

A P.G.I. OF M.E. AND RESEARCH, CHANDIGARH
v.
RAJ KUMAR ETC.

NOVEMBER 2, 2000

B [UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

Labour Laws :

C *Industrial Disputes Act, 1947—Sections 25-B, 25-F—Payment of back wages for reinstated workman with continuity in service—Tribunal granting 60% back wages—High Court in a writ petition modifying the order of Tribunal by granting full back wages without giving reasons—Validity of—Held not valid—Article 226 of the Constitution of India.*

D Appellant terminated the services of respondent who has completed 240 days of service. In appeal, the Labour Court held that the respondent was illegally terminated and directed reinstatement with continuity of service under the Industrial Disputes Act, 1947 awarding 60% of back wages. Single Judge of the High Court allowed the appeal of the respondent granting full back wages. Division Bench of the High Court also concurred with the decision of the Single Judge. Hence this appeal.

E Allowing the appeals, the Court

F HELD : 1.1. While it is true that in the event of failure in compliance with Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion which must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence that would be deemed to be an error of

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law, which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though however perverse the order would warrant intervention of the High Court. [353-G; 354-B, C]

1.2. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. It is well settled that cases are to be decided on the basis of its peculiar facts and circumstances and no generalised principle can be deduced but facts shall have to be considered in its true and proper perspective. [355-A-B, E]

1.3. The issue raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. In the event however, the High Court's interference is sought for, there exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour Court and it is only upon recording the reasons, the High Court has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment. [335-F-H]

Syed Yakoob v. K.S. Radhakrishna, AIR (1964) SC 477, relied on.

Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Work Pvt. Ltd., [1979] 1 SCR 563; *Rattan Singh v. Union of India*, [1997] 11 SCC 396 and *P.G.I.M.E. & Research, Chandigarh v. Soma & Anr.*, Civil appeal No. 12558 of 1996, referred to

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6576 of 1999 Etc.

From the Judgment and Order dated 5.4.99 of the Punjab and Haryana High Court in L.P.A. No. 872 of 1993.

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Civil Appeal No. 6577/1999 and Civil Appeal No. 6578/99

D.S. Nehra, Dhruv Mehta, S.K. Mehta and Ms. Shobha with him for the Appellant.

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M.K. Dua for the Respondents.

The Judgment of the Court was delivered by

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BANERJEE, J. The Post-Graduate Institute of Medical Education and Research, Chandigarh is in appeal against the Bench decision of the Punjab & Haryana High Court. The only limited question in these three appeals is whether the Labour Court in the facts and circumstances of the matter in issue was justified in awarding 60% of the back wages while ordering reinstatement with continuity of service.

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The High Court in the matters under appeal did interfere with the order of the Labour Court in a petition under Article 226 principally on the ground that the Labour Court was in error in the matter of grant of restricted back wages to the extent of 60% and the High Court has modified the order of the Tribunal and directed entitlement in its entirety. The appeal of appellant hereinbefore the Appellate Bench against the order of the learned Single Judge, did not however, yield any benefit and the contentions stand negated by the Appellate Court and hence the appeals before this Court by the grant of special leave.

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Incidentally, be it noted that three separate writ petitions were filed before the High Court by the three affected workmen against whom the Labour Court has declined to pass an order for back wages in its entirety but in view of the common question of law and fact the High Court dealt with the same in one common judgment and we also feel it expedient to deal with the same in this judgment even though three specific appeals have been filed in the matter.

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Learned Single Judge of the High Court drawing inspiration from the decision in *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.*, [1979] 1 SCR 563 came to the conclusion that there is no justification in not awarding the full back wages in the event, the workman is ready to work. The Appellate Court recorded the concurrent finding as

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noticed herein before.

The contextual facts in Civil Appeal No. 6576 of 1999 depict that the respondent joined the service on September 1, 1986 as a helper and worked up to July 18, 1987 and it thus stands proved that respondent had completed 240 days of service when his services were terminated on July 18, 1987, which however was held to be not in accordance with law and as such the Presiding Officer, Labour Court, Chandigarh came to a finding that the services of Raj Kumar were illegally terminated by the appellant and as such declared his entitlement for reinstatement in service with benefit of continuity of service but awarding only 60% of the back wages.

