

C.A. 100/05

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION No. 621 / 2002

PETITIONER :

Om Prakash Verma, son of B.P. Verma
Forest Research Institute, Koni,
Bilaspur (Chhattisgarh).

P. R. No. 621/02
Presented by Shri R. B. Handhagad
dated 21.6.2002

Versus

RESPONDENTS :

1. Director, State Forest
Research Institute, Poli Pather,
Gwarighat Road, Jabalpur (M.P)

2. Regional Forest Range Officer,
Regional Forest Research Institute,
Koni, Bilaspur (C.G)

3. Assistant Labour Commissioner,
Bilaspur (C.G)

4. Presiding Officer, Labour
Court, Bilaspur (C.G)



WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION
OF INDIA



62
S7

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 621 of 2002**

Om Prakash Verma

---- Petitioner

Versus

Director, State Forest Research Institute & Ors.

---- Respondents

Ms. Reena Singh, counsel for the petitioner/s.
Shri B.D.Guru, counsel for respondent no.1.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****23/11/2016**

Heard.

The workman has filed this petition aggrieved by the part of the award of the Labour Court by which, back wages have been restricted for a period of one year only. The petitioner has prayed that once the order of termination was held to be illegal resulting in petitioner's reinstatement, grant of full back wages could not have been denied in the absence of there being any exceptional reason.

2. Learned counsel for the petitioner argued that the petitioner was terminated from service illegally without payment of retrenchment compensation as mandatorily required under the provisions of Industrial Disputes Act, 1947 (for short "the Act of 1947"). The Labour Court, after detailed enquiry, did find that the order of retrenchment was illegal and directed reinstatement. However, while deciding the issue of back wages, the Labour Court confined it to period of one year on the ground that junior employee of the petitioner was terminated after one year. Except this, it is urged, no other reason has been assigned by the Labour Court to deviate from rule of normal application that in the case of reinstatement, full back wages have to be awarded.



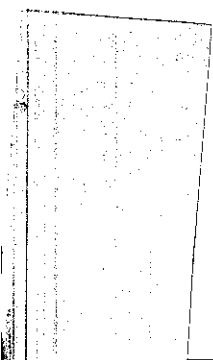
S8
62

3. Learned counsel for the respondent No.1 submits that while examining legality and validity of termination, one of the ground which found favour with the Labour Court was that services of the petitioner were terminated, retaining a person junior to him. The other reason, on the basis of which, termination was held to be illegal was non-payment of retrenchment compensation. Therefore, it is argued, in these circumstances, while considering the issue of back wages, Labour Court took into consideration the fact that the junior employee was also later on terminated after one year. It is next contended that the respondent is not a private institution but an institution of the Government.

4. Further submission of learned counsel for respondent no.1 is that the Forest Research Institute, Madhya Pradesh earlier had office in Chhattisgarh area. In course of time, as the work reduced, they were not needed to keep large number of employees which resulted in retrenchment of employees. Therefore, this circumstance was very relevant and infact, taken into consideration by the Labour Court to limit the period of back wages upto one year only, instead of granting full back wages from 1996 to 2001 i.e. from the date of passing of the award.

5. In the present case, termination order has been held to be illegal by the Labour Court on the ground that at the time of retrenchment, retrenchment compensation was not paid to the petitioner. The Labour Court also took into consideration that a junior employee was retained whereas services of the petitioner were terminated. In the operative part of the order, however, the back wages have been restricted to the period from August 1996 to January, 1997 only while passing the award on 08/02/2001. Para 3 of the operative part of the order, reflects that back wages in respect of the period after January, 1997 has been denied by observing "प्रथम पक्ष फरवरी 1997 से पुनः स्थापना की अवधि का प्रकरण की परिस्थितियों को देखते हुए पिछले वेतन की राशि प्राप्त करने का पात्र नहीं होगा।" (looking to the circumstances of the case, the petitioner would not be entitled to back wages after 1997 till reinstatement.)

The Labour Court has actually not discussed this issue at all. If I may say so, consideration of the aspect as to whether the petitioner should be given full back wages or part backwages, are completely missing. It has been left to everyone to speculate as to what could possibly be the reason not to award back wages after January, 1997 till the date of reinstatement.



