

A

DIVISIONAL CONTROLLER, G.S.R.T.C.

v.

KADARBHAI J. SUTHAR

FEBRUARY 13, 2007

B

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Labour Laws:

C

Termination—On account of misconduct—Labour Court held that since workman was acquitted in criminal case, he is entitled to reinstatement without back wages—High Court ordered 75% of full back wages—On appeal, held Labour Court had taken note of previous acts of misconduct while denying the back wages—Hence, direction of payment of back wages is not correct.

D

Disciplinary proceedings—Termination on account of misconduct—Acquittal in criminal case—Held, would not nullify the decision taken in the departmental proceedings.

E

Back wages—Entitlement to full back wages, when termination not found lawful—Held, there is no automatic entitlement to full back wages.

F

Respondent-workman was driver in the appellant-Corporation. He caused an accident resulting in death of 8 years old child. He was acquitted in the criminal case. A claim petition claiming compensation was filed under the Motor Vehicles Act, 1988 and the Corporation paid Rs. 45000/- to the claimants. Departmental proceedings were initiated against the workman, he was found guilty and was dismissed from service. He raised industrial dispute. The Labour Court held that since the workman was acquitted in the criminal case, a contrary view in the departmental proceedings was not permissible. Accordingly, reinstatement was directed without back wages.

G

Immediately thereafter respondent-workman was reinstated and the Award of the Labour Court was not challenged by the Corporation.

H

After sometime, workman filed writ petition before the High Court questioning correctness of the refusal of back wages. Single Judge allowed the writ petition and directed payment of full back wages. On appeal, Division

Bench reduced back wages to 75% instead of full back wages.

In appeal to this Court, the appellant contended that the view taken by the Labour Court about the effect of acquittal is clearly contrary to law; that the respondent was earlier also responsible for several acts of misconduct and the Labour Court while deciding on the question of entitlement of back wages had taken note of this aspect and that neither the Single Judge nor the Division Bench took note of it; and the conclusion that whenever reinstatement is directed, payment of back wages is the natural corollary is contrary to law.

Allowing the appeal, the Court

HELD : 1. The orders of both the Single Judge and the Division Bench of the High Court suffer from several infirmities. First and foremost, mere acquittal in a criminal case does not have the effect of nullifying the decision taken in the departmental proceedings. They operate in different areas of considerations. [Para 5] [553-D]

Noida Entrepreneurs' Association v. Noida and Ors., WP(C) No. 150 of 1997 with WP(C) 529 of 1998 decided by Supreme Court on 15.1.2007; *Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt Ltd. and Ors.*, (1979) 2 SCC 80 and *PGI of Medical Education and Research, Chandigarh v. Raj Kumar*, [2001] 2 SCC 54, referred to.

2. When fixing the back wages several factors need to be noted. It is a well settled law that on the finding that termination was not lawful, there is no automatic entitlement to full back wages. [Para 6] [553-E]

3 Additionally, the Labour Court had taken note of the previous acts of misconduct by the workman while denying the back wages. That aspect was completely lost sight of. Merely because the Corporation did not challenge the order of reinstatement that does not lead to a conclusion that it accepted any illegality in the departmental proceedings. As a matter of fact, the Labour Court clearly noted that the workman admitted the legality and propriety of the inquiry held against him. In the aforesaid circumstances, the inevitable conclusion is that the direction for payment of back wages cannot be sustained. [Para 8] [554-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3212 of 2002.

From the Judgment and Final Order dated 27.9.2001 of the High Court of Gujarat at Ahmedabad in L.P.A. No. 883/2000.

A Ramesh P. Bhatt, Mahima C. Shroff, Mukesh Kumar and Chirag M. Shroff for the Appellant.

A. Rasheed Qureshi and Mohd. Irshad Hanif for the Respondent.

The Judgment of the Court was delivered by

B **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Gujarat High Court partly allowing the Letters Patent Appeal filed by the present appellant.