The Labour Court, being the final Court of facts and the law being well settled for which we do not intend to dilate, came to a conclusion that payment of 60% wages would comply with the requirements of law.

As noticed above, the learned Single Judge of the High Court while dealing with the matter apart from recording certain decisions of this Court did in fact notice a flaw in the matter of grant of the quantum of back wages and as such granted full quantum therefor. The High Court did not find any error or erroneous assumption of jurisdiction in the matter of declaration of payment of back wages. While it is true that admittedly the normal rule being payment of back wages in its entirety, the High Court while recording normal rule has failed to notice any error apparent with the reasoning of the Tribunal in the matter of grant of restricted back wages. The judgment of the High Court is totally silent on this score. The High Court ought in such circumstances as a matter of principle should record the circumstances under which the use of discretion of the Labour Court or the Tribunal as the case may be, was erroneous warranting interference.

While it is true that in the event of failure in compliance with Section 25(F) read with Section 25(b) of the Industrial Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion, which in *Hindustan Tin Works Pvt. Ltd.* case (supra) this Court has stated must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. While however recording the guiding principle for the grant of relief of back wages this Court in *Hindustan's Case*, itself reduced the back wages to 75%, the reason being the contextual facts and circumstances of the case under

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B The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that C finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though however perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in D *Syed Yakoob v. K.S. Radhakrishna*, AIR (1964) SCC 477.

E Before proceeding with the matter any further let us have a look at the decisions cited before this Court by the respective parties in support of their respective contentions. Learned Senior Counsel appearing in support of the appeals placed strong reliance on the decision of this Court in the case of F *P.G.I.M.E. & Research, Chandigarh v. Soma and Anr.*, (Civil appeal No.12558 of 1996) wherein this Court expressed an opinion that in the facts and circumstances of the case, the Labour Court was justified in restricting the back wages to 50% and the High Court was not justified in interfering with the order of the Tribunal and raising the back wages upto 100% and it was in that perspective that the appeal was allowed.

G The learned counsel appearing for the respondents, however, placed strong reliance on a later decision of this Court in *P.G I. of M.E. & Research Chandigarh v. Vinod Krishan Sharma & Anr.*, (Civil Appeal No. 1261 of 1992) wherein this Court directed payment of balance of 60% of the back wages to the respondent within a specified period of time. It may well be noted that H the decision in *Soma's* case (supra) has been noticed by this Court in *Vinod Sharma's* case (supra) wherein this Court apropos the decision in *Soma's* case observed "a mere look at the said judgment shows that it was rendered in the peculiar facts and circumstances of the case. It is, therefore, obvious that the said decision which centered round its own facts cannot be a precedent in the present case which is based on its own facts". We also

record our concurrence with the observations made therein.

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Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in *Hindustan Tin Works Pvt. Ltd.* (supra) be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

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Strong reliance has also been placed on the decision of this Court in *Rattan Singh v. Union of India*, [1997] 11 SCC 396, wherein this Court observed that protection of Section 25 (f) cannot be denied to a workman on the ground that he was a daily rated worker, having regard to the factum that the said daily rated worker had continuously worked for more than 240 days in a year. The industrial jurisprudence as developed in the country also accepts the same as a true statutory intent in the matter of introduction of the Industrial Disputes Act in the statute book. Significantly, however, in *Rattan Singhs* case (supra) this Court thought it fit by reason of contextual facts to direct payment of consolidated sum of Rs. 25,000 in lieu of back wages and reinstatement-the reason being the factum of the time lag between the date of termination and the date of order. It is well settled that cases are to be decided on the basis of its peculiar facts and circumstances and no generalised principle can be deduced but facts shall have to be considered in its true and proper perspective.

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The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. In the event however the High Court's interference is sought for there exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour Court and it is only upon recording therewith the High Court has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment.

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A In that view of the matter these appeals stand allowed. The orders under appeals are set aside and the orders passed by Labour Court stand restored. There shall, however, be no order as to costs.

B.S.

Appeals allowed.