

Supreme Court of India

O.P. Bhandari vs Indian Tourism Development ... on 17 August, 1993

Equivalent citations: AIR 1994 SC 1294, (1994) ILLJ 938 SC

Author: N Venkatachala

Bench: A Ahmadi, N Venkatachala

ORDER N. Venkatachala, J.

1. Appellant in Civil Appeal No. 1969 of 1986, Applicant in C.M.P. No. 7806 of 1987 and Complainant in C.M.P. No. 14358 of 1989 is one and the same person, i.e., O.P. Bhandari - 'Bhandari', while respondent in them is Indian Tourism Development Corporation Ltd. - 'I.T.D.C.'.

2. Bhandari was in the employment of the I.T.D.C. as a Manager of its hotel Ranjit. However, his services were terminated by the I.T.D.C. by its Order dated 18.9.1984. The sustainability of that termination order was questioned in Civil Appeal No. 1969 of 1986 filed by Bhandari in this Court. This appeal was allowed by this Court by its Judgment dated 29.9.1986. The decrimal order there under read thus:-

We, therefore, direct that:

I. The Respondent Corporation shall reinstate the appellant with full back-wages (including usual allowances), or, at its option, II. The respondent Corporation shall pay to the appellant:-

(1) Salary including usual allowances for the period commencing from the date of termination of his service under the impugned order till the date of payment of compensation equivalent to 3.33 years' salary including usual allowances to him.

(2) Provident Fund amount payable to the appellant and retirement benefits computed as on the date of payment as per Clause 1 shall be paid to him within 3 months from the said date.

III. The appellant shall vacate and make over possession of the premises provided to the appellant by the respondent-company before the expiry of 3 months from the date of this order or within one month of the day on which payment under clause II is made, whichever is later.

IV. Respondent shall pay the costs to the Appellant.

V. Interim order shall stand vacated subject to the direction embodied in Clause III.

VI. Since the amount is being paid in one lumpsum, it is likely that the employer may take recourse to Section 192 of the Income Tax Act, 1961 which provided that any person responsible for paying any income chargeable under the head 'salaries', shall, at the time of payment deduct income-tax on the amount payable at the average rate of income computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If, therefore, the employer proceeds to deduct income-tax as provided by Section 192, we would like to make it abundantly clear that the appellant would be entitled to

relief under Section 89 of the Income Tax Act which provides that where by reason of any portion of assessee's salary being paid in arrears or in advance by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of Clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a higher rate than that it would otherwise have been assessed, the Income Tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in rule 21-A of the Income Tax Rules. The appellant is entitled to relief under Section 89 because compensation herein awarded includes salary which has been in arrears as also the compensation in lieu of reinstatement and the relief should be given as provided by Section 89 of the Income Tax Act read with Rule 21-A of the Income Tax Rules. The appellant is indisputably entitled to the same. If any application is required to be made, the appellant may submit the same to the competent authority and the Corporation shall, through its Tax Consultant, assist the appellant for obtaining the relief.

3. The I.T.D.C., since exercised the option given to it under the decretal order, of payment of compensation in lieu of reinstatement of Bhandari, Bhandari demanded payment from the I.T.D.C. which according to him was the amount of compensation payable by the I.T.D.C. The I.T.D.C. did not accede to that claim, as according to it the amount of compensation payable by it under the decretal order was very much less than what was claimed by him, i.e., Rs. 2050.31, although it issued a cheque drawn in his favour for a sum of Rs. 70,035.00, being the final payment of his provident fund dues. The non-payment of entire amount of compensation claimed by Bhandari by the I.T.D.C., led Bhandari to file C.M.P. No. 7806 of 1987 in this Court seeking modification by this Court of the decretal order in its Judgment dated 29.9.1986 rendered in Civil Appeal No. 1969 of 1986, by deleting the option for payment of compensation in lieu of reinstatement given to the I.T.D.C. When that application was still pending consideration by this Court, C.M.P. No. 14358 of 1989 was filed by Bhandari seeking initiation of contempt action against officers of the I.T.D.C. for not complying with the decretal order of this Court made in the Civil Appeal in the matter of payment of compensation to him. Ultimately, this Court by its order dated 12.5.1992 made in Civil Appeal No. 1969 of 1986 appointed Shri S.K. Gambhir, an advocate of this Court to give a report on the amount which would be payable by the I.T.D.C. to Bhandari under the decretal order made in Civil Appeal No. 1969 of 1986 by taking the assistance of a chartered accountant in the matter of computation of compensation to be paid to Bhandari under that decretal order. Shri S.K. Gambhir, having given his report along with calculation sheets which reflect the amount payable to Bhandari under the said decretal order, the C.M.Ps were listed for orders before us.

4. On behalf of Bhandari it was submitted by his learned counsel that 3.33 years' salary including admissible allowances awardable to Bhandari under the decretal order made by this Court in Civil Appeal No. 1969 of 1986 did represent merely the salary payable to him in lieu of reinstatement but not the arrears of salary payable to him between the date of termination of his service and the date of the order of this Court made in the Civil Appeal. Therefore, according to him, non-inclusion of such arrears of salary by Shri S.K. Gambhir in his report as the amount of compensation payable to Bhandari under the decretal order, was on obvious error. It was also submitted that Shri S.K. Gambhir should have included the amount of interest payable to Bhandari on the amount of compensation in lieu of reinstatement which was undisputed not paid by the I.T.D.C.

