

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2167 OF 2021

Yamuna Gopinath Nadekar

w/o. Gopinath S. Nadekar,
Building No. 202, Room No. 2443,
CGS Colony, Sector 6
Antop Hill, Sion Koliwada,
Mumbai – 400 037.

.. Petitioner

Versus

General Manager

Government of India Mint,

(A unit of Security Printing & Minting
Corporation of India Ltd)
Shahid Bhagat Singh Road,
Mumbai – 400 023.

.. Respondent

-
- Ms. Nivedita S. Deshpande i/by S.N. Deshpande for Petitioner
 - Ms. Urmila S., Advocate for Respondent
-

CORAM : MILIND N. JADHAV, J.

Reserved on : OCTOBER 23, 2023

Pronounced on : NOVEMBER 28, 2023

JUDGMENT:

1. Heard Ms. Deshpande, learned Advocate for Petitioner and Ms. Urmila, learned Advocate for Respondent. By consent of parties, Writ Petition is taken up for final hearing.

2. This Writ Petition is filed under Article 226 of the Constitution of India to challenge the legality and validity of judgement & order dated 16.08.2018 passed in Application No. LC-2/2 of 2008 passed by the Central Government Industrial Tribunal No. 2 (for short “CJIT”).

3. The facts in the present Writ Petition reveal a somewhat sordid picture. It is seen that Award Part-I was passed by CGIT on 17.09.2002, *inter alia*, holding that the domestic inquiry against the workman was not as per the principles of natural justice and the findings of the Inquiry Officer were perverse. It was further held that Management i.e. Respondent herein was allowed to lead evidence to justify its action. This Award was challenged in Writ Petition No. 7995 of 2003 which came to be dismissed on 11.12.2003.

4. Final Award Part-II was passed by CGIT on 26.05.2003, *inter alia*, holding that since the domestic inquiry held was vitiated and there is no request to allow the Management to lead evidence in case inquiry held is vitiated till the disposal of the matter, Management is directed to reinstate the workman in service with full back wages. Reasons stated in paragraph Nos. 4 and 5 of this final order are extremely crucial since it has been held that there was no alternative except to direct the Management to reinstate the workman in service with full back wages in view of the decisions of the Supreme Court.

5. This Award Part-II was once again challenged by Respondent in Writ Petition No. 192 of 2015 which came to be dismissed on 16.11.2006.

6. Record indicates that Respondent Management has not challenged both the orders dated 11.12.2003 and 16.11.2006 passed

by this Court and therefore both Awards have become final.

7. No steps were taken by Respondent for implementation of the Award and therefore workman was compelled to file Contempt Proceedings against the Respondent. In order to quell the Contempt Proceedings, Respondent paid an amount of Rs. 2,80,178/- to the workman towards back wages without providing any calculation or details thereof. Pursuant thereto, correspondence was exchanged between the workman and the Respondent Management but Respondent failed to give the calculation of the back wages due and payable to the workman.

8. In the above background, much time was lost and in 2008, workman filed Application before CGIT for seeking a direction to Respondent to provide computation and calculation of the benefits under Section 33(c)(2) of the Industrial Disputes Act, 1947 (for short “**the said Act**”) and pay the same to the workman along with interest. On 29.07.2013, CGIT partly allowed the Application. This order was challenged by both Petitioner as well as Respondent by filing cross Petitions i.e. Writ Petition No. 753 of 2014 by Petitioner and Writ Petition No. 529 of 2014 by Respondent. In view of the challenge maintained by both parties, by order dated 17.04.2014, this Court set aside the judgement dated 29.07.2016 passed by CGIT and remanded the matter back to CGIT for determination of the calculations afresh.

In the meanwhile, the workman Mr. Gopinath Nadekar expired on 07.07.2014 and his legal heir i.e. wife / widow Yamuna Gopinath Nadekar was brought on record to prosecute the Application.

9. By judgement and order dated 16.08.2018 which is at Exh. “J” – page Nos. 123-137 of the Writ Petition, CJIT partly allowed the Application and directed the Respondent Management to pay the amount of Rs. 1,67,034/- by way of arrears of pay and leave wages to Petitioner along with interest @ 10% from the date of reinstatement till the date of actual payment of the amount to Petitioner. Pursuant to this demand, Respondent Management paid an amount of Rs. 4,07,836/- to the Petitioner on 09.12.2019.