6. There is no material on record to show that there exists any extra ordinary reason to deny the petitioner full back wages. There is no finding, much less any material placed before this Court by the respondent to come to a definite conclusion that during the period of termination from 23/09/1996 till the passing of award, the petitioner was either gainfully employed or employed for lesser wages.

It is not a case where the only basis for holding termination to be illegal was retaining a junior employee. Had it been a case where the petitioner was terminated by giving retrenchment compensation and order held illegal only on the ground of having retaining junior employee, perhaps it would have been an arguable issue, whether the petitioner should be paid back wages beyond the period, his junior was terminated, though later on. It is a case where the order of termination has been held illegal on the ground that retrenchment compensation was not paid. Therefore, from very inception, on account of violation of mandatory provision contained in Section 25-F of the Act of 1947, it being a beneficiary legislation meant for the protection of a class of workman, the termination was held to be illegal.

7. The legal position with regard to grant of back wages is no longer *res integra* in view of recent judicial pronouncement of the Supreme Court in the cases of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors.**, (2013) 10 SCC 324 and **Bhuvnesh Kumar Dwivedi v. Ms. Hindalco Industries Ltd.**, 2014 AIR SCW 3157 as also **Ajaypal Singh v. Haryana Warehousing Corporation**, (2015) 6 SCC 321.

Two of the aforesaid decisions were taken into consideration by this Court while deciding WP (227) No.5280/2010 and batch of petitions vide order dated 15/10/2015. Relying upon decisions of the Supreme Court, this Court held in the case of **Surendra Singh Rajput v. Principal Judge and ors** as below -

"9. In these cases neither before the Labour Court nor before this Court, it could be justified by the respondents - employer that the termination of the petitioners- employee was in accordance with the procedure prescribed under Section 25-F of the Act of 1947. Once the retrenchment is held to be illegal, the reinstatement cannot be made conditional upon availability of work. There is no provision contained



60
65

under the Act of 1947 much less Section 25-F which leaves discretion in the hands of the Labour Court to reinstate or not to reinstate. Once retrenchment is found illegal, reinstatement has to follow.

In exceptional cases where the employer has come out with an offer of payment of lump-sum compensation as one time measure in lieu of non -availability of work and need of daily wage employee or temporary employee, in appropriate case, instead of reinstatement lump-sum compensation can be awarded, but it cannot be done as a matter of course.

10. There is no material on record to show that employees were gainfully employed so as to avoid back wages. Moreover, the period during which they worked before their termination cannot be said to be small tenure so as to dis-entitle them to award of backwages from the date of termination till the date of award. Each of the employee has remained in service for fairly long time. In the above factual scenario, the judgment of the Supreme Court in the case of **Bhuvnesh Kumar Dwivedi** (supra) would squarely apply wherein the Supreme Court, examining issue of backwages, has held as under:

"30. On the issue of back wages to be awarded in favour of the appellant, it has been held by this Court in *Shiv Nandan Mahto v. State of Bihar* that if a workman is kept out of service due to the fault or mistake of the establishment/ company he was working in, then the workman is entitled to full back wages for the period he was illegally kept out of service. The relevant paragraph of the judgment reads as under:

"5. ... In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is,

therefore, obvious that the appellant could not have been denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the appellant was entitled to be paid full back wages for the period he was kept out of service."

31. Further, in *Haryana Roadways v. Rudhan Singh*, the three-Judge Bench of this Court considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The relevant paragraph reads as under:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages

for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.

Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

11. In that case (Bhuvnesh Kumar Dwivedi), the Supreme Court also referred to its earlier decision in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324, in following words:

"32. Subsequently, in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* it was held by this Court as under:

"The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing



83
68

prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

* * *

vi) In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. (supra)*....."

8. Applying the aforesaid principles, I find that the respondent could not bring out any exceptional material to justify deviation from normal mode of payment of full back wages to the petitioner. Once termination is held to be illegal, on account of violation of mandatory provision for payment of retrenchment compensation, petitioner's termination cannot be said to be technically illegal but substantively illegal. In the absence of there being any proof that the petitioner was gainfully employed after termination, he is entitled to full back wages.

9. Accordingly, this petition is allowed and it is directed that the petitioner is entitled to full back wages from the date of his termination till the date of reinstatement.

Sd/-

(Manindra Mohan Shrivastava)
Judge