5. On the other hand, the learned counsel for the I.T.D.C. though did not dispute the amount of compensation calculated by Shri S.K. Gambhir as payable to Bhandari on the basis of 3.33 years salary including admissible allowances he pointed out an arithmetical error which had occurred in arriving at the figure of Rs. 1,41,980.00 in adding the amounts payable to Bhandari on account of Basic Pay, Dearness Allowance, C.C.A., and H.R.A. According to him, the total of the said four items should have been only Rs. 1,28,800/- and not Rs. 1,41,980/-, and, consequently, the amount payable to Bhandari towards compensation calculated on the basis of 3.33 years' salary would be Rs. 1,28,800/-. He, therefore, requested us to effect the necessary correction in the amount payable to Bhandari in that regard. He, however, wanted us to deduct out of the total amount of compensation payable to Bhandari a reasonable amount of rent which would become payable by Bhandari three months after the Judgment of this Court made in the Civil Appeal, within which time Bhandari had to vacate the hotel room belonging to the I.T.D.C. in his occupation.

6. Having perused the report of Shri S.K. Gambhir and the calculation sheets produced along with the report and considering the submissions made by both learned counsel of Bhandari and the I.T.D.C., we accept the amount quantified by Shri S.K. Gambhir as payable by the I.T.D.C. to Bhandari under the decretal order made in Civil Appeal No. 1969 of 1986, subject to the arithmetical error to be corrected in addition, as pointed out on behalf of the I.T.D.C. On the other hand, we are of the view that the claim made on behalf of Bhandari for arrears of his salary in addition to the compensation in lieu of reinstatement is untenable. So also, the claim for interest is untenable. But, we are not able to accede to the request made on behalf of the I.T.D.C. as regards the compensation claimed for hotel room in occupation of Bhandari. The reasons for our views are these:

7. The decretal order to which we have averted to, is in the nature of a decree made in the appeal. The decretal order does not say that if Bhandari is paid 3.33 years salary in lieu of his reinstatement he should, along with that salary, be paid salary which would have become payable to him from the date of his termination order till the date of the order of this Court. Indeed, the decretal order does not envisage the payment of arrears of salary from the date of termination of service of Bhandari till the date of the order of this Court independently of the amount of compensation to be paid in lieu of his reinstatement becomes clear, from the fact that clause II of the decretal order specifically states that the amount of compensation equal to 3.33 years' salary including allowances made payable thereunder covers the full period commencing from the date of termination of his service till the date of payment. Thus the first submission made on behalf of Bhandari as to the separate claim for his arrears of salary from the date of termination of his service to the date of the order of this Court, is devoid merit.

8. As regards the interest claimed from the I.T.D.C. for non-payment of the amount of compensation payable by the I.T.D.C. in lieu of reinstatement, we feel such interest which might have been ordinarily payable cannot be ordered to be paid, for Bhandari is in occupation of a room in the hotel of I.T.D.C. without payment of rent, even though he was not entitled to continue to occupy after he ceased to be in their service.

9. The submission made on behalf of the I.T.D.C. that a correction is required to be made in the amount of compensation because of the arithmetical error which has occurred in adding certain

figures, has to be accepted as such error is apparent. Hence, the total amount payable as per calculations of 3.33 years' salary including the allowances under clause II, ought to be Rs. 1,28,800/- instead of Rs. 1,41,980/-

10. Insofar as the compensation claimed on behalf of the I.T.D.C. for the hotel room in the occupation of Bhandari is concerned, the same cannot be granted since in our view, this amount could be regarded as that set off against the amount of interest on the unpaid amount of compensation which would have otherwise become payable.

11. In the result, both the C.M.Ps are disposed of thus:

(1). I.T.D.C. shall pay a sum of Rs. 2,18,680.00 comprised of (a) Rs. 1,86,755.69 under the heading 'Compensation calculated on the basis of 3.33 years' salary including admissible allowances', (b) Rs. 23,424.31 under the heading 'Statement of impounded A.D.A. and ad-hoc D.A. to be paid to the appellant', and (c) Rs. 8,500/- under the heading 'Encashment of earned leave for 68 days', to O.P. Bhandari being the aggregate of the amounts held to be payable to him in the report of Mr. S.K. Gambhir. This amount less the amount deductible under Clause (3) hereafter, shall be deposited by the I.T.D.C. in this Court on or before 30th August, 1993.

(2). O.P. Bhandari shall vacate the hotel room in his occupation within 30th August, 1993 and put the I.T.D.C. in possession of the same failing which he will be liable to forcible eviction. Upon vacating the hotel room as above, O.P. Bhandari will be at liberty to withdraw the said amount to be deposited by the I.T.D.C. less his share of remunerating payable to Chartered Accountants and Shri S.K. Gambhir, under the following clause(3).

(3). Fee payable to Chartered Accountants for the service rendered by them shall be Rs. 6,000/- . Fee payable to Shri S.K. Gambhir for enquiry held by him and the report made thereon to the Court, shall be Rs. 14,000/-. One-half of the said amounts being Rs. 10,000/- shall be paid by the I.T.D.C. and another one-half being Rs. 10,000/- shall be paid by O.P. Bhandari. The I.T.D.C. will pay its one-half share of the remuneration and one-half share of O.P. Bhandari deducted by it under Clause (1) hereinbefore, either directly by cheque or deposit of the same in the Court.

12. However, there shall be no order as to costs in these Civil Miscellaneous Petitions,