

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 30 of 2015

- The Superintendent, Railway Mail Service, Raipur Division, Raipur, through Senior Post Master, Durg, District Durg (C.G.)

---- Petitioner

Versus

1. Shri P.V. Upganlawar, Resident of Ward No.1, Bhanapeth, Kasturba Road, Chandrapur, Maharashtra 442402
2. Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, Madhya Pradesh

---- Respondents

And

Writ Appeal No. 348 of 2017

(Arising out of order dated 12.07.2017 passed in W.P.(L) No. 30 of 2015 by the learned Single Judge)

- The Superintendent, Railway Mail Service, Raipur Division, Raipur, through Senior Post Master, Durg, District Durg (C.G.)

---- Appellant

Versus

1. Shri P.V. Upganlawar, Resident of Ward No.1, Bhanapeth, Kasturba Road, Chandrapur, Maharashtra 442402
2. Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, Madhya Pradesh

---- Respondents

For Petitioner/Appellant	:	Shri N.K. Vyas, Assistant Solicitor General
For Respondent No.1	:	Shri K.R. Nair, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment on Board

Per, Thottathil B. Radhakrishnan, Chief Justice

23/09/2017

1. Heard the learned Assistant Solicitor General and the learned counsel for respondent No.1.
2. The captioned writ petition by the Union of India is instituted challenging the Award of Industrial Tribunal rendered on a reference made by the Central Government under the Industrial Dispute Act, 1947 touching the removal of the respondent from service in the Postal Department while employed as a Postal Sorting Assistant. The captioned writ appeal was filed by the establishment challenging an interlocutory order passed by the learned Single Judge directing that, pending consideration of the writ petition, 25% of the back wages may be released along with other benefits emanating from the Award. That obviously means the retiral benefits due to the employee has also to be released in terms of that interlocutory order. There could be an apparent confusion while giving effect to that interlocutory order as regards the last pay that was eligible to be drawn or that could be certified as the last pay drawn for the purpose of determining the retiral benefits. We, therefore, thought it appropriate to withdraw the writ petition to be heard by the Division Bench along with the writ appeal. This is how the writ petition is before the Division Bench along with captioned writ appeal.
3. Considering the contentions in the writ petition and the arguments advanced on behalf of the Union, it is seen that following the reference made by the Central Government, the Management did not produce the inquiry file before the Industrial Tribunal. It chose to lead evidence to sustain the

removal of the employee from service. It offered a particular officer as witness. His testimony was found by the Tribunal to be shaky. He did not have any direct knowledge of the matters and spoke only from the records, though such records were not available before the Tribunal. That position notwithstanding, the material evidence tendered by the Management included Exhibits M-4-A, M-4-B, M-4-C, M-4-F, M-4-G, M-4-I, M-4-L and M-4-M & M-4-N which showed that medical certificates were placed by the delinquent at the relevant point of time before the Management. Though the witness of the Management stated before the Tribunal that leave was refused, there was no documentary evidence coming forth in that regard.

4. The only allegation against the delinquent was that he had overstayed the medical leave granted to him and had not obtained extension of such leave and had, thus, unauthorizedly absented himself from service for around one and half years. Even if the documents referred to above were before the issuance of the memo of charges, the fact of the matter remains that the Tribunal which is the fact finding authority, considering the dispute between the Management and the employee, had concluded that there was no material evidence to sustain the removal of the delinquent from service on the allegation of unauthorized absence. Resultantly, we do not find any ground on which the order of the Industrial Tribunal, to that extent, could be interfered with, either in exercise of authority under Article 226 or 227 of the Constitution. Weighing all facts and circumstances of the case, on the basis of the materials on record, we are satisfied that the order of the Tribunal to the extent it orders that the removal of delinquent/respondent No.1 from service is unsustainable, does not warrant interference.
5. However, the fact of the matter remains that an order for reinstatement could have taken back the delinquent to nearly two decades in office, going

by his due date of superannuation which was sometime in 2007. Taking into consideration the overall facts and factors and the probability of respondent No.1 having been, obviously, appropriately utilizing that period to his financial advantage, through other means; and also noticing that there was no contribution of any effective labour by him to the establishment concerned; we are inclined to take the view that the order for back wages should stand trimmed down to 25% from 50% as ordered by the Tribunal. Hence, the Award handed down by the Tribunal and impugned in the writ petition shall stand modified to that extent. It is so ordered.

6. The interlocutory order passed by the learned Single Judge is only to be vacated in the light of the final decision that is being rendered in the writ petition.
7. In the result, the writ petition is allowed in part, to the extent of modification to the impugned Award as ordered above. In view of the final judgment of the writ petition, the interlocutory order passed therein and impugned in the writ appeal is vacated as unnecessary and the writ appeal is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge