

M. Arunachalam Vs. the Tamil Nadu Electricity Board Represented by Its Chairman and anr.

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Court : Chennai

Decided On : Dec-31-1996

Reported in : (1997)1MLJ386

Appellant : M. Arunachalam

Respondent : The Tamil Nadu Electricity Board Represented by Its Chairman and anr.

Judgement :

ORDER

N.V. Balasubramanian, J.

1. The writ petitioner, while he was working as Junior Engineer, Grade-II at R. Pudupalayam was transferred to Thalaivasal Section on 5.6.1987. The petitioner accepted the transfer and received the travelling allowance of Rs. 400 to enable him to join duty in the new place. However, he did not join in the transferred place. He made a request to transfer him to Thanjavur which was negatived by the first respondent. The petitioner did not join duty even thereafter, but was applying for leave frequently. Therefore, the respondent initiated disciplinary proceedings against the writ petitioner on certain charges and the enquiry was conducted with regard to the charges framed against the petitioner. The petitioner even after the

receipt of the notice for the enquiry did not participate in the enquiry. Several opportunities were granted to the petitioner, but inspite of the same, there was no participation by the writ petitioner in the enquiry. Finally, the notice of enquiry was affixed at the door of the petitioner's house in the presence of one independent witness and the officials of the first respondent. On 15.3.1989, the Enquiry Officer held enquiry ex parte and found that the petitioner was guilty of all the charges. On the basis of the report of the enquiry Officer, a show-cause notice was issued to the petitioner on 5.4.1989 which was received by the petitioner on 15.4.1989. The petitioner submitted his explanation on 18.4.1989. But, his explanation was found to be not convincing and the Superintending Engineer, Salem Electricity Distribution Circle, Salem passed an order imposing punishment of removal from service. The petitioner filed an appeal before the Chief Engineer and the appellate authority also upheld the order of removal of the petitioner from service. The petitioner, there-alter, approached the Labour Court in I.D. No. 434 of 1994 under Section 2A(2) of the Industrial Disputes Act. The main contention of the writ petitioner before the Labour Court was that the notice regarding the charge sheet was not served on the petitioner properly and the enquiry was conducted behind his back and the order of removal from service was arbitrary. The order shows that learned Counsel who appeared for the petitioner before the Labour Court conceded that it cannot be stated that the enquiry conducted by the Enquiry Officer was not-proper and that he would confine his argument only to the quantum of punishment. He also filed a memorandum before the Labour Court stating that the claim would be restricted to the punishment aspect of the order of dismissal. Therefore, he submitted, considering the family circumstances of the petitioner, the petitioner should be given the benefit of reinstatement of service, and the claim for backwages was not pressed. The Labour Court considered the arguments of the respondent that except the imputation found in the charge memo, there were no other proceedings against the writ petitioner and the writ petitioner was not involved in any demonstration or any other activities causing loss to the property of the first respondent. Considering the family circumstances of the petitioner, the Labour Court ordered reinstatement with continuity of service, but the payment of backwages was denied to the petitioner.

2. The writ petitioner has challenged the award on the ground that the order passed by the Labour Court denying the benefit of backwages as illegal. The first respondent has contested the claim of the writ petitioner on the ground that having conceded before the Labour Court, that he would be satisfied with the order of reinstatement, it is not open to the petitioner to challenge that part of the order denying backwages. According to the first respondent, the petitioner has not challenged the domestic enquiry or the conclusion arrived at in the domestic enquiry and having accepted the domestic enquiry, it is not open to the petitioner to get any relief of backwages.

3. Learned Counsel for the petitioner submitted that the learned advocate appearing for the petitioner before the Labour Court has no authority to make an endorsement giving up the claim for backwages. According to the counsel for the petitioner, the endorsement of the advocate would not be sufficient, but the signature of the parties should be obtained in the memorandum filed before the Labour Court when a part of the claim was voluntarily given up. Learned Counsel for the petitioner placed reliance on a decision of the Supreme Court in *Gurpreet Singh v. Chatur Bhuj Goel* : [1988]2SCR401 and also a decision of this Court in *M/s. Ideal Garden Complex Private Ltd., Salem-4 v. M/s. Vijai Agencies, Salem-4*, represented by its partner, M. Kamalanathan 1995 T.L.N.J. 23

4. The next submission of the learned Counsel for the petitioner is that where the Labour Court has found that the petitioner was entitled to reinstatement, it should have ordered for the payment of full backwages as the payment of backwages is a normal rule and in the absence of any circumstances in contrary, the Labour Court was not right in denying the petitioner the backwages. Though, there are grounds raised in the writ petition, challenging the enquiry, the counsel for petitioner has not urged those points at the time of hearing of the writ petition.

