

Nandkishore Shravan Ahirrao vs Kosan Industries (P) Ltd. on 10 January, 2020

Bench: D.Y. Chandrachud, Hrishikesh Roy

CA 201-202 /2020

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 201-202 of 2020
(Arising out of SLP (C) Nos 30469-30470 of 2015)

Nandkishore Shravan Ahirrao

...App

Versus

Kosan Industries (P) Ltd

...Re

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 The appellant was employed in the Assembly department of the respondent. He was served with a charge-sheet on 26 June 1992. The charge against the appellant was of causing disruption of work between 1050 am and 12 noon on 17 June 1992. Following a departmental enquiry, the appellant was dismissed from service on 26 November 1997. In pursuance of a reference made under the Industrial Disputes Act 1947, the Labour Court by its award dated 27 February 2008 came to the conclusion that the findings in the enquiry CA 201-202 /2020 were perverse; that the order of dismissal was harsh and granted reinstatement in service with 25% back wages for the surplus days.

3 The order of the Labour Court was questioned before the High Court of Gujarat by the employer. A learned Single Judge of the High Court, by a judgment dated 5 February 2013, partly allowed the Special Civil Application. While affirming the order of reinstatement, the Single Judge set aside the order for payment of 25% back wages. The appellant then filed a Letters Patent Appeal. The Division Bench of the High Court dismissed the appeal on the ground that it was not maintainable.

4 Notice was issued in these proceedings on 16 October 2015. The office report indicates that the

respondent has been served. Since the respondent has failed to appear, we have proceeded to deal with the appeal on merits. 5 The learned Single Judge held that the Labour Court rightly observed that the punishment which was imposed on the appellant was harsh. It appears that even the salary of the appellant was deducted for the period in question during which work was disrupted. However, the learned Single Judge held that the payment of back wages would not follow as a matter of course upon an award of reinstatement. Hence, the direction for the payment of 25% back wages was interfered with and set aside. The Single Judge also observed that the Labour Court has “rightly passed the judgment and award reinstating the respondent without continuity of service”.

CA 201-202 /2020 6 The first grievance of the learned counsel appearing on behalf of the appellant is that the High Court was in error in misconstruing the award of the Labour Court as having denied continuity of service. We find merit in the submission. The award of the Labour Court is in the following terms:

“The reference of second party Nandkishor Shravan Ahirrao, 94, Shriram Kutir, near Chikuvadi, Post Office – Fatehnagar, Udhna, Surat – 304220 – C/o. Bombay foods Ltd. and Kosan Industries Ltd., Worker/Employee Union, Surat is hereby partly allowed.

And the first party of this case is hereby ordered that, they have to reinstate the second party in service with 25% back-wages for his surplus days within 30 days from the publication of this order.”

7 Ex facie, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The award of the Labour Court dated 27 February 2008 does not specifically deny continuity of service. Hence the observation of the High Court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of what has been observed herein-above. The appellant would be entitled to continuity of service.

8 On the question of back wages, the Labour Court had confined the award of back wages to 25%. Having come to the conclusion that the findings in the disciplinary enquiry was perverse, the Labour Court observed that it was a CA 201-202 /2020 matter of record that the workman has been gainfully employed over a part of the period after dismissal, between 3 March 1990 to 9 September 1992 with another employer. It was in the above circumstances, that the entire component of back wages was not awarded to the appellant and only 25% was awarded. The High Court has no justification to set aside the award of 25% back wages awarded by the Labour Court which was eminently fair and proper. The direction of the High Court for deletion of back wages is therefore unsustainable and is set aside.

9 We accordingly allow the appeals by directing that while maintaining the award of reinstatement, the appellant would be entitled to notional continuity of service as well as the payment of 25% back wages. Since the appellant has retired from service during the pendency of the proceedings, his retiral dues together with payment of 25% back wages for the relevant period shall be computed and

paid over to the appellant within a period of three months from the date of receipt of a certified copy of this order.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Hrishikesh Roy] New Delhi;

January 10, 2020
CA 201-202 /2020

ITEM NO.29

COURT NO.8

SECTION III

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

Nos.30469-30470/2015

(Arising out of impugned final judgment and order dated 24-03-2014 in CA No. 5613/2013 24-03-2014 in LPA No. 697/2013 05-02-2013 in SCA No. 8536/2008 passed by the High Court of Gujarat at Ahmedabad) NANDKISHORE SHRAVAN AHIRRAO Petitioner(s) VERSUS KOSAN INDUSTRIES (P) LTD. Respondent(s) Date : 10-01-2020 These petitions were called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE
HRISHIKESH ROY For Petitioner(s) Mr. Prashant Chawdhary, Adv.

Mr. Priank Adhyaru, Adv.

Mr. Rameshwar Prasad Goyal, AOR For Respondent(s) UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeals are allowed in terms of the signed order.

(Chetan Kumar)
A.R. -cum-P.S.

(Saroj Kumari Gaur)
Court Master

(Signed reportable judgment is placed on the file)