

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.1279 of 2008

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The appellant herein is the petitioner in W.P. No. 14436 of 2008 wherein he sought a writ of Certiorari to quash the award passed by the Labour Court in I.D. No. 110 of 2004 dated 20.12.2007 which was published in GO Rt. No. 435 dated 25.2.2008.

Aggrieved by the punishment imposed on him, of removal from service, the appellant-Writ Petitioner invoked the jurisdiction of the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). In the said proceedings, the Labour Court held that the domestic enquiry was fair and valid. While examining the matter under Section 11-A of the Act, the Labour Court recorded a finding that, while the appellant was removed from service in 1997, he did not prefer an appeal thereagainst till the year 2002; there was a delay of five years in preferring the appeal; no reasons were forthcoming as to why he did not prefer an appeal within time; and, though the provisions of the Limitation Act were not applicable, belated claims could not be entertained. On re-appreciating the evidence on record, the Labour Court held that the charges were not proved and, in view of delay and laches in invoking its jurisdiction, set aside the order of removal and directed the respondent therein to reinstate the appellant-writ petitioner as a fresh Stenographer in the present scale of pay. Aggrieved thereby, the appellant-writ petitioner invoked the jurisdiction of this Court.

In the order under appeal, the learned Single Judge observed that delay on the part of the appellant-writ petitioner, in invoking the jurisdiction of the Labour Court, should not result in denial of the benefit of the service rendered by the appellant-writ petitioner at least for the purpose of pension; and, while the Corporation could not be mulcted

with any financial burden on account of the delay on the part of the appellant-writ petitioner, a balanced approach was warranted. The learned Single Judge, therefore, partly allowed the writ petition, modified the award of the Labour Court, and directed that the appellant-writ petitioner should be reinstated into service in the same scale of pay which he was drawing as on the date of his removal, he was entitled to continuity of service, and the period during which he was out of service should not be reckoned for the purpose of calculating increment or promotion. Aggrieved thereby, the present appeal.

Sri P. Sridhar Rao, learned counsel for the appellant-writ petitioner, would contend that, even in the application filed before the Labour Court under Section 2-A(2) of the Act, the appellant-writ petitioner had specifically asserted that he had preferred an appeal in the year 1996 itself; though he had filed documents before the Labour Court, they were not marked as Exhibits, and the finding of the Labour Court, that he had preferred an appeal belatedly, is erroneous. He would submit that, once the charges are held not to have been established, the normal rule is reinstatement with full back wages; and both the Labour Court and the learned Single Judge erred in denying him that part of the relief.

Pleadings before the Labour Court (averments in the application under Section 2-A(2) of the Act) do not constitute proof. The Labour Court has recorded a finding that the appellant-writ petitioner had preferred an appeal in the year 2002 alone, and not earlier. For unexplained delay and laches, of around five years in invoking the appellate remedy and thereafter invoking the jurisdiction of the Labour Court, the appellant-writ petitioner was denied back wages in its entirety by the Labour Court. While Sri P. Sridhar Rao, learned counsel for the appellant-writ petitioner, would submit that he had filed documents before the Labour Court to show that the appeal was preferred within time, it is clear that none of these documents were marked as exhibits, in

I.D.No.110 of 2004, by the Labour Court. In proceedings under Article 226 of the Constitution of India, this Court would not don the robes of an appellate authority to permit additional evidence to be let in, or to re-appreciate the findings of the Labour Court in this regard. In Certiorari proceedings this Court would, save perversity, not re-appreciate the findings recorded by the Labour Court. The Labour Court has found, as of fact, that there was a delay, of more than five years, in preferring the appeal and in invoking its jurisdiction.

In **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya**¹ the Supreme Court observed that, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule; this rule is subject to the rider that, while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of mis-conduct, if any found proved against the employee/workman, the financial condition of the employer and similar other factors; ordinarily an employee or a workman whose services are terminated, and who is desirous of getting back wages, is required to either plead or atleast 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 prior to termination of service; and, 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.

In the present case, the appellant-writ petitioner was denied back wages by the Labour Court not without any reason, but on the ground

¹ (2013) 10 Supreme Court Cases 324

that the workman had invoked its jurisdiction belatedly, ie, more than five years after his removal from service. The learned Single Judge has, in fact, modified the award of the Labour Court and has directed that the appellant-writ petitioner be reinstated into service; and that he be extended the benefit of continuity of service. The Learned Single Judge has merely denied him wages for the period he was out of service, and for the purpose of calculating increments or promotion. As the Labour Court has recorded a finding that the appellant-writ petitioner had invoked its jurisdiction belatedly, with undue delay and laches, it cannot be said that denial of back wages, in the facts of the present case, is not justified. The denial of back wages in the present case is not on the ground that the employee was gainfully employed elsewhere, but on the ground that he had invoked the jurisdiction of the appellate authority and the Labour Court belatedly. Reliance placed on **Deepali Gundu Surwase**¹ is therefore mis-placed.

In an intra-Court appeal under Clause 15 of the Letters Patent, interference is justified only if the order suffers from a patent illegality. We find no such infirmity in the order under appeal. The writ appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

27th March, 2017

pnb

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER**



Writ Appeal No.1279 of 2008

Date: 27.03.2017

pnb