10. Petitioner being aggrieved has filed the present Writ Petition against the Judgment dated 16.08.2018 on the ground that Petitioner (on behalf of the workman i.e. her husband) is entitled to the following claims:-

Sr. No.	Particulars	Amount (Rs,)
1	Payment of difference of wages from 15.02.1996 to 08.04.1999	2,90,406.73
2	Payment of difference of wages from 09.04.1999 till 12.06.2005	4,52,803.06
3	Payment of difference of wages from 13.06.2005 till the date of filing of application.	2,16,452.22
4	Bonus for the year 1995-96, 1996-97, 1997-98, 1999-2000, 2000-2001, 2001-2002, 2003-2004, 2004-2005	27,139.00
5	Leave wages w.e.f. 15.02.1996 till 13.06.2005	80,603.75
	Total	10,67,404.76

10.1. From the above, it is seen that Petitioner has claimed an amount of Rs. 10,67,104.76 towards payment of difference of wages, bonus and leave wages for different periods and given the computation thereof.

11. Ms. Deshpande, learned Advocate for Petitioner would submit that CGIT has only considered payment of difference of wages for the period 15.02.1996 to 08.04.1999 and leave wages from 15.02.1996 to 13.06.2005 to be paid over to Petitioner. She would submit that payment of difference of wages from 09.04.1999 to 12.06.2005 and from 13.06.2005 till date of filing of Application comes to Rs. 4,52,803.06 and Rs. 2,16,452.22 has not been considered and given. Next she would submit that bonus for the period 1995-96 to 2004-05 of Rs. 27,139.00 has not been considered and given. She would submit that the impugned judgment passed by CGIT is completely silent on these claims. She would submit that Petitioner is entitled to these claims and not merely back wages and leave wages only. According to her, back wages mean the last drawn wages at the time of termination and nothing more or nothing less. She would submit that in the present case, considering the decision in Award Part-I and Part-II, Petitioner was entitled for full pay and allowances to which he would have been entitled to had he not been dismissed and hence, Petitioner is entitled for the claim amount accordingly. She

would submit that Award Part-II dated 25.06.2003 awards reinstatement with full back wages which would include all consequential and related benefits unless they are specifically denied by the adjudicating authority. She has taken exception to the computation and calculation carried out by CGIT in paragraph No. 13 of the impugned judgment and would submit that it is much less than what is due to the workman. She has taken a strong exception to the deductions made by CGIT stating that they are incorrect and not tenable in law. She would submit that the subsistence allowance paid to Petitioner did not consist of yearly increments and the house rent allowance. She would submit that since reinstatement, the workman would be entitled to all benefits. Finally she would submit that Respondent Management has failed time and again to give the computation and calculation of the amounts and have given no reasons for denying the claim of Petitioner and hence, the impugned judgment deserves to be modified or set aside and workman is entitled to the claim amount of Rs. 10,67,404.76 along with interest @ 12% per annum on the same after deducting the amounts which have been received by the workman / Petitioner.

12. *PER CONTRA*, Ms. Urmila, learned Advocate appearing for Respondent Management has supported the impugned judgement dated 16.08.2018 and would submit that the only point of distinction

that arises for consideration of this Court is the interpretation of the final Award dated 26.05.2003 passed by CGIT. She would submit that the said order which is at page No. 34 of Petition records as under:-

“ Since domestic inquiry held vitiated and there is no request to allow the management to lead evidence in case inquiry held vitiated till the disposal of the matter, management is directed to reinstate the workman Nadekar in service with full back wages.”

12.1. She would submit that the above order does not record that consequential benefits are to be given to the workman and therefore, he is not entitled to any consequential benefits in the absence of specific directions to that effect. She would therefore submit that the workman would not be entitled to any bonus and increments since they are in the nature of consequential benefits for which there is no direction given in the final Award Part-II. She would therefore submit that the decision of CGIT in the impugned judgment dated 16.08.2018 of rejecting the claim of Petitioner in paragraph No. 28 deserve to be upheld and the present Petition be dismissed accordingly.

13. I have heard Ms. Deshpande, learned Advocate for Petitioner and Ms. Urmila, learned Advocate for Respondent and with their able assistance perused the record and pleadings of the present case. Submissions made by them have received due consideration of the Court.

14. At the outset it is seen that the workman i.e. Gopinath Nadekar was employed with Respondent in the year 1982. He was

