

Veeramani Vs. the Management of Tamil Nadu Electricity Board, and anr.

Veeramani Vs. the Management of Tamil Nadu Electricity Board, and anr.

SooperKanoon Citation : sooperkanoon.com/821693

Court : Chennai

Decided On : Nov-27-1991

Reported in : (1992)2MLJ58

Appellant : Veeramani

Respondent : The Management of Tamil Nadu Electricity Board, and anr.

Advocate for Pet/Ap. : Mr. V. Prakash

Judgement :

Nainar Sundaram, Actg. C.J.

1. This writ appeal is directed against the order of the learned single Judge in W.P. No. 10539 of 1989. The petitioner in the writ petition is the appellant in this writ appeal. The respondents in the writ petition are the respondents in this writ appeal. For the sake of convenience, we are referring to the parties as per their nomenclature in the writ petition. The petitioner succeeded before the second respondent in I.D. No. 188 of 1982 in setting aside the order of dismissal made by the first respondent, and the second respondent by the award in I.D. No. 188 of 1982 directed the reinstatement of the petitioner in service with continuity of service. However, on the question of back wages, the second respondent awarded only 50% of the same. The first respondent was aggrieved with regard to that portion of the award of the second respondent directing the reinstatement of the petitioner with continuity of service and the first respondent came to this Court by

way of W.P. No. 3524 of 1988. The petitioner was aggrieved with reference to the denial of back-wages to the extent of 50% and the petitioner preferred W.P. No. 10539 of 1989. Both the writ petitions had a common disposal at the hands of the learned single Judge. The learned single Judge did not countenance the cases of the petitioner and the first respondent and dismissed both the writ petitions. As already stated, this writ appeal is directed against the order of the learned single Judge in W.P. No. 10539 of 1989.

2. Mr. P. Ibrahim Kalifullah, appears for the first respondent. Mr. V. Prakash, learned Counsel for the petitioner would submit that when the order of dismissal had been found to be not sustainable, the normal rule of award of full back wages ought to have been adhered to by the second respondent and in the instant case no exceptional circumstances have been established by the first respondent to make a departure from the normal rule. As against this P. Ibrahim Kalifullah, learned Counsel for the first respondent would submit that on the available evidence, the petitioner must be held to be guilty of the charges levelled against him and the second respondent only after considering the circumstances of the case deemed fit to award 50% of the back wages and this Court should not interfere with the discretion exercised by the 2nd respondent on this question.

3. The normal rule is that award of full back wages must follow when the relief of reinstatement is given and if there is going to be a departure from the normal rule, compelling circumstances necessitating such departure must be established by the employer. As to how this question has got to be assessed was the subject matter of consideration by a pronouncement of a Bench of this Court to which one of us (Justice S. Nainar Sundaram, as he then was) had been a party in *The Workmen represented by W.S. Insulators of India Ltd. Workers and Staff Progressive Union, Porur v. The Management of W.S. Insulators of India Ltd.* W.A. No. 623 of 1981, judgment dated 1.11.1988 and the discussion runs as follows:

It is true that a workman cannot claim either reinstatement or payment of back wages as of right. Neither is a common law right. But the industrial adjudication by the forums, constituted there for, takes is the question of granting these reliefs. When an order of dismissal is set aside and the workman is reinstated, the

question of back wages arises. The general rule is that the award of full wages stands annexed to the relief of reinstatement. But, there can be exceptional circumstances compelling a departure from the general rule. If a workman is found guilty of gross misconduct and grievous lapses in the discharge of his obligations towards the employer, certainly the discretion is that of the industrial forum not to award back wages during the period the non-employment took place, even though the workman gets the benefit of reinstatement. For making this departure, cogent reasons must be found and expressed. The grant of reliefs, though it is a matter of discretion by the Industrial forums, certainly that discretion is not as arbitrary one; but must be a judicious and a well balanced one. When the Industrial forum gives the relief of reinstatement to the workman, the resultant position is the workman is entitled to be restored to the position in which he stood prior to his non-employment, and the service statue and the emoluments that are legitimately due to him during the said period must normally be awarded to the workman. Reinstatement means, the employer must have taken away illegally, or denied a warrantedly the right of workman to work and consequently deprived him of his emoluments. If the workmen has been kept out of employment on account of the illegal or invalid act on the part of the employer, the Industrial forum could not be normally justified in not awarding the workers, the full back wages to which he was legitimately entitled to. A contrary approach has been viewed as a premium on the unwarranted litigative activity of the employer. If the employer wants the workman to stand deprived of the full back wages, even though he gets reinstated it is for the employer to establish the compelling circumstances which necessitated such departure.

4. Coming to the present case, the second respondent found that the charges levelled against the petitioner have not been proved and hence the order of dismissal is illegal. Yet, the second respondent by merely stating 'but considering the circumstances of the case', directed the award of 50% of the back wages. This Court is not enlightened as to whether any exceptional circumstances are pleaded and established by the first respondent to deny the petitioner the full back wages. The learned single Judge dealt with this aspect in the following terms:

Though normally full back wages is the rule, in this case, the Labour Court thought fit, having regard to the circumstances of the case, to grant only 50% back wages, which in its view, 'will be just and proper'. In the above circumstances, I do not see any reason to interfere with the exercise of the discretion by the Labour Court on this account also.

We find that the norms as set out to govern and guide a decision on this question have not at all been thought about and the question has not been decided in accordance with these norms. Here we find a case where the first respondent did not seek for an opportunity to adduce evidence before the second respondent to prove the charges. The second respondent on the evidence available came to the conclusion that the charges were not at all proved. The first respondent did not place any material, to substantiate exceptional circumstances to deny the petitioner the award of full back wages. In our view, the learned single Judge ought not have to lend support to the decision of the second respondent on the question of denial of 50% of back wages to the petitioner. In view of the foregoing discussions, we are obliged to interfere in writ appeal and accordingly this writ appeal is allowed; the order of the learned single Judge in W.P. No. 10539 of 1989 is set aside; and the award of the second respondent in I.D. No. 188 of 1982 is so far as it denied 50% of the back wages to the petitioner is quashed and in addition to the relief of reinstatement with, continuity of service accorded to the petitioner, the petitioner is also entitled to the relief of full back wages. We make no order as to costs.