

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL No.1886 of 2017

JUDGMENT: (*per MGR,J*)

The present Writ Appeal, under Clause 15 of Letters Patent, is preferred by the National Mineral Development Corporation Limited (for brevity 'Corporation') against the order of the learned single judge in W.P.No.7698 of 2005, dated 15.09.2017.

2. The facts and circumstances giving rise to this appeal are as under:

The first respondent herein (hereinafter called 'workwoman') was appointed as a Peon on compassionate grounds in the appellant-Corporation on 01.08.1987. While so, workwoman availed a House Building Advance of Rs.2,30,800/- and withdrew the amounts on installment basis and repaid the entire amount from her salary. On the ground that even though workwoman purchased a house plot for an amount of Rs.17,000/- at Tallapaka Village in Rajampet Mandal, Cuddapah District, she did not construct a house therein though drawn installments of HBA on false and fabricated certificates, a charge sheet, with the following Articles of Charge, was issued to the workwoman on 20.01.1999:

"1) The CSE draw a House Building Advance (HBA) of Rs.2,30,800/- from the corporation for the purchase of a plot and construction of a house thereon. While she purchased only a plot of land for Rs.17,000/-, she has not

constructed the house. Thus the CSE has misappropriated the remaining amount of Rs.2,13,800/- and committed a serious act of misconduct in terms of Rule 5 (1) of NMDC Employees' (Conduct, Discipline and Appeal) Rules, 1978.

2) The CSE without constructing the house, submitted false and fabricated certificate in regard to the progress in the stages of construction of the house and on their strength claimed and draw the III, IV and final instalments of HBA amounting to Rs.1,38,400/-. The CSE has thus committed a serious act of misconduct in terms of Rule 5 (1), 5 (4), 5 (20) and 5 (21) of NMDC Employees' (Conduct, Discipline and Appeal) Rules, 1978."

3. Later, a domestic enquiry was ordered appointing an Enquiry Officer on 20.03.1999. The Enquiry Officer submitted his report on 30.07.1999 holding that the charges are proved. Thereafter, the workwoman was removed from service. Being aggrieved by her removal, the workwoman raised an Industrial Dispute bearing I.D.No.71 of 2002 before Labour Court-I, Hyderabad. The Labour Court passed an Award on 06.12.2004 holding that the order of removal of the workwoman from service suffers from many irregularities, such as, the workwoman was not given fair opportunity in the enquiry; no principle of natural justice was followed; no objections were called for against the enquiry report; no show cause notice before removal order was given to the workwoman and thereby set aside the removal order while ordering reinstatement of the workwoman into service with full back wages and continuity of service, but without attendant benefits.

4. Being aggrieved by the order of the Labour Court, the Corporation filed W.P.No.7698 of 2005 before this Court mainly contending that the Award of the Labour Court suffers from error of law and fact apparent on the face of the record warranting interference under *Certiorari* Jurisdiction by this Court under Article 226 of the Constitution of India. The learned single Judge while dismissing the writ petition on 15.09.2017 held that the Award of the Labour Court does not call for interference of this Court.

5. Being aggrieved by the order of the learned Single Judge, the Corporation filed the present Writ Appeal on the ground that there is no illegality or irregularity in removing the workwoman from service by the Corporation and the Labour Court grossly erred in ordering reinstatement of the workwoman with continuity of service.

6. Sri K.Raghava Charyulu, learned counsel for the appellant, strenuously contended that the Labour Court had committed error in directing reinstatement of the workwoman with full back wages and continuity of service but without attendant benefits and the learned single Judge also failed to consider all the grounds raised by the appellant, while dismissing the writ petition by confirming the Award of the Labour Court. The Labour Court ought not to have granted back wages.

7. *Per contra*, Smt.K.Udayasri, learned counsel appearing for the 1<sup>st</sup> respondent-workwoman, would contend that the

Labour Court had not committed any error apparent on the face of the record while ordering reinstatement of the workwoman with continuity of service but without attendant benefits, which warrants no interference of this Court and she tried to sustain the order of the Labour Court as well as the order of the learned single Judge.

