

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.12685 of 2006

ORDER :

Heard the counsel for petitioner, and Sri A. Krishnam Raju, counsel for 2nd respondent.

2. The petitioner has filed this Writ Petition challenging the Award dt.15.04.2005 of the 1st respondent in Industrial Dispute L.C.I.D.No.39 of 2004 denying petitioner continuity of service and back-wages, while directing his re-instatement in service of the 2nd respondent-Bank.

3. The counsel for petitioner contended that petitioner would be entitled to continuity of service and back-wages as a matter of right once the termination of petitioner has been set aside by 1st respondent, and that the 1st respondent ought not to have denied continuity of service and back-wages. He placed reliance on the judgment of the Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others**¹.

4. Sri A. Krishnam Raju, counsel for 2nd respondent, however contended that petitioner was rightly denied both continuity of service and back-wages by 1st respondent owing to the fact that petitioner was declared an insolvent by an Insolvency Court on 06.07.2000; that he

¹ (2013) 10 SCC 324

was dismissed from service from 05.02.2002 in view of the provisions in the Banking Regulation Act which prohibited employment to persons who have been adjudged as insolvents; that there was nothing wrong in the imposition of the punishment of dismissal on petitioner, and merely on the ground that the *ex parte* order of Insolvency passed against the petitioner was subsequently set aside on 12.02.2002, the 1st respondent had granted relief of re-instatement to petitioner. He contended that the 2nd respondent was not at fault at the time when the punishment of dismissal was imposed on the petitioner, and placed reliance on the following decisions of the Supreme Court in **Secy., Akola Taluka Education Society and others v. Shivaji and others**² and **Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale**³.

5. In **Deepali Gundu Surwase** (1 supra), the Supreme Court has held that in case of wrongful termination of service though reinstatement with continuity of service and back-wages is the normal rule, there ought to be a pleading by the workman who is desirous of seeking back-wages to plead or make a statement before the adjudicating authority that he was not gainfully employed or was employed on lesser wages. In this decision, the Supreme Court has laid down certain guidelines stating in what circumstances the back-wages and continuity of service can be granted or denied.

² (2007) 9 SCC 564

³ (2009) 2 SCC 288

6. In the decisions cited by the counsel for 2nd respondent, the Court had taken a view that there is no straight-jacket formula. But this view of the Supreme Court does not appear to be correct any more in view of the decision in **Deepali Gundu Surwase** (1 supra).

7. Admittedly, the petitioner had not pleaded before the 1st respondent that he was not gainfully employed or was employed on lesser wages during the period he was out of service.

8. Therefore, as regards the relief of back-wages in the absence of any pleading by petitioner that he was not gainfully employed or was employed on lesser wages before the 1st respondent, I am of the opinion that the petitioner cannot claim full back-wages.

9. Coming to the issue of continuity of service, the Supreme Court in the very same judgment in **Deepali Gundu Surwase** (1 supra) has taken a view that on re-instatement an employee can claim continuity of service as of right, and had followed its earlier Three-Judge Bench judgment in **Hindustan Tin Works (P) Ltd. v. Employees**⁴ and **Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court**⁵. It held that its own judgment in **J.K. Synthetics Ltd. v. K.P. Agrawal and another**⁶ is not good law.

10. In the present case, since the petitioner had been directed to be re-instated by 1st respondent and admittedly he has also been re-

⁴ (1979) 2 SCC 80

⁵ (1980) 4 SCC 443

⁶ (2007) 2 SCC 433

instated, he is entitled to continuity of service also and the view of the 1st respondent that petitioner is not entitled to continuity of service, is not correct.

11. Accordingly, the Writ Petition is allowed and it is declared that the petitioner is entitled for the relief of continuity of service also but he is not entitled to the relief of back-wages. No order as to costs.

12. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-11-2016

Ndr/*

