SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Directorate of Education and Others Vs. Ajit Kumar

Directorate of Education and Others Vs. Ajit Kumar

SooperKanoon Citation : sooperkanoon.com/948396

Court : Delhi

Decided On : Mar-29-2012

Judge : Badar Durrez Ahmed &Amp; V.K.Jain

Appeal No. : W.P.(C) 6450 OF 2011

Appellant : Directorate of Education and Others

Respondent : Ajit Kumar

Judgement :

V.K. JAIN

1. This writ petition is directed against the order dated 28.3.2011 passed by the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as the Tribunal) whereby OA No. 4158/2010 filed by the respondent was allowed. The facts necessary to the extent of deciding this petition can be summed up as under:

The respondent was working as a teacher in an aided school viz. Shrimad Dayanan Gurukul Mahavidyalya Khera Khurd, Delhi. On closure of the said school in the year 1996, the respondent along with other employees was adjusted in a State run school under the petitioners. He superannuated from there on 31.7.2010.

Vide notification dated 29.1.2007, the petitioner promulgated a scheme for automatic re-employment of all retiring teachers upto PGT level subject to fitness and vigilance till they attain the age of 62 years. The benefits of the said scheme were also extended to retiring teachers in Government aided school retiring on or after 31.1.2007. The respondent applied for benefit of re-employment under the aforesaid notification dated 29.1.2007. Since he was not re-employed, in terms of the scheme promulgated vide notification dated 29.1.2007, OA No. 4158/2010 was filed by him seeking automatic re-employment and grant of all consequential benefits to him w.e.f. 31.7.2010. The Tribunal vide impugned order dated 28.3.2011 directed the petitioners to issue necessary orders of re-employment and accord financial benefits in terms of the above referred prayers made in the OA.

2. In compliance of the impugned order dated 28.3.2011 passed by the Tribunal, the petitioners have re-employed the respondent on 22.6.2011. The only plea taken by them in this writ petition is with respect to pay and allowances for the period w.e.f. 1.8.2010 till the respondent was re-employed.

3. The Tribunal, vide impugned order dated 28.3.2011 had directed the petitioners before this Court to comply with its directions within 03 months from the date of receipt of a copy of the order. The respondent having been re-employed on 22.6.2011, the petitioners have complied with the directions with respect to re-employment, within the time stipulated by the Tribunal.

4. This issue was examined by us in **GNCT of Delhi And Others v. Shakuntala Verma WP(C) 2344/2011** decided on 07.2.201. In **Shakuntala Verma** (supra), the respondent before this Court was to retire on 31.3.2009 on attaining the age of sixty years. She was to be extended automatic re-employment for a further period of two years w.e.f. 1.4.2009 as per the policy declared in the notification dated 29.1.2007. In the meanwhile, the respondent had been promoted as Vice Principal on 31.12.2008, but, she was not allowed to perform the functions of Vice Principal. She continued to perform the duties of PGT till she retired on 31.3.2009. Since re-employment was denied to her OA No. 815/2009 was filed by her. The Tribunal vide order dated 27.7.2009 directed GNCTD to consider her promotion by passing a speaking order, within a period of 01 month from the date of receipt of the order.

The respondent was then re-employed w.e.f. 10.2.2010. Since she was not re-employed w.e.f. 1.4.2009 she filed OA No. 1796/2010, in which the Tribunal directed GNCTD to treat her as re-employed w.e.f. 22.2.2010 and treat the interregnum good for pay and allowances which were directed to be disbursed to her within 02 months. The order passed by the Tribunal in OA No. 1796/2010 was challenged before this Court in WP(C) No. 2334/2011. The petition was disposed of with the following order:

The petitioners were directed, vide order dated 27.7.2009, to consider the respondent for re-employment within one month and had they complied with the order, in its true spirit, within the time stipulated in the said order, the respondent would have been re-employed on or before 27.8.2009. We, therefore, are of the view that she should get pay and allowances w.e.f. 27.8.2009. In any event, the petitioner has received pension for the period prior to 27.8.2009.

5. Let us now examine the issue of payment of salary, to the respondent, for the period during which he remained unemployed, after his superannuation on 31.07.2010.