5. Learned Counsel for the first respondent on the other hand, submitted that the petitioner has accepted the fairness of the domestic enquiry and the conclusion of the Enquiry Officer arrived at in the enquiry proceedings and after having accepted the same before the Labour Court, it is not open to the petitioner to canvass the propriety of the enquiry proceedings in this Court. Learned Counsel for the first

respondent further submitted that the petitioner has not joined duty even after the order of reinstatement notwithstanding the fact that the posting order was issued to the petitioner. He further submitted that having made request before the Labour Court that he would be satisfied with the order of reinstatement/it is not open to the petitioner to challenge the order of the Labour Court claiming backwages.

6. I have carefully considered the contentions raised by the learned Counsel for the petitioner as well as the learned Counsel for the first respondent. The award in this case was passed on 31.12.1993 and it was published in Tamil Nadu Government Gazette on 3.8.1994. The writ petition, challenging the award and to quash the relevant portion of the order refusing to grant the attendant benefits including backwages and other privileges consequent to the relief of reinstatement of the petitioner, was filed on 19.4.1996. There is a delay of nearly 2 years in challenging the award of the Tribunal. Though the writ petitioner has given certain reasons in paragraph-2 of the affidavit filed in support of the writ petition, they are not quite convincing for the long delay in approaching this Court. The writ petition is liable to be dismissed on the ground of laches.

7. However, it is necessary to consider the arguments of the learned Counsel for the petitioner. The first submission of the learned Counsel for the petitioner is that the finding of the Labour Court is that the punishment of removal from service was certainly disproportionate to his misconduct and after arriving at this finding, the Labour Court should have ordered for payment of full backwages. According to the learned Counsel for the petitioner, though the petitioner was ordered to be reinstated, the question of granting backwages should follow the order of reinstatement of service. He relied upon a decision of the Supreme Court in *Hind Construction and Engineering Co. Ltd. v. Their Workmen* : (1965)ILLJ462SC wherein the Supreme Court held as under:

It is now settled law that the tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the tribunal as it is ordinarily before a Court of appeal. The tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the tribunal can only interfere if the conduct of the employer shows lack of bona fides

or victimization of employee or employees or unfair labour practice. The tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed, the tribunal should not interfere. The tribunal is not required to consider the propriety of adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. These principles can be gathered from the following cases: *Bengal Baddee Coal Company Ltd., v. Ram Prabesh Singh and Ors.* : (1963)ILLJ291SC , *Bunckingham and Carnatic Mills Ltd. v. Their Workmen* (1951) II L.L.J. 314, *Titaghar Paper Mills Company Ltd v. Ram Naresh Kumar* (1961) I L.L.J. 511, *Doom Dooma Tea Co. v. Assam Chah Karamchari Sangh* (1960) II L.L.J. 56, *Punjab National Bank Ltd. v. Their Workmen* : (1959)ILLJ666SC , *Chartered Bank, Bombay v. Chartered Bank Employees Union* : (1960)ILLJ222SC .

Learned Counsel for the petitioner also placed strong reliance on another decision of the Supreme Court in *Hindustan Tin Works Ltd., v. Its Employees* : (1978)ILLJ474SC wherein the Supreme Court held as under:..Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the grant of litigation, his capacity to sustain himself through the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupifying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort

of penalty for no fault of his and it is wholly underserved. Ordinarily, therefore, workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be premium on the unwarranted litigative activity of the employer. If the employer terminate the service illegally and the termination is motivated as in this case viz., to resist the workman's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.

He also placed reliance on a decision on Andhra Pradesh High Court in *Indian Airlines v. A. Phillips* : (1989)IILLJ86AP wherein the Andhra Pradesh High Court held as under -.Where the Labour Court finds that the termination of the service is not justified awarding of full back wages is the normal rule. The burden of showing that the normal rule should not be followed and that the employee should not be awarded full back wages, is on the employer. Where the employee was gainfully employed during the enforced idleness, this factor has to be taken into consideration in granting backwages. Where there has been considerable delay in raising an industrial dispute, the normal rule of awarding full backwages will not be justified. When the Tribunal finds that the termination of service is unjustified, the question of awarding of backwages is in the discretion of the Tribunal. That discretion has to be exercised judicially injudicious manner and it should not be in capricious or arbitrary manner. In exercising the discretion, the Tribunal has to take into consideration the factors like harshness of the punishment, period during which the employee was kept out of employment due to no fault attributable to him, nature of the charges levelled against him and the delay in raising the industrial dispute.

