

State of M.P. and ors. Vs. Ram Kumar Pathak and anr.

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Court : Madhya Pradesh

Decided On : Feb-10-2009

Reported in : (2010)ILLJ469MP

Judge : Arun Mishra and; Sushma Shrivastava, JJ.

Appellant : State of M.P. and ors.

Respondent : Ram Kumar Pathak and anr.

Disposition : Petition dismissed

Judgement :

Arun Mishra, J.

1. The instant writ petitions have been preferred by the State of M.P. and Others and also by the workmen aggrieved by an award dated April 27, 2007 directing the reinstatement without backwages of workmen Ram Kumar Pathak and Buddhsen Pathak.

The workmen Buddhsen Pathak was employed as daily wager in the year 1988 whereas Ram Kumar Pathak was employed as daily wager in the year 1989. They continuously rendered services till September 7, 1999. As they were involved in the criminal case, they absented w.e.f. September 7, 1999, did not report till December 7, 1999, they had been arrested on December 3, 1999 and bail was

granted to them on December 7, 1999. It was submitted by them that they submitted joining on December 7, 1999 and December 8, 1999. They had earlier sent application as to their absence as they were not well. Ultimately they were acquitted in criminal case, they were not taken back in service even after acquittal. When they filed representation, they were informed that their services were terminated due to involvement in the criminal case. Order of termination was passed on January 20, 2005.

2. The case of the workmen was referred for adjudication to the Labour Court under Section 10 of the Industrial Disputes Act. The Labour Court has found that workmen have rendered the continuous services for a long period. Enquiry was not held before termination of their services. They have been acquitted in the criminal case, as such they should have been reinstated. Merely remaining in the police custody for a period of 4 days could not be termed as misconduct so as to warrant the termination of the services. The termination made on the basis that they were detained in police custody for more than 48 hours, has been found to be illegal. The Labour Court has opined that in case back wages are denied to the workmen in each of the case, that would be sufficient. Consequently, reinstatement has been ordered without backwages. Dissatisfied with the award passed the present writ petitions have been preferred by the employer as well as by the workmen. State of M.P. and Others have assailed the reinstatement part of the award whereas workmen have prayed for grant of backwages.

3. Shri P.N. Dubey, learned Deputy, Advocate General for the State of M.P., has submitted that it was the case of abandonment of the services by workmen, they absented w.e.f. September 7, 1999, they were involved in the criminal case, they did not submit any/joining on December 7, 1999 or December 8, 1999. When they filed representations, it was found that as they were arrested and detained in police custody for more than 48 hours in connection with criminal case, their services had been rightly terminated.

4. Shri Sanjay Verma, learned Counsel appearing on behalf of the workmen, has submitted that no enquiry was held, it was necessary to hold the enquiry, even with respect to the daily wager in case they were to be removed from service on

the ground of involvement of criminal case not even a show cause notice was given. Mere detention in the police custody could not be said to be such a misconduct particularly after acquittal so as to remove them from the services. The backwages in the circumstances ought to have been granted, as the workmen were not taken back in service when they reported back after grant of bail, they submitted their joining on December 7, 1999 or December 8, 1999. Consequently, the writ petitions preferred by the workmen be allowed and the writ petitions filed by the State of M.P. and Others may kindly be dismissed.

5. It is not disputed that both the workmen were involved in the criminal case. It appears that due to their involvement in the criminal case, they absented themselves on September 7, 1999, they submitted the joining on December 7, 1999 or December 8, 1999, the bail was granted to them on December 7, 1999, they were arrested on December 4, 1999, for about 4 days they remained in police custody, however, the fact remains that they have been ultimately acquitted in the criminal case and their services were terminated on the ground that they remained in police custody for more than 48 hours. Mere remaining in the police custody could not be said to be misconduct particularly when they have been acquitted. No departmental enquiry has been held.

6. The Apex Court in *Telecom District Manager and Ors. v. Keshab Deb* : 2009 1 LLJ 733 (SC), has held in the backdrop of the fact that services of the daily wager were terminated without departmental proceedings on the ground of misconduct, misuse of public vehicle and criminal conviction under Section 34(6) of Police Act, 1861, termination was held to be illegal, termination being stigmatic in nature, departmental proceeding should have been initiated. In the instant case, admittedly no departmental enquiry has been held and the order of, termination cast stigma upon the workmen. Consequently, their reinstatement has been rightly ordered by the impugned award passed by the Labour Court.

7. Coming to the question of grant of backwages, the workmen were involved in criminal case on their own. The department was not involved in the criminal prosecution. The workmen had absented for a considerable period.

Consequently, it is not considered appropriate to grant them the backwages in the facts projected in the instant case.

Resultantly, the award passed by the Labour Court is hereby affirmed. Writ petitions being devoid of merits, are hereby dismissed. Parties are left open to bear their own costs as incurred of the petitions.

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