A JEETUBHA KHANSANGI JADEJA

v.

KUTCHH DISTRICT PANCHAYAT

(Civil Appeal No. 6890 of 2022)

B SEPTEMBER 23, 2022

[UDAY UMESH LALIT AND S. RAVINDRA BHAT, JJ.]

Industrial Disputes Act, 1947 – s.25B – Continuous service – Termination – Not justified – Appellant-workman was appointed as a watchman by Respondent society-managment – Terminated – Labour Court held that the appellant's termination was illegal, directed reinstatement with continuity but without backwages – Single Judge affirmed the award – Division Bench rejected management's appeal – SLP, matter remitted for fresh consideration – Division Bench set aside the direction to reinstate the appellant and instead awarded lumpsum compensation of Rs.1 lakh – On appeal, held: Concededly, the appellant had worked for over 10 years – Both the Labour Court and the Single Judge concluded that his claim for having continuously worked within the meaning of s.25B stood proved – Division Bench has not interfered with the factual findings, therefore, the direction to substitute the relief of reinstatement with one for lumpsum payment was not warranted – No perversity or unreasonableness on the part of the Labour Court and the Single Judge in directing the appellant's reinstatement – Appellant be reinstated, he is also entitled to backwages for a period of two years immediately preceding, i.e., from 01.01.20 to 01.01.22 – Impugned judgment set aside – Direction of the Labour Court and the Single Judge for continuity of service is also restored.

Labour Law – Reinstatement of employee, backwages – Restitutionary approach – Discussed.

Allowing the appeal, the Court

HELD: 1.1 The record indicates that both the Labour Court and the Single Judge elaborately considered the depositions of the parties as well as the evidence on the record. In fact, the appellant workman had applied under the RTI Act, eliciting relevant documents to substantiate his claim that employees junior

to him, were retained in the service. The management was unable to refute the material on record. On the other hand, it claimed the inability to produce the relevant documents, i.e., the muster roll for the later period of the appellant's service. Concededly, the appellant had worked for over 10 years. In the absence of precise details as to the so-called periods when the appellant had not been employed – as alleged by the management, both the Labour Court and the Single Judge concluded that his claim for having continuously worked within the meaning of Section 25B of the Industrial Disputes Act stood proved. Furthermore, the workman had deposed that employees junior to him were retained in the service, contrary to Section 25G of the Industrial Disputes Act. In the circumstances, given the fact that the direction of the Labour Court was only to reinstate but not pay backwages, the Division Bench's substitution of that relief is not based on any known principle. In the present case, the Labour Court had rendered its award on 31.08.2010; the Single Judge rejected the management's writ petition on 04.05.2011. The management's appeal was, in the first instance, rejected on 16.01.2014; however, it approached this Court by filing special leave petition, which was allowed on 29.04.2016. It was thereafter – 5 years later, that the impugned judgment was delivered. Having regard to these factors, the Court is of the opinion that the appellant workman could not have been made to suffer on account of the management's obdurate attempt to have the relief set aside. Furthermore, the Division Bench's impugned judgment has not interfered with the factual findings. Therefore, the direction to substitute the relief of reinstatement with one for lumpsum payment was not warranted in the circumstances of this case. There is no perversity or unreasonableness on the part of the Labour Court and the single judge in directing the appellant's reinstatement. Had the respondent management chosen to accept the verdict, the appellant would have been spared the agony of waiting for more than 10 years. In such circumstances, the denial of backwages, has resulted in punishing him, although the delay is attributable to the judicial process. However, the respondent management cannot be absolved of the primary responsibility in its litigative proclivity. In these circumstances, the appellant shall be entitled to backwages for a period of two years immediately

preceding, i.e., from 01.01.2020 to 01.01.2022. The impugned judgment is set aside. The appellant workman shall be reinstated in the services of the respondent within six weeks from today. The direction of the Labour Court and the Single Judge for continuity of service is also restored. [Paras 9, 10, 14 and 15][858-G-H; 859-A-E; 863-C-E]

Hindustan Tin Works (P) Ltd.v. Employees of M/s Hindustan Tin Works Pvt. Ltd. and Others **(1979) 2 SCC 80 : [1979] 1 SCR 563;** *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Others* **(2013) 10 SCC 324 : [2013] 9 SCR 1;** *Bharat Sanchar Nigam Limited v. Bhurumal* **(2014) 7 SCC 177 : [2013] 16 SCR 1023 – relied on.**

Case Law Reference

[1979] 1 SCR 563	**relied on**	**Para 11**
[2013] 9 SCR 1	**relied on**	**Para 12**
[2013] 16 SCR 1023	**relied on**	**Para 13**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6890 of 2022.

From the Judgment and Order dated 05.07.2021 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 896 of 2011 in Special Civil Application No. 5620 of 2011.

Mehmood Umar Faruqui, Ahmad Parvez, Advs. for the Appellant.

Saroj Raichura, Haresh Raichura, Kalp Raichura, Rajat Vats, Advs. for the Respondent.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. Leave granted. With consent, learned counsels for the parties were heard finally. This appeal is directed against an order of the Gujarat High Court[1].

2. Aggrieved by the termination from employment, the appellant raised an industrial dispute which was referred to the Labour Court,

[1] Dated 05.07.2021 in LPA No. 896/2011 in Special Civil Application No. 5620/2011.

Bhuj, Kutchh District of Gujarat. The appellant was appointed as a Watchman on 05.10.1992 by the respondent society (hereafter referred to as "the management"), and lastly, he was working as a watchman at the Shirai Dam at the Beraja Village of Mundra Taluk, Gujarat, with the respondent. After rendering continuous employment, he was terminated from the services on 30.12.2002 for no cause, without notice and without following the procedure prescribed by the Industrial Disputes Act, 1947. His request for reinstatement was negated; consequently, the industrial dispute.

3. The management disputed the claim on the basis that the appellant worked in a purely temporary basis and could not claim the benefit of Section 25B of the Industrial Disputes Act,1947 as he had not worked for a continuous period of 240 days in any given year. However, his employment as a workman since 1992 was not denied.

4. Before the Labour Court, the parties led evidence - oral and documentary. A copy of the muster roll maintained by the management was called for. In the evidence, the appellant deposed that the management did not maintain any seniority list nor was it published and that employees junior to him were retained while he was unfairly terminated from service. The respondent management contended that the entire muster roll records was not available as it was destroyed during a natural calamity; they could produce the documents for the years 1994-98. After considering the pleadings and the materials on record, the Labour Court, by Award dated 31.08.2010, held that the appellant's termination was illegal and directed his reinstatement with continuity but without backwages.

5. The management challenged the award, mainly contending that the appellant workman was not entitled to the benefits of the Industrial Disputes Act. The learned Single judge of the Gujarat High Court endorsed the findings of the Labour Court, affirming the Award, and directed the appellant's reinstatement. The management, however, appealed to the Division Bench. Initially, the Division Bench rejected the appeal; the management approached this court by special leave petition. This court remitted the matter for fresh consideration.

6. By the impugned order, the Division Bench noticed the findings of the single judge that workmen junior to the appellant had been retained in service despite which his services were terminated and that the

A management had not maintained proper records. In spite of these facts, the Division Bench set aside the direction to reinstate the appellant workman and instead awarded lumpsum compensation of ₹ 1 lakh.

7. The appellant contends that the Labour Court and the learned single Judge concurrently ruled that sufficient material had been brought B on record to show that 63 labourers were working with the respondent management, many of whom were junior to the appellant. It was pointed out that the workman appellant had moved the Labour Court to direct the management to produce all relevant service particulars of its employees' muster roll, pay register, and bonus register. An appropriate C direction was issued in this regard. Since the management did not produce the entire records, the Labour Court drew an adverse inference and based on available material concluded that the termination was illegal. In these circumstances, all the findings were endorsed by the High Court; the substitution of the order of reinstatement amounted to a miscarriage of justice. It was submitted that the appellant had been unfairly kept out D of employment, despite the fact that the award was made in 2010, and the single judge endorsed it in 2011. The management unjustifiably dragged the matter for one more decade, which resulted in denial of backwages to him in a very harsh manner. It was further submitted that the denial of reinstatement to the appellant, by the impugned order, which did not disturb the findings of the labour court and the single judge, is not based E on any reasoning or norm but has resulted in unfairness.

