

[2020] 1 S.C.R. 90

A NANDKISHORE SHRAVAN AHIRRAO

v.

KOSAN INDUSTRIES (P) LTD.

(Civil Appeal Nos. 201-202 of 2020)

B JANUARY 10, 2020

**[DR. DHANANJAYA Y. CHANDRACHUD AND
HRISHIKESH ROY, JJ.]**

- Service Law – Continuity of service – Appellant was dismissed from service for causing disruption of work – The Labour Court came to the conclusion that the order of dismissal was harsh and granted reinstatement in service with 25% back wages for the surplus days – The High Court affirmed the order of reinstatement and set aside the order for payment of 25% back wages – The High Court also observed that the Labour Court had ‘rightly passed the judgment and award reinstating the respondent without continuity of service’ – On appeal before the Supreme Court, the appellant contended that the High Court was in error in misconstruing the award of the Labour Court as having denied continuity of service – Held: 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 did 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 was erroneous – The appellant was entitled to continuity of service – Further, the High Court had no justification to set aside the award of 25% back wages awarded by the Labour Court which was eminently fair and proper – Thus, the direction of the High Court for deletion of back wages was unsustainable – Accordingly, direction of the High Court set aside.*

G **Allowing the appeals, the Court**

HELD: 1. 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 does not specifically deny continuity of service. Hence the observation of

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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 of service. [Para 7] [93-B]

2. 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 matter of record that the workman has been gainfully employed over a part of the period after dismissal, 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. [Para 8] [93-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 201-202 of 2020.

From the Judgment and Order dated 05.02.2013 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 8536 of 2008 and order dated 24.03.2014 in Civil Application (for Condonation of delay) No. 5613 of 2013 in Letters Patent Appeal (Stamp) No. 697 of 2013.

Prashant Chawdhary, Priank Adhyaru, Rameshar Prasad Goyal, Advs. for the Appellant.

The Judgment of the Court was delivered by

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 were perverse;

- A 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

- B 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.

- C 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.

- D 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 E 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”.

- F 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:

- G “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.” A

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. B

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 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. C

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. D