K.S. Ravindran vs Branch Managr,New India Assurance Co ... on 6 May, 2015

Equivalent citations: AIR 2015 SUPREME COURT 2369

Author: V. Gopala Gowda

Bench: C. Nagappan, V.Gopala Gowda

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4220 OF 2015
(Arising Out of SLP (C) No.31909 of 2013)

K.S. RAVINDRAN ....APPELLANT

VERSUS

BRANCH MANAGER, NEW INDIA
ASSURANCE CO. LTD. ...RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Delay condoned. Leave granted.

2. The appellant has questioned the correctness of the judgment and order dated 20.11.2012 passed in W.A. No.514 of 2011 by the learned Division Bench of the High Court of Madras, wherein, the learned Division Bench partly allowed the writ appeal of the respondent and upheld the judgment of the learned single Judge of the High Court to the extent of reinstatement with continuity of service but set aside the order with regard to 25% back- wages and the 'punishment of termination' was also modified into stoppage of increment for a period of 3 years with cumulative effect.

The relevant facts are briefly stated to appreciate the rival legal contentions urged on behalf of the parties in this appeal:

> The appellant- K. S. Ravindran, was appointed as an Inspector on probation with the respondent-New India Assurance Co. Ltd. (for short 'the respondent-Company') w.e.f. 31.12.1983. The services of the appellant as Inspector Grade-I was confirmed w.e.f. 1.1.1985 by the respondent-Company vide its order dated 12.01.1985. The

appointment of the appellant was governed by the Development Staff Scheme, 1976 and also by General Insurance (Conduct, Discipline and Appeal) Rules, 1975, which deal with the service conditions of the employees working in General Insurance Company of India and its subsidiaries. According to the Development Staff Scheme, the appellant is supposed to complete the target set forth for him for each year of performance and also within the permissible cost as mentioned in the Scheme. In 1991, due to the appellant's personal problems in his marital life, he was on leave, due to which he was chargesheeted on 1.4.1991 for his unauthorised absence and also because his business performance had allegedly been very poor since 1985. An enquiry was conducted against the appellant and based on the findings of the Enquiry Officer on 16.12.1991, the appellant was issued a warning to mend himself and make progress in the business of the respondent-Company. However, the appellant was unable to achieve the premium targets for years 1991-92 and 1992-93 and therefore, he was issued with notice of termination dated 10.05.1993 on the ground that he had failed to conform to the stipulated cost limit and therefore, his services were liable for termination. The appellant was given 30 days notice for preparing an appeal against the order of termination. The appellant appealed against his order of termination before the Senior Divisional Manager of the respondent-Company on 30.6.1993, explaining the efforts taken by him to ensure business from various customers and assuring to the Senior Divisional Manager that he has conformed to the stipulated cost limit. On 09.06.1993 the appellant also appealed before the Appeals Committee explaining his stand against the order of termination. However, by order dated 30.7.1993, the order of termination dated 10.5.1993 was confirmed by the Appeals Committee holding that the appellant was terminated from the date of receipt of the order of termination i.e. from 17.08.1993.

The appellant raised an industrial dispute before the Conciliation Officer challenging the order of termination, the conciliation proceedings ended in failure and the report in this regard was submitted to the State Government of Tamil Nadu for its consideration, which has referred the points of dispute to the Central Government Industrial Tribunal-cum-Labour Court, Chennai (for short 'the Labour Court'). The Labour Court registered the said reference in I.D. No.12 of 1995, renumbered as I.D. No.385 of 2001. The appellant filed claim petition challenging the order of termination inter alia contending that no enquiry was conducted in respect of the order of termination dated 10.5.1993 and that the termination of services of the appellant on 17.8.1993 is in violation of the Service Rules and principles of natural justice and that the same is unjustified and therefore, prayed to set aside the same and pass and award of reinstatement with all consequential benefits.

