

VISMAY DIGAMBAR THAKARE

v.

RAMCHANDRA SAMAJ SEWA SAMITI AND ORS.
(Civil Appeal No. 2708 of 2012)

MARCH 2, 2012

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

Service Law – Back wages – Claim for – Parties came to an amicable settlement – Appeal accordingly disposed of by Supreme Court – Employee-appellant directed to be paid by respondent No.1-Samiti and respondent no.2-Institution jointly and severally a sum of Rupees one lakh towards back wages in full and final settlement of the claim of the appellant on that account.

The High Court, by the impugned order, set aside the judgment of the School Tribunal to the extent the same awarded back wages to the appellant. When the matter came up before this Court, the parties came to an amicable settlement on the question of back wages claimed by the appellant.

It was submitted on behalf of the respondent-school and the Samiti that they were willing to pay to the appellant a sum of Rupees one lakh in full and final settlement of the claim made by him towards back wages. The appellant expressed his willingness to accept the said amount in satisfaction of his claim.

Allowing the appeal in part, the Court

HELD: The parties having agreed to a solution, there is no reason why the same cannot be made a basis for disposal of this appeal in modification of the order passed by the High Court. The appellant shall be paid by

- A respondent No.1-Samiti and No.2-Institution jointly and severally a sum of Rupees one lakh towards back wages in full and final settlement of the claim of the appellant on that account. The payment shall be made to the appellant within a period of three months failing which the amount shall start earning interest @ 10% p.a. from the date of this judgment till actual payment. [Paras 6, 7] [774-C-E]

- C *U.P. State Brassware Corpn. Ltd. & Anr. v. Uday Narain Pandey* (2006) 1 SCC 479 - 2005 (5) Suppl. SCR 609; *Reetu Marbles v. Brabhakant Shkla* (2010) 2 SCC 70 - 2009 (16) SCR 34; *Metropolitan Transport Corporation v. V. Venkatesan* (2009) 9 SCC 601 - 2009 (12) SCR 583 and *Kendriya Vidyalaya Sangathan & Anr. v. S.C. Sharma*, (2005) 2 SCC 363 - 2005 (1) SCR 374 – cited.

D Case Law Reference:

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|---|-------------------------|-------|--------|
| | 2005 (5) Suppl. SCR 609 | cited | Para 3 |
| | 2009 (16) SCR 34 | cited | Para 3 |
| E | 2009 (12) SCR 583 | cited | Para 3 |
| | 2005 (1) SCR 374 | cited | Para 4 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2708 of 2012.

- F From the Judgment & Order dated 07.05.2010 of the High Court of Judicature at Bombay, Nagpur in M.C.A. (Review) No. 1479 of 2009 in Letters Patent Appeal No. 386 of 2008.

- G Manish Pitale, Wasi Haider, Chander Shekhar Ashri for the Appellant.

Satyajit A. Desai, Anagha S. Desai, Vipul Ganda, Somanatha Padhan, Rahul M. Bhangde for the Respondents.

- H The Judgments of the Court was delivered by

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SAMAJ SEWA SAMITI AND ORS.

T.S. THAKUR, J. 1. Leave Granted.

A

2. This appeal arises out of a judgment and order dated 7th May, 2010 passed by the High Court of Judicature at Bombay, Nagpur Bench, whereby M.C.A. (Review) No.1479 of 2009 in Letters Patent Appeal No.386 of 2008 has been allowed and the judgment of the School Tribunal to the extent the same awarded back wages to the appellant has been set aside.

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3. When the matter came up before us for hearing on 27th February, 2012, learned counsel for the parties made their submissions extensively but sought liberty to mention the matter again if the parties were able to negotiate an amicable settlement on the question of back wages claimed by the appellant? Only to recapitulate the line of arguments advanced before us we may mention that learned counsel for the appellant had placed reliance upon the decisions of this Court in *U.P. State Brassware Corpn. Ltd. & Anr. v. Uday Narain Pandey* (2006) 1 SCC 479, *Reetu Marbles v. Brabhakant Shkla* (2010) 2 SCC 70, and *Metropolitan Transport Corporation v. V. Venkatesan* (2009) 9 SCC 601, to contend that back wages could be awarded to the appellant even in the absence of a specific assertion by the appellant to the effect that he was not gainfully employed during the period he remained out of service. It was argued by learned counsel for the appellant on the strength of the above decisions that back wages could range between 25% to 60%.

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4. On behalf the respondent-Institution, reliance was placed upon the decision of this Court *Kendriya Vidyalaya Sangathan & Anr. v. S.C. Sharma*, (2005) 2 SCC 363, in an attempt to demonstrate that unless there was a specific assertion that the appellant was not gainfully employed during the period he remained out of service, no back wages could be awarded in his favour.

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5. It is not necessary for us to pronounce upon the rival

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A contentions urged by learned counsel for the parties. We say so because the matter was mentioned before us on 28th February, 2012 by the learned counsel for the parties. It was submitted on behalf of the respondent-school and the Simiti that they were willing to pay to the appellant a sum of Rupees one lakh in full and final settlement of the claim made by him towards

B back wages. Mr. Manish Pitale, learned counsel for the appellant submitted on instructions that the appellant was ready and willing to accept the said amount in satisfaction of his claim.

C 6. The parties having agreed to a solution, we see no reason why the same cannot be made a basis for disposal of this appeal in modification of the order passed by the High Court.

D 7. We accordingly, allow this appeal but only in part and to the extent that the appellant shall be paid by respondents No.1-Samiti and No.2-Institution jointly and severally a sum of Rupees one lakh towards back wages in full and final settlement of the claim of the appellant on that account. The payment shall be made to the appellant within a period of three months from

E today failing which the amount shall start earning interest @ 10% p.a. from the date of this judgment till actual payment. The parties to bear their own costs.

B.B.B.

Appeal partly allowed.