

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.278 OF 2013
IN
WRIT PETITION NO.3598 OF 2012

The Sub Area Manager,
WCL Kamptee Open Cast Mine,
PO: Parseoni, Distt. Nagpur

... Appellant

-vs-

~~Morris William s/o Arohi William~~ (Dead)
Through L.Rs.

1.A) Sanjivani wd/o Morris William
aged about 52 years,
Occ. Household

1.B) Joy s/o Morris William
aged about 16 years, Occupation :
Education, Through natural guardian
Sanjivani wd/o Morris William,
aged about 52 years, Occupation : Household
Both r/o Plot No.33 and 34, Sony Layout,
Ward No.1, Harihar Nagar, Kandri,
Tahsil, Parseoni, Dist. Nagpur

... Respondents

Shri A. M. Ghare, Advocate for appellant.
Shri S. S. Joshi, Advocate for respondents.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.
DATE : January 03, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

In this Letters Patent Appeal a challenge has been raised to the judgment of the learned Single Judge dated 18/10/2012 whereby the said writ petition challenging an order of reinstatement along with continuity in service and a direction to pay 50% back-wages to the original respondent as

passed by the Central Government Industrial Tribunal, Nagpur came to be dismissed.

2. The original respondent herein was engaged as a general Mazdoor in Open Cast Mine. During the course of employment a departmental enquiry was held against him and on its conclusion his services were terminated on 26/06/1986. Being aggrieved the original respondent made a reference to the appropriate Authority and the proceedings were referred to the Tribunal for adjudication. The learned Presiding Officer after considering the entire material on record held that the action of the appellant in dismissing the services of the original respondent on 26/06/1986 was illegal. After setting aside that order of dismissal it was held that the respondent was entitled for reinstatement with continuity in service and 50% back-wages. The appellant being aggrieved filed Writ Petition No.3598/2012 and the learned Single Judge by the judgment impugned in this appeal dismissed the said writ petition. Hence this appeal.

3. While admitting the appeal, this Court restricted the challenge to the order passed by the learned Single Judge only on the aspect of back-wages. While staying the direction to pay back-wages it was directed that the original respondent shall reinstate in service along with continuity in service for all purposes. Consequently the services of the original respondent were

reinstated. During pendency of the appeal the original respondent expired and his legal heirs have been brought on record.

Shri A. M. Ghare, learned counsel for the appellant submitted that the Tribunal was not justified in directing payment of 50% back-wages. Referring to the statement of claim as made by the original respondent and the corresponding pleadings in the written statement it was submitted that there was no material on record to justify grant of such back-wages. He also invited our attention to the deposition of the original respondent and submitted that in his evidence the stand taken as regards absence of gainful employment had been departed from and a different case was set up. The Tribunal also failed to assign any reason while awarding 50% back-wages. The learned Single Judge therefore erred in not interfering with that direction. Infact it was his submission that the order of reinstatement itself was not liable to be passed. In support of his submissions learned counsel placed reliance on the decision in *National Gandhi Museum vs. Sudhir Sharma 2021 SCC Online SC 800* and prayed that the appeal be allowed.

4. Shri S. S. Joshi, learned counsel appeared for the legal heirs of the original respondent supported the direction to pay back-wages. According to him in the statement of claim it was clearly stated that the original respondent was not in gainful employment. Denial in the written statement was vague. In the evidence, the original respondent had deposed that he

was not gainfully employed after being dismissed from service. In absence of any effective cross-examination the Tribunal did not commit any error in awarding 50% back-wages. According to him the original respondent was entitled for entire back-wages. He therefore submitted that the appeal was liable to be dismissed.

5. Having heard the learned counsel for the parties and having perused the entire material on record we find that the challenge as raised to the direction to pay 50% back-wages is without any merit. In the statement of claim it was specifically pleaded that the original respondent was out of employment since the date of his dismissal from service. A prayer was therefore made for grant of full back-wages. This aspect has not been denied in the written statement. Similarly, in his deposition the original respondent stated that he was not in gainful employment. In addition, he stated that his wife was doing some petty work to support the family. In the cross-examination except for a general suggestion no other material was brought on record to indicate that the original respondent was gainfully employed. It is in that view of the matter that the learned Presiding Officer proceeded to award 50% back-wages. The learned Single Judge on finding that such grant of back-wages was supported by the material on record did not interfere with that direction while maintaining the order of reinstatement.

6. In view of the fact that it was the consistent case of the original respondent that he was not in gainful employment after his services were terminated and he having deposed in that regard, the burden to disprove the aforesaid aspect shifted on the appellant. The appellant however neither pleaded nor placed on record any material to indicate that the original respondent was infact gainfully employed. In that view of the matter it cannot be said that the finding as recorded by the Tribunal and upheld by the learned Single Judge is without any material on record. The grant of 50% back-wages cannot be said to be perverse and hence there is no case made out to interfere with the exercise of that discretion. The ratio of the decision relied upon by the learned counsel for the appellant cannot be applied to the case in hand in the aforesaid facts.

For aforesaid reasons, the Letter Patent Appeal stands dismissed with no order as to costs.

The appellant shall pay the amount of back-wages as directed to the legal heirs of the original respondent within a period of three months from today failing which the amount of arrears would carry simple interest at the rate of 5% per annum payable from today till realization of the same.

(P. V.Ganediwala, J.)

(A. S. Chandurkar, J.)