

MULIN SHARMA

v.

STATE OF ASSAM AND OTHERS

(Civil Appeal No. 6119 of 2016)

JULY 12, 2016

[J. CHELAMESWAR AND R.K. AGRAWAL, JJ.]

Service law: Back wages – Appellant’s case was that he was forced to submit resignation letter under compulsion and criminal intimidation by respondent no.6 and his men – Courts below accepted the allegation and ordered reinstatement, however denied back wages – Appellant challenged non-grant of back wages – Held: The facts and circumstances of the case clearly showed that the resignation tendered by the appellant was not voluntary – However, courts below categorically held and rightly so that the appellant was not entitled to back wages – Appellant had not produced any material to prove that he remained unemployed during that period – Since he did not attend the school during that period, he cannot be granted back wages for that period – He, however, should be reinstated in service and be given all other consequential benefits – Though he is not entitled to back wages, he is granted Rs. 25,000/-, in addition to the amount granted by the High Court, for wrongful denial of service.

Disposing of the appeal, the Court

HELD: 1. The fact remains that the appellant did not perform his duties in the School at the behest of respondents. Similarly, the fact of he being unemployed throughout the period was not proved; no material evidence was placed on record for the same. In that case, single Judge of the High Court was having only the remedy of reinstatement of the appellant in the service and he ordered so after carefully examining that the resignation was not voluntary. In the facts and circumstances of the case, back wages should not have been awarded to the appellant. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised by a court keeping in view the facts in their entirety and neither straitjacket formula can be

A evolved nor a rule of universal application can be laid down in such cases. Thus, reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate court. The concurrent finding of the courts below that the appellant is not entitled to back wages in the absence of any material on record that he remained unemployed during the entire period from 23.05.1998 to 16.08.1999 is correct. The appellant did not attend the school during that period and back wages cannot be granted to him for that period. He, however, should be reinstated in service and be given all other consequential benefits. Though he is not entitled to back wages, he is certainly entitled to an amount of Rs. 25,000/-, in addition to the amount granted by the High Court, for wrongful denial of service. [Paras 7, 9, 11, 12] [757-E, H, 758-A, D-G]

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C.N. Malla vs. State of Jammu and Kashmir & Ors.
(2009) 9 SCC 597: 2009 (13) SCR 479 – relied on.

Case Law Reference

	2009 (13) SCR 479	relied on	Para 10
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6119 of 2016.

F From the Judgment and Order dated 25.07.2012 of the High Court of Guwahati in W. A. No. 14 of 2010.

Ms. Aparna Jha, Adv. for the Appellant.

Dr. Kailash Chand, J. Chutiya, Avijit Roy, Ms. Kankana Arandhara (For M/s. Corporate Law Group) Advs. for the Respondents.

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The Judgment of the Court was delivered by

R.K. AGRAWAL, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 25.07.2012 passed by the Gauhati High Court at Gauhati in Writ Appeal Nos. 14 of 2010 and 226 of 2009 whereby the Division Bench of the

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High Court partly allowed Writ Appeal No. 14 of 2010 filed by the appellant herein against the judgment and order dated 19.01.2007 passed by the learned single Judge of the High Court in Writ Petition No. 2357 of 2004 and dismissed the Writ Appeal No. 226 of 2009 filed by the respondents herein.

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3. Brief facts:

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(a)Mulin Sharma-the appellant herein, an M.A. in Sanskrit, was employed as an Assistant Teacher (Classical/Sanskrit) in the Rangcina High School, Karbi, Anglong District, Assam in the year 1995. The school was provincialized in the year 1996 as also the services of the appellant herein against the allotted post of Assistant Teacher.

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(b)Owing to certain differences with the Headmistress (Respondent No. 5 herein) of the School, who incidentally is the wife of Respondent No. 6 herein, who is also the Head Master of the M.E. Section of the said school, the appellant herein was forced to sign the resignation letter under compulsion, force and criminal intimidation by Respondent No. 6 and his men on 22.05.1998 and he was not paid his salary from 23.05.1998.

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(c)Making a grievance against such forcible obtaining of resignation letter and signature therein, the appellant herein submitted a series of representations to various authorities to take action in the matter. When the appellant herein did not get any response in respect of his grievance relating to forceful obtaining of letter of resignation, he filed a Writ Petition being No. 4047 of 1999 before the High Court. Learned single Judge of the High Court, by order dated 16.08.1999, directed as an interim measure that if the appellant is working in the school in question as on today, he shall be allowed to continue.

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(d)The writ petition was disposed of by the High Court by order dated 14.07.2003 with a direction that the appellant herein and Respondent Nos. 4 and 5 herein shall appear before the learned Deputy Commissioner, Karbi Anglong, Diphu. The Deputy Commissioner was further directed to determine the facts and circumstances under which the resignation letter came to be issued and signed by giving opportunity to both the sides.

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(e)The Deputy Commissioner, Karbi Anglong, Diphu, after conducting an enquiry and also after affording reasonable opportunity to both the sides, by order dated 16.10.2003, held that the resignation

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A tendered by the appellant herein was voluntary and that in terms of the order dated 14.07.2003, the competent authority will have to accept the resignation of the appellant herein afresh.

