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W.A.No.361 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

THE HONOURABLE Mr.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE Mrs.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.A.No.361 of 2020

R.Govindarajan

... Appellant

Vs.

1. Indian Overseas Bank,
Rep.by its Chairman and
Managing Director,
Central Office,
763, Anna Salai, Chennai-600 002.
2. The Appellate Authority,
General Manager,
Indian Overseas Bank,
Central Office,
763, Anna Salai, Chennai-600 002.
3. The Deputy Chief Officer,
Disciplinary Authority,
Vigilance Department,
Indian Overseas Bank,
Central Office,
763 Anna Salai, Chennai-600 002.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order passed in WP.No.12571 of 2004 dated 05.03.2019 consequently allow the above Writ Appeal as prayed for.



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For Appellant : Mr.R.Viduthalai
Senior Counsel
for Mr.L.N.Pragasam
For Respondents : Mr.K.rinivasamurthy
for Mr.N.G.R.Prasad

J U D G M E N T

(The Judgment of the Court was delivered by **R.SUBRAMANIAN, J**)

The appellant is aggrieved by the direction of the Writ Court that he would not be entitled to back wages while setting aside the order of the dismissal and imposing a penalty/punishment of reduction of basic pay in five stages with cumulative effect.

2. The appellant, who was working as a Clerk with the respondent Bank was charged with various delinquencies. All the charges related to discounting of cheques of a particular group of Companies and non-sending of the cheques for realization in time. While the appellant was also charged for destruction of the some of the cheques that were purchased by the Bank, the other Officers viz., The Chief Manager, The Assistant Manager and another Clerk were charged with dereliction of duty. The Chief Manager Mr.V.Sankar was charged with even granting facilities over and above the



permitted levels. He was also accused of having discounted cheques despite there being delay in payment of the dues by the persons, who had discounted the cheques. The Management saw it as a scheme by these four individuals to help the borrowers to gain undue advantage to the detriment of the Bank. All the four were charge sheeted. The Bank initially proposed to impose punishment of reduction in pay uniformly for all the four employees. When the Bank sought the opinion of the Central Vigilance Commission on the proposed punishments, the Bank was advised that, for the proved delinquencies, the appropriate punishment for all the four of them would be dismissal from service. The Bank, however imposed the punishment of dismissal from service for three of them viz., The Assistant Manager and the clerical staff including the appellant. The Chief Manager, however was dealt with very soft gloves and imposed a punishment of reduction in pay alone. All the three persons, who were imposed a punishment of dismissal from service challenged the same in WP.Nos.12475, 12571 of 2004 and WP.No.30829 of 2005. The writ petitions filed by the clerical staffs M.Eganathan and the appellant herein came to be disposed of by a common order dated 05.03.2019. The other writ petition filed by S.Yuvaraja Bhoopathy, Assistant Manager viz., WP.No.30829 of 2005 was disposed of on



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the basis of the order in W.P.Nos.12475 & 12571 of 2004, which is impugned in this Writ Appeal on 01.07.2021. The other two employees viz., M.Eganathan and S.Yuvaraja Bhoobathy have not challenged the direction for withholding back wages.

3. We have heard Mr.R.Viduthalai, learned Senior counsel appearing for the appellant, Mr.K.Srinivasamurthy, learned counsel appearing for Mr.N.G.R.Prasad for the respondents.

4. Mr.R.Viduthalai, learned Senior counsel appearing for the appellant would vehemently contend that having held that the punishment is disproportionate and having setting aside the dismissal from service, the Writ Court was not right in denying back wages without assigning any reason. Drawing out attention to the nature of the proved charges, learned Senior counsel would contend that the Management was not right in treating the Chief Manager in very soft gloves and while the Writ Court took note of such partiality or inequality in the quantum of punishment, it however chose to deny back wages for no reason. The learned Senior counsel would also compare the charges that were laid against the Chief Manager and the appellant, who is a clerical staff to contend that the charges against the Chief Manager were more serious than the charges against the appellant. Last but



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not least, the learned Senior counsel would contend that there was no financial loss for the Bank, since the entire amount stood recovered, of course, after some delay. He would also draw our attention to judgments of the Hon'ble Supreme Court in *Hindustan Tin Works Pvt. Ltd., Vs. The Employees of M/s.Hindustan Tin Works Pvt. Ltd and Others* reported in (1979) 2 SCC 80 and *Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed and Others* reported in (2019) 17 SCC 184 in support of his contention that back wages cannot be denied without assigning any reasons and without rendering a finding that the employees are otherwise gainfully employed during the period, for which proof should be provided by the Management.