In **S.S.Shetty v. Bharat Nidhi Ltd. (1958) SCR 442** the appellant before the Supreme Court was discharged from service on the ground that he had become surplus. An industrial dispute was thereupon referred by the Central Government to the Industrial Tribunal at Calcutta for adjudication. The order of discharge of the appellant was held to be illegal and he was directed to be reinstated with wages from the date of discharge. The respondent however failed to implement the decision of the Labour Appellate Tribunal within the prescribed period. Thereupon, the appellant before the Supreme Court claimed a sum of Rs. 47,738/- from the respondent as compensation. The Tribunal awarded a sum of Rs.1,000/- to him. The appeal filed by him having been dismissed by Labour Appellate Tribunal, he approached the Supreme Court by way of Special Leave. The Supreme Court, after considering all the circumstances of the case, computed the benefit of reinstatement at Rs.12,500/- and awarded that amount to the appellant, during the course of judgment, the Supreme Court, inter alia, observed as under:

"The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained. "They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he is fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages……No compensation can be claimed in respect of the injury done to the servant's feeling by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages." (Chitty on Contracts, 21st Ed., Vol. (2), p.559 para. 1040).

If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured prima facie and subject to the rule of mitigation in the salary of which the master had deprived him. (Vide Collier v. Sunday Referee Publishing Co., Ltd.). The servant would then be entitled to the whole of the salary, benefits etc. which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment.

Such damages would be recoverable by the servant for his wrongful dismissal by the master only on the basis of the master having committed a breach of the contract of employment. If, however, the contract is treated as subsisting and a claim is made by the servant for a declaration that he continues in the employ of the master and should be awarded his salary, benefits, etc., on the basis of the continuation of the contract, the servant would be entitled to a declaration that he continues in the employ of the master and would only be entitled to the payment of salary, benefits, etc., which accrued due to him up to the date of the institution of the suit."

However, there has been some shift in the approach of the Supreme Court, with respect to payment of back wages, in case the dismissal of the employee from

service is found to be bad in law. In **P.G.I of Medical Education andResearch Chandigarh v. Raj Kumar (2001) 2 SCC 54**, Supreme Court observed as under:

"Payment of back-wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back-wages in its entirely. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. be it noted that though broad guidelines, as regards payment of back-wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back-wages only."

In **U.P. State Brassware Corporation Ltd. and Anr. v. Udai Narain Pandey AIR 2006 SC 586,** the Supreme Court, inter alia, observed as under:

"A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of its significance. The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy globalization, privatization and outsourcing is evident."

In **AllahabadJal Sansthan v. Daya Shankar Rai and Anr. (2005) IILLJ 847 SC**, the Supreme Court, inter alia, observed as under:

"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 realized 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 he arrived at."

In **Kendriya Vadyalaya Sangathan and Anr. v. S.C.Sharma (2005) IILJ 153 SC**, the Supreme Court granted only 25% of total back-wages to the respondent. In **Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Anr. (2002) IILLJ 1156 SC**, the Supreme Court awarded 50% of the back-wages till the date of reinstatement of the respondent. In **U.P. State Electricity Board v. Laxmi Kant Gupta 2009 LLR 1**, the Supreme Court, referring to its decision in **U.P. State Brassware Corporation Ltd.** (supra) and **Haryana State Electronics Development Corporation v. Mamni AIR 2006 SC 2427,** inter alia, observed as under:

"Thus it is evident that there has been a shift in the legal position which has been modified by this Court and now there is no hard and fast principle now that on the termination of service being found to be illegal, the normal rule is re-instatement with back-wages. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

The proposition of law, which emerges from these judgments, is that even if the dismissal of an employee from service is illegal, he is not entitled to whole of the back-wages as a matter of right, and the Court needs to award a suitable compensation after considering all the facts and circumstances of the case before it.

6. In the case before us, the petitioners have re-employed the respondent within the time stipulated by the Tribunal in this regard. His case does not stand on a footing stronger than that of an employee, who is wrongfully dismissed from service. Hence, there is no ground for giving a direction to treat the respondent as re-employed w.e.f. a date prior to 22.6.2011 when he was actually re-employed pursuant to the order of the Tribunal or for payment of salary for the period prior to 22.06.2011.

Admittedly the respondent did not work with the petitioners from 1.8.2011 to 22.6.2011. We presume that the respondent was paid pension for the aforesaid period. Therefore, we find no justification for payment of full back wages or any other amount over and above the pension paid to the respondent for the aforesaid period. The writ petition stands disposed of accordingly, without any order as to

costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com