suspended w.e.f. 15.02.1996 and was issued chargesheet on 08.06.1996 and terminated from service on the basis of chargesheet by way of compulsory retirement w.e.f. 09.04.1999 after holding domestic inquiry. Thereafter he raised industrial dispute which was adjudicated by CGIT which passed Award Part-I on 17.09.2002 holding that inquiry was not proper and the findings were perverse. Thereafter CGIT passed Award Part-II on 26.05.2003 directing the Respondent to reinstate the workman in service with full back wages. It is seen that both these Awards were confirmed by this Court as two Writ Petitions challenging the same came to be comprehensively dismissed on 11.10.2006 and 16.11.2006 respectively. Record reveals that the workman was reinstated in service from 13.06.2005 and paid back wages of Rs. 2,80,178/- on 26.09.2005 but was not intimated the calculation / computation sheet and details along with the cheque issued by Respondent. It was found out by workman that he was paid back wages only for the period from 09.04.1999 to 12.06.2005. However, he was not paid the back wages from the date of his suspension i.e. 15.02.1996 even though there was a specific provision under the standing orders Act meant for workers to that effect. Hence, Petitioner claimed that the workman would be entitled to the benefits for difference of wages for the period from 15.02.1996 to 08.04.1999 which would include basic pay, dearness allowance, dearness pay, CCA for the said period. Petitioner further claimed that he would also

be entitled to increase in wages due to implementation of recommendations of the Vth Pay Commission which was made applicable to the workman by resolution dated 30.09.1997. The issue for determination would be whether the workman would be entitled to all consequential benefits had he not been terminated and would have continued in service of the Respondent. Ms. Deshmukh has agitated that the direction “reinstatement with full back wages” in the present case would necessarily entail that the workman would be entitled to all such consequential benefits also and unless and until it was specified that he would not be entitled to consequential benefits, the same cannot be denied to the workman.

15. Ms. Urmila, learned Advocate for Respondent has placed before me a decision of the Supreme Court in the case of **V.V.G. Reddy Vs. Andhra Pradesh State Road Transport Corporation, Nizamabad Region & Anr¹** in support of the Respondent’s case. She would submit that in the said decision, reference was made to the decision in the case of **A.P. SRTC Vs. Abdul Kareem²** and **A.P.SRTC Vs. S. Narsagoud³**. and would contend that this Court should consider that merely because a workman has been directed to be reinstated in service with full back wages as in the present case, he would claim benefit of increments notionally earned by him during the said period when he

1 (2009) 2 SCC 668

2 (2005) 6 SCC 36

3 (2003) 2 SCC 212

was not on duty and was out of service in absence of specific directions in the order for continuity of service. She would submit that if there is no specific direction that the reinstatement with full back wages is to be accompanied by all consequential benefits then the workman is not entitled to benefits of increments earned during the said period of absence. I have perused the decision referred to and relied upon by Ms. Urmila. In that decision, there is reference made to the aforementioned two cases. However, the said decision was in respect of reinstatement on the basis of a consent Award with continuity but without attendant benefits and back wages. The facts and circumstances of the decision in the case of **V.V.G. Reddy (first supra)** are different. In the present case, reinstatement has been allowed by the final Award Part-II with full back wages. The effect of such of adjudication would mean that the workman was wrongfully prevented from attending his duties as a public servant in the employment of Respondent. The effect of such an Award clearly means that the workman has to be given his full back wages with all benefits attached thereto. It could have been open to the CGIT while passing the final Award to restrict the back wages and not grant the benefits due to the workman which has not been specified in the final Award Part-II. In absence of any such direction, the stand adopted by Respondent that while passing Award Part-II it does not state “with continuity of service” cannot be accepted.

16. In the above context, I would like to place reliance on the decision in the case of **Goa Bottling Co Pvt Ltd Vs. Pradeep Sardesai & Anr⁴**. Paragraph Nos. 13, 14 and 15 are relevant in the context of the facts of the present case. There is a reference to the decision in the case of Gammon India Ltd. therein. For reference paragraph Nos. 13 to 15 are reproduced below:-

“13. The workman was paid comparatively low at the termination of his services. His services were terminated throwing him and his family to the winds, as it were, one of the elementary and substantial principles of industrial jurisprudence in relation to disciplinary action. No management could ordinarily be permitted to shunt to starvation a workman without performing the elementary duty of conducting an enquiry. Ordinarily it will be a shattering shock for the workman and his family. When the management does mix up matters in messy manner as it had done here, the action may even smack of lack of good faith and also of the existence of an oblique motive. The workman would be eminently entitled to backwages in such a situation. The Tribunal observed that his present age was about 45. The prime of his youth was spent in disconcerting unpredictability, and distress arising out of non-employment and the consequent depression. The entirety of the back wages would then normally be due to the workman. There is, however, evidence which has been accepted by the Tribunal about an alternate employment which the workman had during the period of 1982 to 1986. Counsel for the workman rightly and fairly submitted that back wages for the above period could be excluded in the computation of the arrears of back wages. We hold that the workman is entitled to the full back wages during the period he has been kept out of service except for the period 1982 to 1986 during which he had been employee in another establishment.