2. Background facts in a nutshell are as follows:

C The respondent (hereinafter referred to the 'workman') was employed with the appellant-Gujarat State Road Transport Corporation (hereinafter referred to as the 'Corporation') as a driver. While driving a corporation vehicle respondent caused an accident as a result of which a child aged about 8 years died. Criminal proceedings were initiated against the workman but he was acquitted. A claim petition claiming compensation was filed under the Motor Vehicles Act, 1988 (in short 'M.V. Act') and the Corporation paid compensation of about Rs.45,000/- to the claimants. Departmental proceedings were initiated against the workman and he was found guilty. His negligence of duty as well as charge of misconduct were held to have been proved. Accordingly, he was dismissed from service. A reference was made under Section 10(1)(c) of the Industrial Disputes Act, 1947 (in short 'Act') to the Labour Court, Ahmedabad. The Presiding Officer came to hold that since the workman was acquitted in the criminal case, a contrary view in the departmental proceedings was not permissible. Accordingly, reinstatement was directed without back wages by order dated 11.5.1990. Immediately thereafter respondent-workman was reinstated and the Award of the Labour Court was not challenged by the Corporation. Subsequently, in November, 1991, the workman filed writ petition before the High Court, questioning correctness of the refusal of back wages. By order dated 21.9.2000 writ petition was allowed by a learned Single Judge who directed payment of full back wages from the due date till the date from which he was reinstated along with running interest @ 6% p.a. Corporation filed Letters Patent Appeal before the High Court. By the impugned judgment the Division Bench reduced back wages to 75% instead of full back wages as directed by the learned Single Judge.

H 3. Learned counsel for the appellant submitted that the view taken by the Labour Court about the effect of acquittal is clearly contrary to law. The

Corporation had to pay compensation of about Rs.45,000/- to the claimants. The respondent was earlier also responsible for several acts of misconduct. In fact, there were more than two dozen proceedings. The Labour Court while deciding on the question of entitlement of back wages had taken note of this aspect. Unfortunately, neither the learned Single Judge nor the Division Bench took note of it. Further, conclusions that whenever reinstatement is directed, payment of back wages is the natural corollary is contrary to law.

4. Learned counsel for the respondent on the other hand submitted that though neither the learned Single Judge nor the Division Bench has referred to the earlier acts of misconduct, that has no relevance. The accident occurred because of inaction by the authorities to take note of the intimation by the respondent-workman about the defect in the several vital parts of the vehicle.

5. The orders of both the learned Single Judge and the Division Bench suffer from several infirmities. First and foremost, mere acquittal in a criminal case does not have the effect of nullifying the decision taken in the departmental proceedings. They operate in different areas of considerations. This position was recently highlighted by a three-Judge Bench of this Court in *Noida Entrepreneurs' Association v. Noida and Ors.*, (W.P. (C) No.150 of 1997 with W.P. (C) 529 of 1998 decided on 15.1.2007).

6. When fixing the back wages several factors need to be noted. It is a well settled position in law that on the finding that termination was not lawful there is no automatic entitlement to full back wages. In *Hindustan Tin Works Pvt. Ltd. v. The Employee of Hindustan Tin Works Pvt. Ltd. and Ors.*, [1979] 2 SCC 80, a three-judge Bench of this Court laid down:

“In the very nature of things there cannot be a straight-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

A legal and regular (See *Susannah Sharp v. Wakefield*, [1891] AC 173, 179)".

7. In *P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar*, [2001] 2 SCC 54, this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus:

C "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 affect."

Again at paragraph 12, this Court observed:

D "Payment of back wages having a discretionary element involvement 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." [See: *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Anr.*, (2002) AIR SCW 3008]."

E 8. Additionally, the Labour Court had taken note of the previous acts of misconduct by the workman while denying the back wages. That aspect was completely lost sight of by the learned Single Judge as well as the Division Bench. Merely because the Corporation did not challenge the order of reinstatement that does not lead to a conclusion that it accepted any illegality in the departmental proceedings. As a matter of fact, the Labour Court clearly noted that the workman admitted the legality and propriety of the inquiry held against him.

F 9. In the aforesaid circumstances, the inevitable conclusion is that the direction of payment of back wages cannot be sustained. The orders passed by the learned Single Judge as partly modified by the Division Bench stand set aside to the aforesaid extent.

10. The appeal is allowed without any order as to costs.

H .D.G.

Appeal allowed.