5. Contending contra, Mr.K.Srinivasamurthy, learned counsel appearing for the respondents would submit that while the appellant was responsible for despatch of cheques, which were purchased or discounted by the Bank. The Chief Manager was only having a supervisory role and therefore, he cannot be said to have committed a very serious delinquency than that of the appellant. Drawing our attention to the finding of the Enquiry Officer, the learned counsel would contend that the appellant has



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been found guilty of destroying the cheques purchased by the Bank. He would also point out that though the Bank originally proposed a lesser punishment, it was at the instance of the Central Vigilance Commission, a higher punishment was imposed. He would also point out that insofar as the Assistant Manager Mr.Yuvaraja Bhoopathy, this Court taking note of the judgment impugned in this appeal and reduced the punishment to reduction in pay as well as denial of back wages.

6. We have considered the rival submissions.

7. The law relating to the payment of denial of back wages is too well settled. In ***Hindustan Tin Works Pvt. Ltd., Vs. The Employees of M/s.Hindustan Tin Works Pvt. Ltd and Others***, the Hon'ble Supreme Court has observed as follows:-

“9..... Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule.”



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8. Again at paragraph 11, the Hon'ble Supreme Court has observed as follows:-

“11.In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.”

9. In a recent judgment in ***Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed and Others*** authoring the judgment of the Hon'ble Supreme Court, Hon'ble Justice Dr.D.Y.Chandrachud [as he then was] had



while following the judgment of the three Judge Bench in ***Hindustan Tin Works Pvt. Ltd.***, also extracted the principles laid down in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya***. The principles as stated are as follows:-

“38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid 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 misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least 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 the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a



positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, 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.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the



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entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

*38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-a-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e., the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in **Hindustan Tin Works(P) Ltd. V. Employees.**”*



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10. It is not in dispute that the appellant has reached the age of superannuation just three months after the order made in the writ petition. The Writ Court has found that the termination is illegal. The said conclusion of the Writ Court is not under challenge before us. The same having become final, we will have to proceed on the footing that the termination is illegal. Once the termination is held to be illegal, the consequence of such conclusion should follow as pointed out by the Hon'ble Supreme Court in ***Hindustan Tin Works Pvt. Ltd.*** No doubt it will be open to the Court or Tribunal to deny back wages, but the same should be on sound reasoning. We find that the Writ Court has not assigned any reasons for denying back wages to the appellant. As rightly contended by the learned Senior counsel, it should be shown that the appellant was not gainfully employed during the period of enforced idleness or that the Management is in very bad financial condition. Neither of the two grounds exist in the case on hand. We are therefore constrained to interfere with the direction of the Writ Court denying back wages to the appellant.

11. The Writ Appeal will stand allowed while the punishment imposed



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by the writ Court viz., reduction in back wages by five stages with cumulative effect is upheld. The direction denying back wages alone is set aside. The appellant will be entitled to full back wages during the period of his service. Considering the fact that the appellant has already retired from service, the Bank will do well to pay the back wages within a period of twelve weeks from the date of the receipt of a copy of this judgment. No costs.

(R.S.M.J.) (K.G.T.J.)
16.02.2023

Index : No

Speaking order: Yes

Neutral Citation case: No

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To

1. Indian Overseas Bank,
Rep.by its Chairman and Managing Director,
Central Office,
763, Anna Salai, Chennai-600 002.

2. The Appellate Authority,
General Manager,
Indian Overseas Bank,
Central Office,
763, Anna Salai, Chennai-600 002.

3. The Deputy Chief Officer,
Disciplinary Authority,
Vigilance Department,



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and
K.GOVINDARAJAN THILAKAVADI, J.

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