14. This takes us to the somewhat difficult task of determinating the arrears of wages for the period involved. It has to be observed in this connection that in the computation of the backwages in the case of a reinstated workman, the benefit of revised wages or salary arising out of a revision of pay scales, as also yearly increments and revised dearness allowance should also enter the calculation of arrears of backwages. Leave encashment and bonus, if other workmen in the same category have been paid the same would also be his dues. Interest at 12% per annum from the date the amount became due, is also held to be one of such entitlement of a workman in such a situation. See Gammon India Ltd Vs. Niranjana Dass 1984 (48) FLR 310.

15. The Industrial Tribunal noted that the salary of the workman at the time of termination of his services was Rs. 377.60. It was contended

4 1992 II CLR 490

before the Tribunal that there were two to three revisions of pay-scales and the wages of the workman had been enormously increased. However, on this aspect, there was no clear evidence. Exhibit 19 before the Tribunal was, however, a helpful material. That was a settlement which furnishes figures of the revised scales of the workmen, A revision ranging from Rs. 200/- to Rs. 400/- per month had been noticed by the Tribunal. The workman had a contention that a person in the clerical grade was receiving somewhere about Rs. 3000/- per month at the time when the matter was argued before the Tribunal. This was obviously not accepted by the Tribunal in the absence of supportive evidence. The long span of twelve years, however, would justify an inference about revisions of scales of pay during that period. The Court has necessarily to attempt the computation of the backwages, in as satisfactory a manner with the above constraints. In doing so, as noted above, the interest at 12% on amounts becoming due would also enter the reckoning. Even if it is assumed that by 1986, the salary would have been about Rs. 1000/-(as against the claim of the workman that it was Rs. 3000/-), the total amount for the entirety of the period may aggregate to about Rs. 80,000/-, with addition of interest. Similarly, the salary for the period prior to 1982 would work out to about Rs. 20,000/-. Interest at 12% will have to be added to the salary payable as and when it becomes due. The total figure thus worked out, even on a conservative basis may, far exceed rupees one lac. We have modulated the figure in favour of the management. On a total evaluation of all the circumstances, we feel that the arrears of wages payable to the workman could be fixed in the sum of rupees one lac.”

16.1. From the above it is seen that this Court (Coram : Panaji Bench) has categorically held that it has to be observed in this connection that in computation of back wages in the case of reinstated workman, the benefit of revised wages or salary arising out of the revision of pay scales as also yearly increments and revised dearness allowance should also enter the calculation of arrears of back wages. This Court has also categorically held further that leave encashment and bonus being paid to other workman in the same category have been paid, then the same would also be the workman's dues. Interest @ 12% per annum from the said amount having become due is also held to be one of such entitlement of workman in such a situation. It

is held that the Court has necessarily to attempt the computation of the back wages, in as satisfactory a manner with the above constraints and in doing so, interest at 12% on amounts becoming due would also enter the reckoning.

17. On the basis of the above observations and findings, I see no reason as to why a different decision can be taken by me. Once the final Award grants reinstatement with full back wages and the said Award has been upheld and confirmed by this Court and the same having not been challenged by the Respondent in Appeal, there is no reason for me to hold that the workman in the present case namely deceased Gopinath Nadekar would not be entitled to the payment of difference of wages as per the revision in pay scales for the period 09.04.1999 to 12.06.2005 and for payment of difference of wages from 13.06.2005 till the date of filing of the Application as also the bonus for the years 1995-96 to 2004-05.

18. In view of the above, the impugned Judgment dated 16.08.2018 stands modified to the extent that the Application filed by the Workman under Section 33(C)(2) of the said Act for recovery of the amounts mentioned in the annexure thereto stands fully allowed along with interest @ 12% per annum. To that extent the impugned judgment dated 16.08.2018 stands set aside and modified. By the impugned judgment, interest has been awarded @ 10% from the date

of reinstatement till the date of actual payment of the amount to the workman. That portion of the judgment also stands modified to the extent that on the unpaid amount as per the computation in Annexure “A” to the Application and more specifically as stated in paragraph No. 1 of the present Writ Petition, Petitioner i.e. widow of the deceased workman shall be entitled to the entire balance amount along with interest @ 12% per annum from the date it is due and / or reinstatement till the date of its actual payment after giving due adjustment and credit for the amounts which have already been paid. It is directed that Respondent shall pay the balance amount to the Petitioner alongwith interest as directed within a period of four weeks from the date of this order.

19. For convenience and implementation of this order, Advocate for Petitioner is directed to compute the balance outstanding amount along with interest @ 12% per annum and inform the same to the Respondent along with an authenticated copy of this judgement within a period of two weeks and on the same having been confirmed after adjusting the amounts which have already been paid till now, the balance amount shall be paid within a period of two weeks thereafter.

20. With the above directions, Writ Petition stands allowed.