The respondent-Company resisted the petition by contending that the appellant was governed by the Development Staff Scheme, 1976 and also by the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, which deal with service conditions of the employees and that the appellant failed to achieve the expected premiums for the relevant years and also failed to conform with the stipulated cost limit during the years 1991-92 and 1992-

93. Further, it was contended on behalf of the respondent-Company that not achieving the target, expected cost limit as per the Scheme and non- performance on his behalf was admitted by the appellant himself. It was further averred that the service conditions empower the management to terminate the services of employees by one month notice and therefore, the decision of the management cannot be challenged by the appellant.

The Labour Court, examined W1 to W12 from the appellant's side and M1 to M4 from the respondent-Company's side. Further, on referring to Clause 9, Schedule-A (duties and functions of the appellant) attached to the appointment order, the Labour Court held that the appellant has been given appointment in the respondent-Company wherein, the appellant agreed to conform to the stipulated cost limit and in spite of warning issued to the appellant, he has not shown progress in developing the insurance business and that the appellant was terminated from service in accordance with the terms and conditions mentioned in his appointment order. In so far as contention of the appellant that no enquiry was conducted before the order of termination, the Labour Court held that the enquiry against the appellant was conducted and he was given sufficient opportunity to put forth his defence and that the enquiry officer found that the charges leveled against the appellant had been proved and there was no violation of the principles of natural justice. The Labour Court passed an award holding that the action of the management in terminating the services of the appellant is justified and did not suffer from any illegality.

The said award was challenged by the appellant in Writ Petition No.6849 of 2002, wherein the learned single Judge held that the order of termination is not in consonance with the Scheme as nothing has been brought on record to show the reduction of emoluments for 3 consecutive years, rather the order of termination is on the ground that the appellant failed to achieve the target fixed on him for the particular year. It was further held by the learned single Judge that the order of termination was passed by way of punishment without following the principles of natural justice or conducting any enquiry into the allegations made against the appellant before passing the order of termination against him. Further, it was held by the learned single Judge that the termination of services of a confirmed employee without holding an enquiry is violative of Article 14 of the Constitution of India. The learned single Judge allowed the petition and directed the respondent-Company to reinstate the appellant in his post with 25% back-wages.

The said order of the learned single judge was challenged by the respondent-Company by filing Writ Appeal No.514 of 2011 inter-alia contending that the learned single Judge ought to have seen that consequent to the appellant being unable to achieve the target fixed on him in acquiring premium as required under the said Scheme, the order of termination was passed against him and therefore, justified that the same did not warrant further domestic enquiry as the mandatory provision of collecting the premium has not been complied with by the appellant. The Division Bench of the High Court held that the order of reinstatement passed by the disciplinary authority is modified into one of "stoppage of increment for a period of three years with cumulative effect" and the direction of the learned single Judge to pay 25% back-wages to the appellant was set aside and the appeal was partly allowed. Hence, the present appeal.

It is contended by the learned counsel on behalf of the appellant that the learned Division Bench of the High Court erred in denying back-wages to the appellant as quantified by the learned single Judge and further failed to appreciate that the order passed by the learned single Judge was judicious, just and in consonance with the judgments of this Court inasmuch as it directed the reinstatement with 25% back-wages of the appellant whose services had been wrongly terminated by the respondent-Company without holding an enquiry and the same was not in conformity with the principles of natural justice. In support of the said contention the learned counsel placed reliance on the decision of this Court in the case of Mohan Lal v. Bharat Electronics Ltd.[1] and Hindustan Tin Works v. Employees[2].

It was further contended by the learned counsel that the Division Bench of the High Court erred in overlooking the context of this particular case and vicissitudes of long drawn litigation thereof and also the fact that the appellant was not employed elsewhere during this long interregnum and he is entitled to back-wages as laid down by this Court in the case of Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya[3].

On the other hand, the learned counsel on behalf of the respondent- Company contended that consequent to the failure of the appellant to conform to the stipulated cost limit and only after affording opportunity to the appellant, his services were terminated and therefore, giving one more opportunity by way of domestic enquiry was not required in the case on hand. Attention was drawn to the report of the Enquiry Officer dated 16.12.1991 inter alia contending that in the said enquiry the second charge against the appellant was “poor business” performance by him since 1985 and that the learned single Judge ought to have seen that in the earlier domestic enquiry, the appellant was given a warning after his guilt had been proved for his absence and not achieving the target of his business. Therefore, there is no question of violation of principles of natural justice.

