THE MANAGEMENT OF NARENDRA & COMPANY PRIVATE LIMITED

v.

THE WORKMEN OF NARENDRA & COMPANY

(Civil Appeal No.14 of 2016)

JANUARY 4, 2016

[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

Labour Laws – Retrenchment – Labour Court directed reinstatement with 50% back wages from January 1995 till January 1999 – Single Judge of High Court upheld the award of reinstatement, but limited the award of back wages to January 1995 in view of closure of the industry by the beginning of January 1995 – In intra-court appeal, Division Bench held that due to closure of industry reinstatement was not possible – However, since it was not proved that the industry was not functional after January 1995, the workmen were held entitled to back wages till January 1999 – On appeal, held: It is proved that the industry was not functional after January 1995, hence payment of back wages beyond January 1995 is not permissible – Order denying reinstatement is upheld.

Appeal – Intra- Court appeal – Power of appellate court – To interfere with the finding of fact – Held: The appellate court shall not disturb finding of fact, unless it reaches a conclusion that the finding on fact is perverse – There should not be interference merely because another view or better view is possible.

Partly allowing the appeal, the Court

HELD: 1. Once the Single Judge came to the conclusion that the industry was not functioning after January, 1995, there was no justification in entering a different finding without any further material before the Division Bench. The appellate Bench ought to have noticed that the statement of MW-3 was itself part of the evidence before the Labour Court. In an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or

A **disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief. [para 4] [599-E-G]**

2. Appellant-Management has stated on oath that the industry became non-functional by the beginning of January, 1995 and remained defunct thereafter. Respondent-workmen have
B **not been able to establish that the industry was functioning thereafter. Hence, the order for payment of back wages beyond January, 1995 is vacated, and in all the other aspects, the order passed by the Division Bench is retained. [paras 5-6] [600-A-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14 of
C 2016

From the Judgment and Order dated 03.01.2013 of the High Court of Karnataka at Bangalore in Writ Appeal No. 982 of 2008 (L-TER).

K. K. Mani, T. Archna for the Appellant.

D Shubham Saxena, Rajiv Shukla, B. Ramana Murthy for the Respondent.

The Judgment of the Court was delivered by

KURIAN, J.: 1. Leave granted.

E 2. Short question is whether the respondents-workmen are entitled to the back wages till the beginning of January, 1995 or till January, 1999. The Labour Court, Bangalore by award dated 02.08.2002 directed reinstatement of the workmen with 50 per cent back wages. That award was challenged by the appellant before the High Court of Karnataka at Bangalore by judgment dated 14.03.2008 in Writ Petition No. 41489 of
F 2002. Though the appellant attacked the award on several grounds, the learned Single Judge declined to interfere with the award on reinstatement. However, taking note of the fact that the industry was virtually closed by the beginning of January, 1995, it was ordered that the award on back wages would be limited to January, 1995. The learned
G Single Judge, in fact, had entered a finding in that regard which reads as follows:

> "From the record it shows that the industry was functioning till the beginning of 1995 and the Union though has led the evidence but has not proved as to whether the industry was functioning thereafter or not."

H

3. In appeal, the Division Bench took the view that apart from the sole evidence of MW-3, there was no other evidence on record to prove that the industry was not functional after January, 1995. However, there was no dispute with regard to the fact that the industry was closed, and therefore, reinstatement was not possible. In that background, without any further material available on record, the Division Bench took the view that interest of justice would be met by extending the benefit of 50 per cent back wages upto the end of January, 1999 and consequential benefits with closure compensation as well as gratuity upto that date. We may extract the relevant consideration by the Division Bench in the impugned judgment:

> "... According to MW-3, the machines were operated only till the beginning of January, 1995. However, to substantiate that contention, there is no evidence on record. In the light of such evidence on record, it is not possible to record a categorical finding that the industry was closed in the year 1995 itself. Having regard to the fact that the industry was closed, the order of re-instatement has been set aside by the learned single Judge and the workmen were entitled to retrenchment compensation and only 50% back wages is awarded, we are of the view that justice would be met by extending the benefit of 50% back wages upto the end of January 1999 and they are also entitled to consequential benefits with closure compensation as well as gratuity upto that date. ..."

4. Once the learned Single Judge having seen the records and come to the conclusion that the industry was not functioning after January, 1995, there is no justification in entering a different finding without any further material before the Division Bench. The appellate bench ought to have noticed that the statement of MW-3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.

5. When the matter came up before this Court on 08.07.2013, the Court directed the appellant to file an affidavit indicating the actual year of closure of the industry so as to determine the question as to from what date retrenchment compensation should be paid to the workmen.

A Accordingly, affidavit dated 11.07.2013 was filed wherein it is clearly stated that the industry became non-functional by the beginning of January, 1995 and remained defunct thereafter. In the counter affidavit filed by the respondent-workmen also, there is nothing to establish that the industry was functioning thereafter.

B 6. Hence, the order for payment of back wages beyond January, 1995 is vacated, and in all the other aspects, the order passed by the Division Bench is retained. In case, the workmen have not been paid the benefits which they are entitled to, the same shall be paid within a period of three months from today, failing which, the respondent-workmen shall be entitled to interest at the rate of 10 per cent per annum.

C

7. The appeal is partly allowed as above. There shall be no order as to costs.

Kalpana K. Tripathy Appeal partly allowed.

D