8. The next submission of the learned Counsel for the petitioner is that the endorsement of the advocate giving up the backwages is not sufficient as the writ petitioner has not signed the memorandum of compromise filed before the Labour Court. He relied upon a decision of the Supreme Court in *Gurpreet Singh v. Chatur Bhuj Goel* : [1988]2SCR401 . The Supreme Court after considering the provisions of Order 23, Rule 3 of the Code of Civil Procedure held as under:

Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The court must therefore insist upon the parties to reduce the terms into writing.

The Supreme Court further held that the whole object of the amendment by adding the words, 'in writing and signed by the parties' is to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise with a view to protract or delay the proceedings in the suit.

9. The above decision of the Supreme Court followed by a learned Judge of this Court in M/s. Ideal Garden Complex Private Ltd., Salem-4 v. M/s. Vijai Agencies, Salem-4 (1995) T.L.N.J. 23 wherein Govardhan, J. after noticing a decision of the Supreme Court in By ram Pestonji Gariwala v. Union Bank of India (1991) 1 S.C.W. 2567 and another decision of the Supreme Court in Banwari Lal v. Chando Devi : AIR 1993 SC1139 , held that an advocate alone cannot sign the endorsement and he has to obtain the signature of the party for the compromise to be acted upon. Learned Counsel, therefore, submitted that the Labour Court should have insisted upon the parties to reduce the terms of compromise into writing and the compromise should have been signed to the parties. Learned Counsel, therefore, submitted that the view of the Labour Court that the petitioner is not entitled to backwages on the basis of the memorandum signed and filed by the advocate alone is erroneous and the petitioner is entitled to full backwages and the order of the Labour Court is not valid in law.

10. The powers of the Labour Court to pass award are found in Section 11-A of the Industrial Disputes Act. The Labour Court has powers to dismiss a claim petition or where it is satisfied that the order of dismissal or discharge was not justified, it has the powers to set aside the order of dismissal or discharge and

direct the reinstatement of the workman on such terms and conditions that it deems fit. It has the powers to give such other reliefs to the workman including an award of any lesser punishment. The Labour Court, on the facts of the case, was satisfied that the order of dismissal was not justified and in that view of the matter, set aside the order of dismissal and directed the reinstatement of the writ petitioner. The first respondent has not challenged that part of the award which is against the first respondent and that part of the award of the Labour Court ordering reinstatement has become final. The necessary corollary of the acceptance of that part of the order by the first respondent is that the order was passed after the Labour Court satisfying itself that the order of dismissal was not justified and the order of punishment was harsh and disproportionate to the charges levelled against the petitioner.

11. There is no difficulty in accepting the contention of the writ petitioner that once the Labour Court was justified that the Order of dismissal was not justified it should have awarded full backwages. There can be no dispute over the proposition of law that it is not open to the Court to act on the basis of the memorandum signed by the advocate alone. In my view, the then counsel for the writ petitioner might have consented or even invited the Labour Court to pass the award denying the benefit of backwages to the writ petitioner, but the Labour Court as a creature of law must exercise the powers according to the statute. The Labour Court is not competent to pass orders on the basis of the consent of counsel which is de hors the provisions of the statute. The decisions of the Supreme Court in *Gurpreet Singh v. Chatur Bhuj Goel* : [1988]2SCR401 and *BanwariLai v. ChandoDevi* : AIR 1993 SC1139 and the decision of this Court in *M/s. Ideal Garden Complex Private Ltd., Salem-4 v. M/s. Vijai Agencies, Salem-4* 1995 T.L.N.J. 23, make it clear that the Labour Court should have insisted upon the parties to reduce the terms of compromise into writing and the compromise should be signed by the party. The requirement of the signature of the party when a part of claim is given up is all the more necessary in the case of industrial adjudication where the workman is a party and there are possibilities of a workman becoming the victim of circumstances. The sine quo non for the denial of the relief of the backwages when the order of termination was not found justified is the application of mind of the Labour Court to the facts of the case and then decide the question for the grant of necessary relief.

The counsel for the workman might have voluntarily invited or might have led the golden path of the compromise, but the Labour Court should not have gone on the basis of the memorandum signed by the counsel alone. However, on the facts of the case, it is seen, Labour Court has not acted on the basis of memorandum signed by the advocate, but also took into account other circumstances.

