2023 STPL(WEB) 35 SC
SUPREME COURT OF INDIA

(ABHAY S. OKA AND RAJESH BINDAL JJ.)

RAMESH CHAND

Appellant

VERSUS

MANAGEMENT OF DELHI TRANSPORT CORPORATION

Respondent

Civil appeal no. 4208 of 2023 (Arising out of SLP (Civil) No. 7137/2016)-Decided on 5-7-2023

Labour Law, Industrial Dispute

(A) Industrial Disputes Act, 1947, Section 2(oo), 10 – Industrial Dispute – Back wages – Held that even if Court passes an order of reinstatement in service, an order of payment of back wages is not automatic - It all depends on the facts and circumstances of the case - In the statement of claim, it is specifically asserted that till August 1997 when the statement of claim was filed, the appellant found it difficult to get employment and in fact he was unemployed - There is a cross-examination of the appellant on this issue by the Advocate for the respondent and in the cross-examination, the appellant denied that he had a sufficient source of income to look after his family - However, considering the conduct of the appellant of withdrawing the affidavit filed earlier and not raising the contention of unemployment in the fresh affidavit, the appellant cannot be granted the benefit of back wages for the entire period from the date of termination till reinstatement - It is not possible to accept that for the entire period of thirteen years, the appellant had no source of income - However, the respondent has not come out with the case that from the date of his removal from service, the appellant had another source of income - Thus, the appellant discharged the burden on him by establishing that he was unemployed at least till August 1997 – Held that it will be appropriate if a sum of Rs.3 lakhs is ordered to be paid to the appellant in lieu of back wages - To that extent, the appeal must succeed.

(Para 9 and 10)

(B) Disputes Act, 1947, Section 2(oo), 10 - Evidence Act, 1872, Section 106 – Industrial Dispute - – Back wages – Gainfully employed – Burden of proof - Whether an employee after dismissal from service was gainfully employed is something which is within his special knowledge - Considering the principle incorporated in Section 106 of the Act, 1872, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination - It is a negative burden - However, in what manner the employee can discharge the said burden will depend upon on peculiar facts and circumstances of each case - It all depends on the pleadings and evidence on record - Since, it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer.

(Para 7)

Cases Referred:
National Gandhi Museum v. Sudhir Sharma[(2021) 12 SCC 439]

JUDGMENT

Abhay S. Oka, J.-FACTUAL ASPECTS

1. Leave granted. The appellant was employed as a conductor on 22nd June 1985 by the respondent – Delhi Transport Corporation. The appellant was served with a charge sheet on 8th September 1992 alleging that while discharging duties as a conductor on a particular route, he collected a sum of Rs.4/ from two passengers, but failed to issue tickets to them. After enquiry, the respondent passed an order of removal of the appellant from service with effect from 14th June 1996.

2. The respondent raised an Industrial Dispute before the Labour Court and challenged the enquiry and consequent order of removal. The Labour Court, after hearing the parties, came to the conclusion that the enquiry was illegal. Therefore, the Labour Court permitted the respondent to adduce evidence. By the award dated 17th March 2009, the Labour Court came to the conclusion that the charge against the appellant was not established by the respondent. Accordingly, by the said award, the Labour Court passed an order of reinstatement of the appellant in service. The Labour Court was of the view that the appellant has not discharged the burden of proving that he was not gainfully employed from the date of removal from service. Therefore, the Labour Court denied back wages.

3. The respondent accepted the Award of the Labour Court. Being aggrieved by the denial of the back wages, the appellant filed a writ petition before the learned Single Judge of Delhi High Court. The writ petition was dismissed. Being aggrieved by the dismissal of the writ petition, the appellant filed an appeal before the Division Bench of the Delhi High Court. By the impugned judgment dated 11th December 2015, the denial of back wages has been upheld by the Division Bench.

4. Notice was issued by this Court on 18th March 2016. We may note here that in terms of the award of the Labour Court which was not challenged by the respondent, the appellant was reinstated in service with effect from 23rd July 2009. He superannuated on 31st March 2020.

SUBMISSIONS

5. The learned senior counsel appearing for the appellant urged that even in the statement of claim filed before the Labour Court, the appellant had specifically pleaded that he was unemployed from the date of his removal from service. He submitted that before the Labour Court, the appellant was subjected to cross-examination on this aspect by the advocate for the respondent. He would, therefore, submit that in the facts of the case, the appellant discharged the burden on him by proving that he did not have any employment after his removal from service by the respondent. He submitted that there is no evidence to the contrary and therefore, the appellant is entitled to full back wages.

