

A

MANAGEMENT OF NILPUR TEA ESTATE

v.

STATE OF ASSAM AND ORS.

NOVEMBER 17, 1995

B

[A.M. AHMADI, CJI, N.P. SINGH AND B.N. KIRPAL, JJ.]

Labour Laws :

Industrial Disputes Act, 1947 :

C

S.33-C(2)—Back wages till termination of service—Since termination order not challenged, the relationship of employer—Employee ceased on the date of termination—Order of Courts below modified to that extent—Payment of backwages—Directions issued.

D

A charge-sheet was issued by the appellant against the third respondent alleging certain misconduct under the standing order. Thereafter a domestic enquiry was held and on the basis of the report of the Enquiry Officer, his services were terminated. An industrial dispute was raised, and reference of the dispute was made for adjudication to the Labour Court, which gave an award setting aside the order of termination and directing that the respondent be reinstated.

E

The appellant filed a writ petition before the High Court questioning the validity of the award. The writ petition was dismissed by a Single Judge. The writ appeal was also dismissed.

F

During the pendency of writ petition respondent was reinstated but his services were terminated against. He was also called upon to collect his back wages. The second order of termination after reinstatement of the respondent was not challenged and no dispute was raised. A letter was addressed by the appellant to the respondent requesting him to hand over possession of the staff quarter as his services had already been terminated.

G

A Title Suit was also filed, for recovery of vacant possession of the said quarter. The respondent filed an application under section 33-C(2) of the Industrial Disputes Act before the Labour Court for computation of the amount of money due to him as back wages payable by the appellant. The

H

Labour Court directed the appellant to pay an amount of Rs. 1,54,851 as

dues towards the wages and other benefits payable to the respondent for the period commencing from 1.2.1982 when the services of the said respondent were terminated, till March 1994. The writ petition as well writ appeal challenging the said order of Labour Court were dismissed by the High Court. Hence this appeal.

Partly allowing the appeal, this Court

HELD : 1. As no step had been taken by the respondent to question the legality or otherwise of the order of termination dated 19.4.1988 the said order could not have been ignored by the Labour Court or the High Court, for purposes of calculating the amount which remained due and is payable to the respondent. Unless the said order of termination is held to be invalid, it cannot be ignored in a proceeding under section 33-C(2) of the Act. In view of the order dated 19.4.1988 it has to be assumed that the services of the respondent had been terminated and the relationship as employer and workman between the appellant and the said respondent came to an end on 19.4.1988, because of which the said respondent was not entitled to claim any back wages after 18.4.1988. In such a situation, there is no option but to modify the orders of the Labour Court as well as of the High Court to the extent that the back wages and other benefits which had been computed by the Labour Court as the amount payable to the respondent, has to be calculated till 18.4.1988. Consequently, the direction to make payment upto March, 1994 is set aside and it shall be restricted to the period from 1.2.1982 to 18.4.1988. [469-E-H; 470-A]

2. It is directed that the dues payable to the respondent in terms of this order be paid to the respondent within two months by calculating the dues payable to the said respondent upto 18.4.1988, if not already paid.

[470-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10610 of 1995.

From the Judgment and Order dated 15.5.95 of the Assam High Court in W.A. No. 76 of 1995.

P.K. Goswami, Rajiv Mehta, Ms. Anita Sahni and Kailash Vasdev for the Appellant.

P. Chowdhary for the Respondents.

A The Judgment of the Court was delivered by

N.P. SINGH, J. Leave granted.

B This appeal has been filed on behalf of the Management of Nilpur Tea Estate for setting aside the order dated 8.2.1995 passed by a learned Judge of the Guwahati High Court, dismissing the writ petition filed on behalf of the appellant, for quashing the order passed by the Labour Court under section 33-C(2) of the Industrial Disputes Act (hereinafter referred to as the 'Act'). The order aforesaid has been affirmed by the Division Bench by dismissal of the writ appeal by its order dated 15.5.1995.

C A charge-sheet was issued by the appellant on 9.10.1981 against the third respondent (hereinafter referred to as the 'respondent') alleging certain misconduct under the standing order. Thereafter a domestic enquiry was held and on the basis of the report of the Enquiry Officer by order dated 1.2.1982 the services of the said respondent were terminated.