Further, it is contended by the learned counsel on behalf of the respondent-Company that the duty is cast on the employee to prove that he was not gainfully employed from the date of termination since the appellant has not adduced any evidence to prove the same and therefore, he is not entitled to any back wages. In support of the said contention reliance was placed on the decisions of this Court in the case of Rajasthan SRTC v. Shyam Behari Lal Gupta[4], Nagar Panchayat Kharkhauda v. Yogendra Singh[5] and R.B.I. v. Gopi Nath Sharma[6] wherein the legal position as regards to the payment of back-wages on reinstatement has been well settled by this Court.

We have heard the rival legal contentions urged on behalf of the parties in support of the respective claim and counter claim.

In our considered view, after examining the facts, circumstances and evidence on record, it is clear that the order of termination against the appellant on the ground that he failed to achieve the target fixed on him by the respondent-Company for the particular year is erroneous. The learned single Judge of the High Court in this regard duly noted that there was no record brought before the Court to show that there was a reduction of emoluments for three consecutive years due to non-performance of work by the appellant. It was also rightly held by the learned single Judge that neither the respondent-Company nor the Labour Court, have taken into consideration the

recommendation of the Branch Manager of the respondent- Company and the explanation given by the appellant in his representation challenging the order of termination passed against him.

In view of the above, the learned single Judge has rightly appreciated the facts and circumstances of the case on hand and passed an order dated 1.2.2011 quashing the award of the Labour Court and directed the respondent- Company to reinstate the appellant with all consequential benefits. Further, the learned single Judge, keeping in view that the appellant was terminated in the year 1993, directed the respondent-Company to pay 25% back-wages to the appellant.

The learned Division Bench has erred in modifying the order passed by the learned single Judge into one of stoppage of increment for a period of three years with cumulative effect and set aside the direction of the learned single Judge directing the respondent-Company to pay 25% back-wages to the appellant. The learned Division Bench failed to appreciate that the order passed by the learned single Judge was judicious, just and in consonance with the judgments of this Court in so far as awarding reinstatement and direction to pay 25% back-wages to the appellant whose services had been terminated illegally by the respondent-Company. The learned Division Bench erred in setting aside the award of payment of 25% back-wages to the appellant as passed by the learned single Judge which is contrary to the well established principle of law with regard to award of back-wages, when it is found that the order of termination is illegal. Therefore, the learned Division Bench has failed to follow the legal principles laid down by this Court in the case of Mohan Lal v. Bharat Electronics Ltd. (supra) wherein it was held thus:

> "17. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in the case."
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> 16. After considering the facts, circumstances and evidence on record, we are of the view that the appellant is entitled for reinstatement with back-

wages and other consequential benefits as per the principles laid down by this Court in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya[7] , wherein it was held as under:-

> "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 concerned employee, 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. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

17. For the foregoing reasons, the impugned judgment and order of the Division Bench of the High Court is set aside. The appeal is allowed and having regard to the facts and circumstances of this case, the respondent-

Company is directed to reinstate the appellant in his post and pay him 50% back-wages from the date of termination till the date of reinstatement by calculating the same on the basis of revision of pay scales of the appellant and other consequential monetary benefits and pay the same to him within six weeks from the date of receipt of the copy of this Judgment, failing which the back-wages shall be paid with an interest at the rate of 9% per annum after the expiry of the said six weeks. There shall be no order as to costs.

... ... J . [V . G O P A L A G O W D A]
.....J. [C. NAGAPPAN] New Delhi, May 6, 2015

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[1] (1981) 3 SCC 225
[2] (1979) 2 SCC 80
[3] (2002) 6 SCC 41
[4] (2005) 7 SCC 406
[5] (2005) 13 SCC 428
[6] (2006) 6 SCC 221
[7] (2013) 10 SCC 324