6. Learned counsel appearing for the respondent pointed out that before the Labour Court, on 18th July 2008, an affidavit was filed by the appellant in which there was an assertion that the appellant was unemployed from the date of his termination and was not able to secure any employment. However, the said affidavit was withdrawn and a fresh affidavit was filed in which no such specific assertion was incorporated. The learned counsel would, therefore, submit that the appellant has not discharged the burden on him of making out of a case that he was unemployed from the date of termination of service. As directed by this Court, he has placed on record documents showing retiral dues paid to the appellant and a statement incorporating the salary which he could have drawn from the date of his termination till the date of his reinstatement.

OUR VIEW

7. The only question before us is whether the Labour Court was justified in denying relief of back wages. In the case of National Gandhi Museum v. Sudhir Sharma*[(2021) 12 SCC 439]* , this Court held that the fact whether an employee after dismissal from service was gainfully employed is something which is within his special knowledge. Considering the principle incorporated in Section 106 of the Indian Evidence Act, 1872, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden. However, in what manner the employee can discharge the said burden will depend upon on peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since, it is a

negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer.

8. Now, coming to the facts of the case, we find that in the statement of claim filed by the appellant before the Labour Court on 8th August 1997, which is duly signed and verified by him, a specific contention was raised that he was still unemployed and has been rendered jobless. Therefore, a contention was raised in paragraph 9 of the statement that the appellant was entitled to back wages. Therefore, at least as on 8th August 1997, there is a specific case made out by the appellant that he was not gainfully employed. The appellant filed an affidavit on 18th July 2008 before the Labour Court in which he contended that he was unemployed from the date of termination and was facing acute financial hardship. However, the said affidavit was withdrawn and a fresh affidavit of evidence was filed by the appellant on 4th September 2008 in which a specific assertion regarding the failure to get employment was not incorporated. However, he was cross-examined on this aspect before the Labour Court by the advocate for the management by giving a suggestion that the appellant was earning a sufficient amount to support his family. However, the appellant denied the correctness of the said suggestion. Therefore, in the statement of claim filed thirteen months after termination, a specific assertion was made by the appellant that he was unemployed. Neither any material has been placed by the respondent on record to show that the appellant had a source of income nor anything material has been elicited by the respondent while cross-examining the respondent.

9. The law is very well settled. Even if Court passes an order of reinstatement in service, an order of payment of back wages is not automatic. It all depends on the facts and circumstances of the case. It is true that affidavit filed by the appellant on 18th July 2008 before the Labour Court making a categorical statement on oath that he was not employed from the date of termination was withdrawn and in the fresh affidavit filed by way of evidence, such a specific contention was not raised. But there are two factors in favour of the appellant. In the statement of claim, it is specifically asserted that till August 1997 when the statement of claim was filed, the appellant found it difficult to get employment and in fact he was unemployed. The second aspect is that there is a cross-examination of the appellant on this issue by the Advocate for the respondent and in the cross-examination, the appellant denied that he had a sufficient source of income to look after his family. <u>However, considering the conduct of the appellant of withdrawing the affidavit filed earlier and not raising the contention of unemployment in the fresh affidavit, the appellant cannot be granted the benefit of back wages for the entire period from the date of termination till reinstatement. It is not possible to accept that for the entire period of thirteen years, the appellant had no source of income. However, the respondent has not come out with the case that from the date of his removal from service, the appellant had another source of income. Thus, the appellant discharged the burden on him by establishing that he was unemployed at least till August 1997.</u> From the chart submitted on record by the learned counsel appearing for the respondent, we find that the gross salary of the appellant on the date of reinstatement was Rs.18,830/. On the date of removal, his salary was approximately Rs.4,000/ per month.

10. <u>We are of the view that considering the facts of the case, it will be appropriate if a sum of Rs.3 lakhs is ordered to be paid to the appellant in lieu of back wages. To that extent, the appeal must succeed.</u>

11. Accordingly, the award of the Labour Court dated 17th March 2009 and impugned judgments of the High Courts are modified. We direct the respondent to pay a sum of Rs.3 lakhs to the appellant as back wages within a period of two months from today. The appellant shall provide his account details and a copy of a cancelled cheque of his account to the advocate for the respondent. The amount shall be transferred by the respondent to the bank account of the appellant within a stipulated time of two months. In the event of failure of the appellant to furnish details of his bank account and a copy of the cancelled cheque to the advocate for the respondent within a period of one month from today, it will be open to the respondent to deposit the amount with the Labour Court. The Labour Court shall permit the appellant to withdraw the amount. In the event the respondent fails to pay or deposit the sum of Rs.3 lakhs within two months from today, the said amount will carry interest at the rate of 9% per annum from the date of reinstatement in service. The appeal is partly allowed on the above terms.