(f) After the Order so passed by the Deputy Commissioner, the Deputy Secretary, Education Department (Higher), Karbi Anglong Autonomous Council (KAAC) passed an order dated 12.01.2004 accepting the resignation of the appellant herein with effect from 16.10.2003, i.e., the date of the order passed by the Deputy Commissioner, with the stipulation that the appellant herein would not be entitled to any financial benefits w.e.f. 22.05.1998 since according to the said authority, he did not attend his duties from 22.05.1998.

C (g) Another consequential order dated 27.01.2004 was issued by the office of the Inspector of Schools, Karbi Anglong District Circle, Diphu stating that the resignation letter dated 22.05.1998 tendered by Shri Mulin Sharma, Classical Teacher at Rangcina High School is hereby accepted without any financial benefit with effect from 22.05.1998 since the incumbent concerned did not attend his duties.

D (h) Being aggrieved by the order dated 16.10.2003 passed by the Deputy Commissioner, the appellant herein preferred a Writ Petition being No. 2357 of 2004 before the High Court. Learned single Judge of the High Court, by order dated 19.01.2007, partly allowed the petition by holding that the resignation was not voluntary without passing any direction on the back wages.

E (i) Being aggrieved by the order dated 19.01.2007 to the extent of back wages for the period 23.05.1998 to 16.08.1999, the appellant herein preferred Writ Appeal being No. 14 of 2010 before the High Court. The respondents herein also preferred Writ Appeal No. 226 of 2009 before the High Court against the aforesaid order.

F (j) The Division Bench of the High Court, by common judgment and order dated 25.07.2012 denied back wages to the appellant herein while granting a sum of Rs. 25,000/- for wrongful denial of his employment during the abovesaid period in question. Writ Appeal No. 226 of 2009 was, however, dismissed by the Division Bench.

G (k) Aggrieved by the order dated 25.07.2012, the appellant herein has preferred this petition by way of special leave before this Court.

H 4. Heard learned counsel for the parties.

5. In the facts and circumstances of the present case, it is undisputed that the resignation tendered by the appellant herein on 22.05.1998 was not voluntary and the courts below have categorically held that the appellant herein is not entitled to back wages in the absence of any material on record to show that he remained unemployed during the said period. Now, the question that arises for consideration is whether the courts below erred in not granting back wages to the appellant herein or whether the appellant has made out a case for grant of back wages for the period 23.05.1998 to 16.08.1999.

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6. Learned single Judge of the High Court while holding that the resignation was not voluntary, reinstated the appellant herein in service but denied him back wages. Learned counsel for the appellant contended before this Court that the respondents did not allow the appellant herein to perform his duties in the school. In fact, the very same thing was raised before the learned single Judge that the respondents did not allow the entry of the appellant herein into the School. The appellant herein signed the resignation letter under compulsion, criminal intimidation and force applied by the respondents on to him at their residence and forcefully they deprived him from entering into the school.

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7. The fact remains that the appellant herein did not perform his duties in the School at the behest of respondents. Similarly, the fact of he being unemployed throughout the period was not proved; no material evidence was placed on record for the same. In that case, learned single Judge of the High Court was having only the remedy of reinstatement of the appellant herein in the service and he ordered so after carefully examining that the resignation was not voluntary.

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8. The High Court, on the other hand, dealt with the question of back wages left open by learned single Judge as well as the appeal filed by the respondents herein. The High Court, on a correct appreciation of evidence on record, dismissed the appeal filed by the respondents herein holding that the resignation was not voluntary. Though the High Court did not grant back wages to the appellant herein, a sum of Rs. 25,000/- was granted for wrongful denial of his employment.

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9. We are fully satisfied that in the facts and circumstances of the case, back wages should not have been awarded to the appellant herein. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised by a court keeping in view the facts in their entirety and neither straitjacket formula can be

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A evolved nor a rule of universal application can be laid down in such cases. Thus, reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate court.

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10. In *C.N. Malla vs. State of Jammu and Kashmir & Ors.* (2009) 9 SCC 597, this Court has held as under:-

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“11. The legal position is fairly settled by a catena of decisions that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. The concept of discretion is inbuilt in such exercise. The court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case. Each case, of course, would depend on its own facts.”

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11. In view of the foregoing discussion, we are of the considered opinion that the concurrent finding of the courts below that the appellant herein is not entitled to back wages in the absence of any material on record that he remained unemployed during the entire period from 23.05.1998 to 16.08.1999 is correct. Even learned counsel for the appellant herein has admitted before this Court that he was not allowed to perform his duties after obtaining his signature on 22.05.1998.

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12. In the present facts and circumstances of the case, the appellant has not produced any material on record to prove that he being unemployed during that period and has not made out a case for grant of back wages for the aforesaid period. The appellant herein did not attend the school during that period and back wages cannot be granted to him for that period. He, however, should be reinstated in service and be given all other consequential benefits. Though he is not entitled to back wages, he is certainly entitled to an amount of Rs. 25,000/-, in addition to the amount granted by the High Court, for wrongful denial of service.

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13. In view of the above, the appeal is disposed of with the above terms.