D On an industrial dispute being raised, reference of the dispute was made for adjudication to the Labour Court. The Labour Court gave its award which was published in the gazette in January 1988. By the aforesaid award, the order of termination was set aside and a direction was given that respondent be reinstated.

E A writ petition was filed on behalf of the appellant before the High Court questioning the validity of the award aforesaid. The said writ petition was dismissed on 24.6.1993 by a learned Judge upholding the order of the Labour Court directing reinstatement. The writ appeal filed on behalf of the appellant was also dismissed on 29.9.1993. It may be mentioned that

F during the pendency of writ petition respondent was reinstated but on 19.4.1988 the appellant communicated an order to the said respondent again terminating his services. He was also called upon to collect his back wages. There is no dispute that the second order of termination after reinstatement of the respondent as per direction given by the Labour

G Court, was not challenged and no dispute was raised in respect of the said order dated 19.4.1988. On 11.10.1993 a letter was addressed by the appellant to the said respondent requesting him to hand over possession of the staff quarter as his services had already been terminated on 19.4.1988. A Title Suit No. 2/94 was also filed in the Court of the Assistant District Judge, Tejpur for recovery of vacant possession of the said quarter. Then

H the respondent filed an application under section 33-C(2) of the Act before

the Labour Court on 16.2.1994 for computation of the amount of money due to him as back wages payable by the appellant. On that petition the Labour Court directed the appellant to pay an amount of Rs. 1,54,851 as dues towards the wages and other benefits payable to the respondent for the period commencing from 1.2.1982 when the services of the said respondent were terminated till March 1994. The writ petition as well writ appeal challenging the said order of Labour Court under section 33-C(2), were dismissed by the High Court saying that there was no error apparent on the face of the order of the Labour Court calling for an interference by the High Court.

On behalf of the appellant it was pointed out that there was no dispute in the present case that second order of termination of the services of the respondent dated 19.4.1988 had remained unchallenged and validity thereof had never been questioned by the respondent before any forum. It was also pointed out that the said order had been communicated to the respondent, who completely ignored the same and only when the aforesaid communication dated 11.10.1993 was issued by the appellant requiring the respondent to hand over possession of the staff quarter, the aforesaid petition under section 33-C(2) was filed for computation of the arrears of back wages. As no step had been taken by the respondent to question the legality or otherwise of the order of termination dated 19.4.1988 the said order could not have been ignored by the Labour Court or the High Court, for purposes of calculating the amount which remained due and is payable to the respondent. To put it in other words, the Labour Court or the High Court could not have directed payment to the respondent for period after 19.4.1988 when the services of the respondent were terminated afresh. The counsel for the respondent could not take a stand that respondent had challenged the aforesaid order dated 19.4.1988 terminating his services after being reinstated. Unless the said order of termination is held to be invalid, it cannot be ignored in a proceeding under section 33-C(2) of the Act. The counsel who appeared for the respondent could not explain as to why the order of termination dated 19.4.1988 was completely ignored by the respondent. In view of the order dated 19.4.1988 it has to be assumed that the services of the respondent had been terminated and the relationship as employer and workman between the appellant and the said respondent came to an end on 19.4.1988, because of which the said respondent was not entitled to claim any back wages after 18.4.1988. In such a situation, we are left with no option but to modify the orders of the Labour Court

A as well as of the High Court to the extent that the back wages and other benefits which had been computed by the Labour Court as the amount payable to the respondent, has to be calculated till 18.4.1988. Consequently, the direction to make payment upto March, 1994 is set aside and it shall be restricted to the period from 1.2.1982 to 18.4.1988.

B On behalf of the respondent, our attention was drawn to an order of the High Court in a contempt proceeding initiated by the said respondent. The counsel who appeared for the appellant had given an undertaking that the appellant shall pay all the dues to the said respondent within the time fixed in the said order. That order according to us is of no help to the respondent. Now that has to be read as the amount which in law is due to the respondent. We, accordingly, direct that the dues payable to the respondent in terms of this order be paid to the respondent within two months from today, by calculating the dues payable to the said respondent upto 18.4.1988, if not already paid.

D The appeal is allowed to the extent indicated above. There shall be no order as to costs.

G.N.

Appeal allowed.