

U.P. STATE ROAD TRANSPORT CORPORATION

v.

MAN SINGH

SEPTEMBER 13, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.]

*Labour Laws:*

*Industrial Disputes Act, 1947; Ss. 11-A and 25—F:*

*Termination of services of a conductor/workman by employer—State Road Transport Corporation—Industrial Dispute—Labour Court directing reinstatement of the workman with back wages—Affirmed by High Court—On appeal, Held: Though the Labour Court has jurisdiction to pass an award directing re-instatement of the workman in terms of Section 11-A of the Act but the discretionary relief must be granted upon by the Court taking into consideration all attending circumstances—The workman was appointed on a temporary basis—Since dispute was raised after 12 years of the incident, it was unlikely that he remained unemployed for such a long time—Both the Courts below have failed to take into consideration all these aspects—In the peculiar facts and circumstances of the case it would be wholly unjust to direct reinstatement of the workman after a period of 30 years—It would be appropriate if the workman in question is directed to pay a sum of Rs.50,000 instead and in place of his reinstatement in service with back wages—Directions issued.*

**The respondent-workman was appointed w.e.f. 20.07.1974 on temporary basis by the appelland-employer, a State Road Transport Corporation. His services were terminated on the ground of misconduct etc. on 23.07.1975. He raised an industrial dispute on 14.9.1986 which was referred to the Labour Court by the appropriate Government. The Labour Court held that the appelland-Corporation had failed to comply with the mandatory requirements of Section 25F of the Industrial Disputes Act while terminating the services of the workman in question, and therefore, set aside the order of termination of the services of the respondent and also granted him back-wages. Aggrieved, the employer filed a writ petition,**

A which was dismissed by the High Court. Hence the present appeal.

Partly allowing the appeal, the Court

B HELD:1.1. The Labour Court indisputably had the jurisdiction to pass an award directing reinstatement of the respondent in terms of Section 11A of the Industrial Dispute Act. [124-A]

C 1.2. There is nothing on record to show that the respondent-workman was employed in accordance with the recruitment rules framed by the Appellant Corporation. No material has also been brought on record to show that the vacancy was a regular one or in filling up of the said vacancy the constitutional requirements as envisaged under Articles 14 and 16 of the Constitution of India were complied with. [124-B-C]

D 1.3. The workman in question had raised a dispute in 1986, after a period of about 12 years. It may be true that in an appropriate case, delay in raising the dispute would have resulted in rejection of the claim for back-wages for the period during which the workman remains absent. But the discretionary relief must be granted upon taking into consideration all attending circumstances. The appellant is a statutory Corporation. Keeping in view the fact that the respondent-workman was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time i.e. after a period of more than 30 years, to direct reinstatement of the respondent in service. However, the Labour Court or the High Court did not consider these aspects of the matter. [124-C-D-E]

F *Gurmal Singh v. Principal, Government College of Education and Ors.*, [2000] 9 SCC 496, relied on.

G 2. Keeping in view the peculiar facts and circumstances of this case, instead and in place of the direction for reinstatement of the respondent together with back-wages from 1986, interest of justice would be subserved by directing the appellant-Corporation to pay a sum of Rs.50,000 to the workman. [124-F-G]

H *State of Rajasthan & Anr. v. Ghyan Chand*, (C.A.No.3214/2006) decided Supreme Court, *State of M.P. and Ors. v. Arjunlal Rajak*, (2006) 2 SCALE 610; *Nagar Mahapalika (now Municipal Corporation) v. State of U.P. & Ors.*,

(2006) 5 SCALE 145 and *Haryana State Electronics Development Corporation Ltd. v. Mamni*, (2006) 5 SCALE 164, relied on. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4107 of 2006.

From the Judgment and Order dated 8.4.2005 of the High Court of Judicature at Allahabad in C.M.W.P. No. 19480/1994. B

A.K. Pandey, Sudanshu Saran, Sunita Singh, Rajeev Singh and Pradeep Misra for the Appellant.

Rajesh Prasad Singh for the Respondent. C

The Judgment of the Court was delivered by

S.B. SINHA, J. Delay condoned.

Leave granted. D

The appellant before us is a Corporation constituted under the Road Transport Corporation Act. The respondent was appointed w.e.f. 20.4.1974 on temporary basis. His services were terminated on 23.07.1975. He is said to have been paid one month's salary in lieu of notice. Some allegations had also been made that he committed misconduct. E

He raised an industrial dispute on or about 14.9.1986 which was referred to for adjudication to the Presiding Officer, Labour Court, U.P., Agra. The industrial dispute referred by the appropriate Government for its adjudication by the Labour Court reads as under:

"That the act of the employer in terminating the service of their workman Man Singh s/o Sher Singh, post Conductor, vide order dated 23.03.1975 is proper and/or legal. If not then to what relief/compensation is the concerned workman entitled for and with what further details." F

On a finding that in retrenching the respondent the appellant failed to comply with the mandatory requirements of Section 25F of the Industrial Disputes Act, 1947, the Labour Court although set aside the order of termination of the services of the respondent but granted back-wages only from 1986. The High Court in the writ petition filed by the appellant refused to interfere therewith. G H

A The Labour Court indisputably had the jurisdiction to pass an award directing reinstatement of the respondent in terms of Section 11A of the Industrial Dispute Act. While exercising the said power, however, the Labour Court should have taken into consideration all relevant factors. The respondent does not dispute that he got employment only for about a year during the period 24.4.1974 to 23.7.1975. There is nothing on record to show that he was employed in accordance with the recruitment rules framed by the Appellant Corporation. No material has also been brought on record to show that the vacancy was a regular one or in filling up of the said vacancy the constitutional requirements as envisaged under Articles 14 and 16 of the Constitution of India were complied with.

C The respondent admittedly raised a dispute in 1986, i.e. after a period of about 12 years. It may be true that in an appropriate case, as has been done by the Labour Court, delay in raising the dispute would have resulted in rejection of his claim for back-wages for the period during which the workman remains absent as has been held by this Court in *Gurmaj Singh v. Principal, Government College of Education and Ors.*, [2000] 9 SCC 496. But the discretionary relief, in our opinion, must be granted upon taking into consideration all attending circumstances. The appellant is a statutory Corporation. Keeping in view the fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time i.e. after a period of more than 30 years, to direct reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did not consider these aspects of the matter.

F Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that in stead and place of the direction for reinstatement of the respondent together with back-wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs.50,000/- to him. Similar orders, we may place on record, have been passed by this Court in *State of Rajasthan & Anr. v. Ghyan Chand*, (C.A.No.3214/2006), *State of M.P. & Ors. v. Arjunlal Rajak*, (2006) 2 SCALE 610, *Nagar Mahapalika (now Municipal Corporation) v. State of U.P. & Ors.*, (2006) 5 SCALE 145 and *Haryana State Electronics Development Corporation Ltd. v. Mamni*, (2006) 5 SCALE 164.

H We direct the appellant to pay the aforementioned amount to the respondent within a period of eight weeks from today, failing which, the

same shall carry interest at the rate of 6 per cent per annum till the date of actual payment. This appeal is allowed to the extent mentioned hereinbefore. The parties shall pay and bear their own costs. **A**

S.K.S.

Appeal partly allowed.

**B**