12. It is fairly well settled that ever since the decision of the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay* 1949 F.C.R. 321 : A.I.R. 1949 E.C. 111, the Industrial Tribunal has the jurisdiction to direct reinstatement in appropriate cases. In a case of wrongful dismissal the normal rule adopted in industrial adjudication is to order reinstatement. There are, however, exceptions to this rule and even when it is found that the dismissal was wrongful the workman has been denied reinstatement for the reason that it would not be expedient to direct reinstatement. The Supreme Court in *Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd* : (1990) IILLJ226SC observed as under

In the *Punjab National Bank Ltd. v. Their Workmen* : (1959) IILLJ666SC this Court has approved the following observations of the Full Bench of the Labour Appellate Tribunal in *Buckingham and Carnatic Mills Ltd. v. Their Workmen* (1951) 2 Lab. L.J. 314 But in so ordering the tribunal is expected to be inspired by a sense of fair play towards the employee on the one hand and considerations of discipline in the concern on the other. The past record of the employee, the nature of his alleged present lapse and the ground on which the order of the management is set aside are also relevant facts for consideration.' In that case this Court has laid down (at p. 173 of A.I.R):

It is obvious that no hard and fast rule can be laid down in dealing with this problem. Each case must be considered on its own merits, and in reaching final decision an attempt must be made to reconcile the conflicting claims made by the employee and the employer. The employee is entitled to security of service and should be protected against wrongful dismissals, and so the normal rule would be reinstatement in such cases. Nevertheless in unusual or exceptional cases the tribunal may have to consider whether in the interest of the industry itself, it would

be desirable or expedient not to direct reinstatement. As in many other matters arising before the industrial courts for their decision this question also has to be decided after balancing the relevant facts and without adopting any legalistic or doctrinaire approach. Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee has been one of trust and confidence, or when, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interests of the industry, *Hindustan Steel Ltd., v. A.K. Roy* : (1970)ILLJ228SC . In cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment.

The Supreme Court in *O.P. Bhandari v. Indian Tourism Development Corpn. Ltd* : (1986)ILLJ509SC held as under:

In the sphere of employer-employee relations in Public Sector Undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to blue-collar workman and 'white collar' employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. In so far as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life-aim or successfully view with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the 'policy-makers' of such undertakings. Then and then only can the public sector undertaking achieve the goals of

- (1) maximum production for the benefit of the community,
- (2) social justice for workers, consumers and the people, and
- (3) reasonable return on the public funds invested in the undertaking.

The provisions of Section 11-A of the Industrial Disputes Act as well as the above decisions of the Supreme Court make it clear that the Court has to apply its mind and grant appropriate relief and in granting the relief, the Court has the full discretion to suit the needs of the matter at hand.

13. The Supreme Court in *S.K. Giri v. Home Secretary Ministry of Home Affairs* : (1996)ILLJ814SC has found that the punishment awarded to the appellant in that case was found to be severe and disproportionate and therefore, the order deserved to be set aside. The Supreme Court directed the reinstatement, but without backwages and granted the benefit of continuity of service. This decision makes it clear that it is for the Court to determine what would be the appropriate relief that should be granted.

14. It is seen that the Labour Court has applied its mind to the question of payment of backwages and found that the petitioner was not involved in any of the activities disruptive of discipline and was not involved in any strike and was not engaged in any demonstration and no disciplinary proceedings were taken against him and there was no loss. The Labour Court also took note of the family circumstances of the petitioner. It is relevant to notice that it is not on the basis of mere compromise on the basis of the memorandum filed by the advocate alone the Labour Court has acted. The writ petitioner has examined himself as a witness and nearly 25 documents were marked on his side. It has to be assumed that when the Labour Court passed the order it had before it all the documentary and oral evidence and when the order was passed, it has considered the same, though the order is not explicit. Significantly, the petitioner has not questioned that the part of the claim giving up on the ground that it was fraudulent act. The petitioner has not questioned the same before the Labour Court. The fairness of the enquiry conducted was not challenged before the Labour Court. Though certain grounds are raised on the enquiry conducted in the affidavit filed, they were not urged at

the time of hearing of the writ petition. The Labour Court might have thought that the order of reinstatement without backwages would be the just appropriate or proportionate punishment to the charges established. Therefore, it purely the discretion of the Labour Court in ordering reinstatement but denying the benefit of backwages. I have to hold that the Labour Court exercised its discretion on the facts of the case and though the normal rule is for the payment of full backwages when the order of dismissal is set aside, the Labour Court after considering the materials on record and the plea of the counsel for the petitioner, held that the petitioner is not entitled to backwages. Since it is purely in the realm of discretionary sphere of the Labour Court, I do not find any reason to interfere with the order of the Labour Court. Accordingly, the Writ Petition is liable to be dismissed and it is dismissed. No order as to costs.