ultimately increased to Rs.475/- per month. His services were terminated on 10.02.1992. Since he failed in his all efforts to get back into the service, he raised an Industrial Dispute before the Labour Court under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). The employer contested the dispute. The Labour Court after having considered the entire materials on record held that for termination of the service of employee, the procedure contemplated under Section 25-F of the Act had not been followed and, therefore, he was entitled to the relief of reinstatement into service with continuity of service. The employer-HMTL was initially not added as a party to the proceedings. In other words, the HMTL was added as a party respondent in the writ petition for the first time before this Court.

It has come on record that during pendency of the writ petition, the

HMT Teachers Welfare Sangh had filed two writ petitions bearing Nos.2703 of 1999 and 12626 of 1999 questioning the proposal to close down HMT High School where the employee was working as Librarian and also seeking direction to the employer to re-open the said school respectively. Both the writ petitions were disposed of by common order dated 25.11.1999 with the following directions:

“Accordingly, the impugned order is set aside and the 4th respondent is directed to consider the application afresh, of course, after giving opportunity to the petitioner society also. While considering the petition submitted by the 2nd respondent, the 4th respondent can also consider the necessity and feasibility of taking over the institution by the Government, as provided under the provisions of the Act. The 4th respondent is also directed to consider the claim of the petitioner-society, if it comes to run the institution on its own.”

Thereafter, a Contempt Case bearing C.C.No.1745 of 1999 was also filed and ultimately, the Management had agreed to pay 18 months salary to the employees on closure of school and accordingly after recording the said submission this Court closed the contempt case. It has also come on record that during pendency of the dispute before the Labour Court by virtue of the interim order dated 08.04.1994 passed on I.A.No.35 of 1994, the employee was reinstated and he was working till the disposal of the dispute.

In this backdrop, the learned Judge having taken note of the fact that school where the employee was working has been closed passed the order directing the employer to pay a sum of Rs.2,00,000/- to the employee in lieu of reinstatement and minimum wages.

It is not in dispute that as of today, the school where the employee was working as Librarian does not exist and, therefore, question of reinstatement would not arise. In this backdrop, we are not inclined to interfere with the order passed by the learned Judge directing the employer to pay the amount as aforementioned in lieu of reinstatement and minimum wages. Hence, the appeal filed by the employer (W.A.No.190 of 2007) is dismissed. No order as to costs.

At this stage, by way of interim order, this Court is informed that the employer had already paid Rs.1,00,000/- to the employee. This fact is not disputed by the employee. In view thereof, the employer is directed to pay the remaining Rs.1,00,000/- to the employee within a period of eight weeks from today.

In view of the dismissal of writ appeal filed by the employer, learned counsel appearing for the employee does not press the appeal filed by him. Hence, W.A.No.838 of 2007 is dismissed as not pressed. No order as to costs.

Miscellaneous petitions pending in both the appeals, if any, also stand disposed of.

Dilip B.Bhosale, J

A.Ramalingeswara Rao, J

2nd February, 2015.
sur