8. Learned counsel for the respondent/management argued that this Court should not interfere with the impugned judgment since the Division Bench acted correctly in law in not upholding the reinstatement. It was submitted that the petitioner had been out of employment for over F 20 years and in the circumstances, directing reinstatement was not in the interest of justice.

9. The record indicates that both the Labour Court and the learned Single Judge elaborately considered the depositions of the parties as well as the evidence on the record. In fact, the appellant workman had G applied under the RTI Act, eliciting relevant documents to substantiate his claim that employees junior to him, were retained in the service. The management was unable to refute the material on record. On the other hand, it claimed the inability to produce the relevant documents, i.e., the muster roll for the later period of the appellant's service. Concededly, H the appellant had worked for over 10 years. In the absence of precise

details as to the so-called periods when the appellant had not been employed – as alleged by the management, both the Labour Court and the learned Single Judge concluded that his claim for having continuously worked within the meaning of Section 25B of the Industrial Disputes Act stood proved. Furthermore, the workman had deposed that employees junior to him were retained in the service, contrary to Section 25G of the Industrial Disputes Act.

10. This Court discerns no material to establish the proposition put forth by the appellant. In the circumstances, given the fact that the direction of the Labour Court was only to reinstate but not pay backwages, the Division Bench's substitution of that relief is not based on any known principle. In the present case, the Labour Court had rendered its award on 31.08.2010; the learned Single Judge rejected the management's writ petition on 04.05.2011. The management's appeal was, in the first instance, rejected on 16.01.2014; however, it approached this Court by filing special leave petition, which was allowed on 29.04.2016. It was thereafter – 5 years later, that the impugned judgment was delivered. Having regard to these factors, the Court is of the opinion that the appellant workman could not have been made to suffer on account of the management's obdurate attempt to have the relief set aside. Furthermore, the Division Bench's impugned judgment has not interfered with the factual findings. Therefore, the direction to substitute the relief of reinstatement with one for lumpsum payment was not warranted in the circumstances of this case.

11. This court, in a three-judge Bench decision, in *Hindustan Tin Works (P) Ltd.*v. *Employees of M/s Hindustan Tin Works Pvt. Ltd. And Others*[2] when retrenchment of services of 56 employees due to non-availability of the raw material necessary for utilisation of full installed capacity by the employer, was held to be illegal, held that:

> *"'9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It*

[2] (1979) 2 SCC 80

A *would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to* B *be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout* C *the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just* D *sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except* E *to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the* F *workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages."*

12. In a more recent decision, *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Others,*[3] this court highlighted G the need to adopt a restitutionary approach, when a court has to consider whether to reinstate an employee and if so, the extent to which backwages is to be ordered. The court observed:

H [3] (2013) 10 SCC 324

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

13. In *Bharat Sanchar Nigam Limited v. Bhurumal,*[4] on the other hand, the discretion of the court in directing reinstatement with backwages in the event of a retrenchment being declared illegal, was described in the following terms:

"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full

[4] 2014 (7) SCC 177

A *back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.*

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation

that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

14. In the present case, this court finds no perversity or unreasonableness on the part of the Labour Court and the single judge in directing the appellant's reinstatement. Had the respondent management chosen to accept the verdict, the appellant would have been spared the agony of waiting for more than 10 years. In such circumstances, the denial of backwages, has resulted in punishing him, although the delay is attributable to the judicial process. However, the respondent management cannot be absolved of the primary responsibility in its litigative proclivity. In these circumstances, the appellant shall be entitled to backwages for a period of two years immediately preceding, i.e., from 01.01.2020 to 01.01.2022.

15. In light of the above discussion, the impugned judgment is hereby set aside. The appellant workman shall be reinstated in the services of the respondent within six weeks from today. He shall also be entitled to backwages for a period of two years immediately preceding, i.e., from 01.01.2020 to 01.01.2022. The direction of the Labour Court and the learned Single Judge for continuity of service is also restored. The respondent management is directed to pay the backwages as directed by this court, at current rates, within 6 weeks from today. Hence, the appeal is allowed in above terms, with no order as to costs.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeal allowed.