

R.M.X Joss Vs. Sumitra

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Court : Delhi

Decided On : Nov-01-2006

Reported in : 2009(93)DRJ93

Judge : Shiv Narayan Dhingra, J.

Appeal No. : W.P.(C) No. 15421 of 2004

Appellant : R.M.X Joss

Respondent : Sumitra

Advocate for Def. : Piyush Sharma and ; K.G. Mishra, Advs.

Advocate for Pet/Ap. : A.K. Sakhuja, Adv

Disposition : Petition allowed

Judgement :

Shiv Narayan Dhingra, J.

1. By this writ petition, the petitioner has challenged the validity of award dated 20.2.2003 whereby the learned Tribunal answered the reference in favor of the work-woman and held that she was entitled for reinstatement with continuity in service with full back wages. However, the work-woman had already been taken on duty w.e.f. 2.12.1999 during the pendency of the award, so the work-woman

was held entitled for full back wages from 31.7.1988 to 1.12.1999. The management has challenged the validity of granting full back wages to the work-woman.

2. Briefly, the facts are that the respondent was working with the petitioner as a helper. She absented from duty and after being absent for about two months she sent a letter along with fitness certificate on 11th July, 1988 stating that she was fit to resume duty however, she would be joining duty on 31st July, 1988. She alleged that she went to join duty on 31st July, 1988 but she was not allowed to join duty. She then approached the Labour Inspector, who accompanied her on 4th August, 1988 but she was not allowed to join duty in presence of the Labour Inspector. She served a notice on the management on 4th August, 1988 itself. She approached Conciliation Officer, who fixed the date of hearing as 29th August, 1988. On 29th August, 1988, the management did not appear. On next date of hearing i.e. 12th September, 1988, the management replied that they have taken her on duty with continuity in service but left open the question of payment of back wages. The work-woman alleged that after taking her on duty the management had started harassing her due to which her health deteriorated. She again went on leave for two days on 17.9.1988 seeking permission from Mr. Rakesh of the management. When she returned to join on 20.9.1988, the management again refused to take her on duty and then she wrote a letter to the management on 23.9.1988, to which the management did not reply. On 14.10.1988 before the Conciliation Officer, the management showed their inability to give her duty and wages so industrial dispute to the following effect was referred for adjudication to the Industrial Tribunal:

Whether Smt. Sumitra has abandoned her services or the same have been terminated illegally and / or unjustifiably by the management and if so, to what relief is she entitled and what directions are necessary in this respect?

3. The Tribunal observed that the plea of the management that the respondent had herself abandoned the job was not proved and it was the management who had terminated the services of the work-woman.

4. The award was challenged by the petitioner on the ground that no relief of back wages should have been granted to the respondent since it was the respondent who showed erratic behavior in joining the duty. She absented from duties from 20th May, 1988 without any application then sent a letter to the management along with fitness certificate dated 11th July, 1988 that she was fit to join duty but she stated that she would join duty only on 31st July, 1988 and not before. The management took her on duty on 12th September, 1988. She again absented from duty from 17th September, 1988, there was no termination of her services by the management. The work-woman had not alleged that she remained unemployed during the pendency of proceedings. The Tribunal wrongly granted her full back wages.

5. Since the work-woman has already been reinstated the question before this Court is only for back wages. A perusal of the statement of claim filed by the respondent would show that in her claim she stated that she fell ill and went on leave and sent a registered letter dated 11th July, 1988 with her fitness certificate and also informed the management that she would be joining duty on 31st July, 1988. She failed to state since when she was absenting from the duties, when she sent a medical certificate, who granted her leave how her leave was sanctioned. The management has stated in the written statement that she was absent from duty since 20th May, 1988. In her rejoinder she has not disputed the fact that she was absenting from duty from 20th May, 1988 and informed the management that she would be joining on 31st July, 1988. The Tribunal has not taken into account the attitude and conduct of the respondent while granting full back wages. The respondent is an employee, who went on leave without any intimation and then sent a letter with her fitness certificate that she was fit to resume duty on 11th July, 1988 but would not join duty on 11th July and she will join duty on 31st July, 1988 after twenty day of her fitness for reason best known to her. She was taken on duty on 12th September, 1988 and again she went on leave for alleging that she had informed one of the management employees, she did not make any application for leave.

6. Full back wages is not the natural consequence in all cases where reinstatement is made. In this case, the management had reinstated the

employees during the pendency of proceedings. The management had offered to reinstate the employee even during conciliation proceedings and during the proceedings before the Tribunal. However, the management was susceptible about the conduct of the respondent because of her attitude of going on leave without any intimation. Tribunal was bound to consider all facts and circumstances while granting relief regarding back wages. The Hon'ble Supreme Court in various judgments held that while granting back wages, the Tribunal should take into account all factors.

7. In U.P. State Brassware Corporation Limited and Anr. v. Udai Narain Pandey 2006 LLR 214, Supreme Court held that no precise formula can be laid down regarding payment of entire back wages and it depends upon facts and circumstances of each case. It would not be correct to contend that it is automatic. The Supreme Court surveyed the law laid down in respect of back wages and directed payment of 25% of total back wages to the workman.

8. In Allahabad Jal Sansthan v. Daya Shankar Rai and Anr. : (2005)IILLJ847SC , the Supreme Court observed:

16 We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

9. In Kendriya Vidyalaya Sangathan and Anr. v. S.C. Sharma : (2005)IILLJ153SC , Supreme Court held:..when the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that

regard.

10. I consider that looking into the facts the award of full back wages by the Tribunal was not justified, the respondent did not contribute anything towards the management for all these years. I consider 30% back wages would be an appropriate relief in such cases. The award of the Tribunal is modified to the effect that the respondent would be entitled for 30% back wages w.e.f. 31.7.1988 to 1.12.1999. The writ petition is allowed to the above extent.

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