

P. KARUPAIAH (D) THR. LRS. A

v.

THE GENERAL MANAGER THRUUVALLUVAR TRANSPORT CORPORATION LTD.

(Civil Appeal No. 4160 of 2008) B

OCTOBER 12, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Service law – Claim of back wages – When not justified – Appellant working as driver with respondent-Corporation was dismissed from the service because of his involvement in a murder case – Conviction by Sessions Court, however, later acquitted by High Court – Appellant was reinstated after the acquittal but was declined back wages for the period in question – Writ petition by appellant for grant of back wages, dismissed – Order upheld by Division Bench – On appeal, held: In order to claim the relief of back wages along with the relief of reinstatement, the employee is required to prove that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere – However, in the present case there was no such evidence brought on record by the appellant in his writ petition to claim the back wages, in full or part, for the period in question – Orders impugned call for no interference – Labour Law – Industrial Disputes Act, 1947 – Proviso to s.17-B. C D E

Service law – Award of back wages – Principle of “No work-No pay” – Change in law – Held: The law on the question of award of back wages has taken some shift – Now, in cases where the dismissal/removal order is set aside/withdrawn by the Courts, directing employee’s reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in-express terms directs payment of back wages and other benefits. F G

Dismissing the appeal, the Court

HELD: 1.1 The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal/removal order is set aside/withdrawn by the Courts or H

A otherwise, as the case may be, directing employee's
reinstatement in service, the employee does not become entitled
to claim back wages as of right unless the order of reinstatement
itself in express terms directs payment of back wages and other
benefits. [Para 10] [560-D-E]

B 1.2 The employee in order to claim the relief of back wages
along with the relief of reinstatement is required to prove with
the aid of evidence that from the date of his dismissal order till
the date of his rejoining, he was not gainfully employed anywhere.
The employer too has a right to adduce evidence to show
C otherwise that an employee concerned was gainfully employed
during the relevant period and hence not entitled to claim any
relief of back wages. [Para 11] [560-F-G]

1.3 On proving such facts to the satisfaction of the Court,
the back wages are accordingly awarded either in full or part or
may even be declined, as the case may be, while passing the
D order of reinstatement. The Courts have also applied in
appropriate cases the principle of "No work-No pay" while
declining to award back wages and confining the relief only to the
extent of grant of reinstatement along with grant of some
consequential reliefs by awarding some benefits notionally, if any,
E in exercise of discretionary powers depending upon the facts of
each case. [Para 12] [560-G-H; 561-A]

2. In the present case, no evidence was brought on record
by the appellant (employee) in his writ petition to claim the back
wages for the period in question, either in full or part. Moreover,
F it is found that the issue in question was raised in writ petition
and not before the Industrial or Labour Tribunal where parties
could adduce evidence on such question. Yet, the writ Court and
the appellate Court examined the question in its writ jurisdiction
and finding no merit therein declined to award any back wages.
There is no ground to interfere in the discretion exercised by
G the two Courts below and accordingly the orders impugned call
for no interference and are upheld. The appellant should feel
satisfied that he was able to secure reinstatement in service
despite his involvement in a murder case. The appellant should
be content with what he has got. [Paras 13-15] [561-B-D]

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M.P. State Electricity Board v. Jarina Bee (Smt.) (2003) A
6 SCC 141: [2003] 1 Suppl. SCR 535 – referred to.

Case Law Reference

[2003] 1 Suppl. SCR 535 referred to Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4160 B
of 2008

From the Judgment and Order dated 07.12.2006 of the High Court
of Judicature at Madras in W. A. No. 1848 of 2000.

Brij Bhushan, Adv. for the Appellant.

T. R. B. Sivakumar, T. Harish Kumar, Advs. for the Respondent. C

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the
employee against the final judgment and order dated 07.12.2006 passed
by the High Court of Judicature at Madras in W.A. No. 1848 of 2000 D
whereby the Division Bench of the High Court dismissed the appeal
filed by the appellant herein and upheld the judgment dated 03.08.2000
of the Single Judge in W. P. No. 10314 of 1996 by which the appellant
was denied the back wages for the period from 21.07.1994 to 31.08.1999.

2. Facts of the case lie in a narrow compass so also the controversy E
involved in the appeal as would be clear from the narration of relevant
facts hereinbelow.

3. The only question involved in the appeal filed by an employee
against his employer is whether the appellant is entitled to claim back
wages for the period in question, i.e., 21.07.1994 to 31.08.1999? F

4. The learned Single Judge and Division Bench of the High Court
declined to award any back wages to the appellant for the period in
question and dismissed the appellant's writ petition and intra court appeal.

5. The appellant was working as a Driver in the employment of
the respondent. The respondent dismissed the appellant from service G
because he was found involved in one murder case and was prosecuted
for the said offence.

6. The Session Court had convicted him but later he was acquitted
by the High Court. After the acquittal by the High Court, the appellant H

A made a request to the respondent for his reinstatement. The respondent allowed the request made by the appellant and reinstated him in service but declined to pay him any back wages for the aforementioned period.

B 7. The appellant, felt aggrieved by the decision of the respondent in not paying him any back wages for the period in question, filed writ petition in the High Court and prayed for grant of the relief of back wages.

C 8. The learned Single Judge declined to grant any relief of back wages to the appellant and dismissed his writ petition. The Division Bench, in an appeal filed by the appellant against the dismissal of his writ petition, upheld the order of the learned Single Judge and dismissed his appeal giving rise to filing of this appeal by way of special leave by the employee to this Court.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

D 10. The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal/removal order is set aside/withdrawn by the Courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. (See **M. P. State Electricity Board vs. Jarina Bee (Smt.)**, (2003) 6 SCC 141)

E 11. Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

F 12. On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The Courts have also applied in appropriate cases the principle of "No work-No pay" while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs-by awarding some benefits notionally, if any,

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in exercise of discretionary powers depending upon the facts of each case. A

13. Having seen the record of the case, we are satisfied that there was no evidence brought on record by the appellant (employee) in his writ petition to claim the back wages for the period in question either in full or part. Moreover, we find that the issue in question was raised in writ petition and not before the Industrial or Labour Tribunal where parties could adduce evidence on such question. (See **proviso to Section 17-B of the Industrial Disputes Act, 1947**). B

14. Be that as it may, the writ Court and the appellate Court yet examined the question in its writ jurisdiction and finding no merit therein declined to award any back wages. This Court does not find any good ground to interfere in the discretion exercised by the two Courts below and accordingly uphold the orders impugned herein calling no interference. C

15. Indeed, the appellant should feel satisfied that he was able to secure reinstatement in service despite his involvement in a murder case. The appellant should be content with what he has got. D

16. In view of foregoing discussion, the appeal fails and is accordingly dismissed.

Divya Pandey

Appeal dismissed. E