8. It appears from the reading of the orders of the learned single Judge and the Award of the Labour Court, the employer or his counsel had not raised any justifiable ground against awarding full back wages, but raised objection for the first time in the Writ Appeal. Hence, we want to consider the issue of granting full back wages by the Labour Court. Whether the Labour Court is justified in awarding the full back wages for the period of out of employment of the workwoman, it is trite that the Labour Court has ample power under Section 11-A of the Industrial Disputes Act, 1947, to grant full back wages, under the facts and circumstances of the case, by exercising statutory discretion vested in it, but it should be exercised judiciously. In the instant case, it appears that none of the parties have raised any issue with regard to awarding of back wages. The Labour Court also failed to consider the issue of grant of back wages as required under law laid down by the Hon'ble Supreme Court in a catena of judgments. However, the Labour Court, being the final Court of adjudication of facts, by exercising its statutory discretion granted relief of reinstatement into service with full back wages but without attendant benefits. In our considered view,

without grant of attendant benefits, the grant of full back wages is unworkable.

9. We have considered the rival contentions of the counsel for both sides and perused the grounds of appeal and Award of the Labour Court and came to a conclusion that the Labour Court has not considered the issue of grant of back wages.

10. It is worth to mention herein that in similar set of circumstances, the Apex Court in *Hindustan Motors Ltd., vs. Tapan Kumar Bhattacharya and another*<sup>1</sup> held in paras 11 and 16, as follows:-

“ 11. Under Section 11-A as amended in 1971, the Industrial Tribunal is statutorily mandated, while setting aside the order of discharge or dismissal and directing reinstatement of the workman to consider the terms and conditions, subject to which the relief should be granted or to give such other relief to the workman including the award of any other punishment in lieu of the discharge or dismissal, as the circumstances of the case may require. The section is couched in wide and comprehensive terms. It vests a wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows that the Tribunal is duty-bound to consider whether in the circumstances of the case, back wages have to be awarded and if so, to what extent.

16. As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue

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<sup>1</sup> (2002) 6 SCC 41

relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement. The amount already paid as wages or subsistence allowance during the pendency of the various proceedings shall be deducted from the back wages now directed to be paid. The appellant will calculate the amount of back wages as directed herein and pay the same to the respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs."

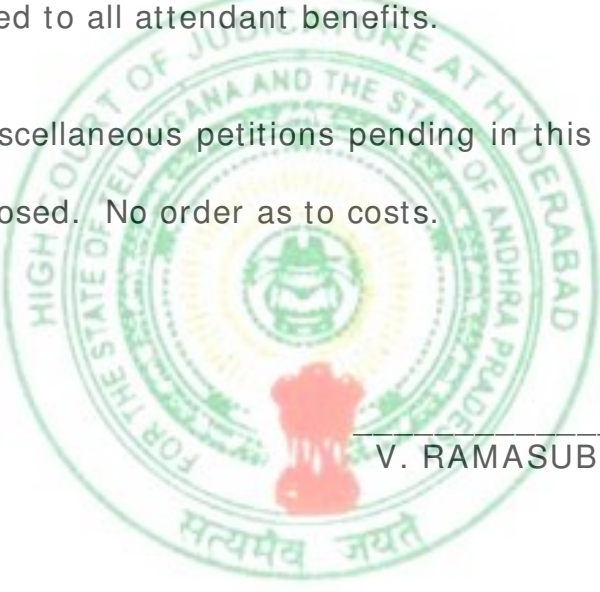
11. In this case also, the 1<sup>st</sup> respondent was appointed on compassionate grounds on 01.08.1987 and was dismissed from service on 30.09.1999. The Labour Court ordered reinstatement on 06.12.2004. The writ petition was dismissed by an order dated 15.09.2017. We do not know whether the workman was reinstated pursuant to the award passed on 06.12.2004 or whether wages under Section 17B was paid during the pendency of the writ petition.

12. Therefore, taking into account all the above, we confirm the order of the learned Judge and the Award of the Labour Court with a slight modification.

13. Accordingly, the writ appeal is allowed, the order of the learned Single Judge and the Award of the Labour Court are modified. The 1<sup>st</sup> respondent will be entitled to reinstatement.

She will be entitled to 50% of the wages from the date of the dismissal till the date of the Award of the Labour Court. From the date of the Award of the Labour Court, if she has been reinstated, she will be entitled to full pay and allowances. If she was only paid wages under Section 17B, she will be entitled to the balance amount, viz., difference between full back wages and the wages under Section 17B. In other words, she will be entitled to full back wages from the date of the Award, less any payment made during the pendency of the writ petition. She will also be entitled to all attendant benefits.

14. Miscellaneous petitions pending in this appeal, if any, shall stand closed. No order as to costs.



V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

11<sup>th</sup> December, 2017  
TSNR