

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 540 OF 2016

Union of India and ors.	...Petitioners
Versus	
Yogesh S. Kulkarni	...Respondent

Mr. Chetan C. Agrawal for the Petitioners.
Mr. S.V. Marne for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : APRIL 11, 2018.

ORAL JUDGEMNT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 12th August 2015 made by the Central Administrative Tribunal (CAT), Mumbai allowing O.A. No. 6 of 2013 instituted by the respondent.

4] Mr. Chetan Agrawal, learned counsel for the petitioners- Union of India, submits that this petition is pressed insofar as the award of consequential benefits to the respondent, which would include backwages for a period of almost five years. Mr. Agrawal submits that the petitioners have already reinstated the respondent and therefore, that part of the impugned judgment and order is not being challenged.

5] Mr. Agrawal submits that backwages ought not have been awarded by applying principle of 'no work-no pay'. In any case, Mr. Agrawal submits that there was no statement made by the respondent in his O.A. that he was not gainfully employed. Mr. Agrawal submits that the CAT, without adverting to this issue, has directed to payment of all consequential benefits and such direction is clearly an excess of jurisdiction vested in the CAT. On these grounds, Mr. Agrawal submits that direction for payment of consequential benefits is liable to be set aside.

6] Mr. Marne, learned counsel for the respondent, points out that the respondent was dismissed from service in an

high handed manner without conduct of any enquiry. He submits that the respondent was an Assistant Driver (Assistant Loco Pilot), who has been harassed by the some office superiors. On the basis of a false charge and without holding any enquiry, the respondent was dismissed from service, on account of which, not only the respondent but also his family members have suffered immensely. Mr.Marne points out that in the O.A. before the CAT, a claim had been made for consequential benefits and at that stage, the petitioners did not even hint the possibility of the respondent being an alternate gainful employment. Mr.Marne submits that as a Assistant Loco Pilot, other than the Railways, there was no possibility of the respondent even securing any alternate employment. Taking into consideration the manner in which the respondent illegally and in an high handed manner dismissed from service, the CAT has directed the payment of consequential benefits to the respondent. Mr. Marne submits that the principle of 'no work-no pay' is clearly in-applicable in such situation. He submits that there is absolutely no jurisdictional error in the impugned judgment and order and therefore, this petition, may be dismissed with costs.

7] The rival contentions now fall for our determination.

8] The CAT has held that the dismissal of the respondent without holding any enquiry and without compliance with the principles of natural justice and fair play, was clearly improper and on said basis set aside the dismissal order and directed reinstatement of the respondent with all consequential benefits. The petitioners, had already reinstated the respondent and the portion of the impugned order to the extent it directs the reinstatement is not being challenged before us.

9] Taking into consideration the manner in which the respondent was dismissed from service and now that there is no challenge to the order of the CAT, setting aside of such dismissal order and reinstating the respondent, we are of the opinion that there is really no case made out, in the facts and circumstances of the present case to question the award of consequential benefits.

10] In the CAT, there was no issue raised by the petitioners as regards any apprehension of the respondent

having secured any alternate employment. Besides, from the nature of the position held by the respondent, i.e., Assistant Loco Pilot , we are inclined to accept the submission of Mr. Marne that there was no possibility of the respondent securing similar employment, otherwise than with the Railways. There is absolutely no material produced on record on the aspect of gainful employment. This is not a case where the respondent, has not worked of his own volition. The respondent was dismissed from service. The principle of 'no work-no pay' will not apply to the facts of the present case. The CAT has made the impugned order after considering all the relevant aspects and there is really no error of jurisdiction or perversity demonstrated.

11] Mr. Marne has pointed out that despite the fact that there was no interim relief granted by this court, till date, i.e., even though three years have expired since the direction for payment of consequential benefits was issued by the CAT, there is no compliance. Taking into consideration of all these factors, we see no ground to interfere with the impugned judgment and order.

12] This petition is therefore dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)