Supreme Court of India

K.M. JOSEPH, J. HRISHIKESH ROY, J.

GOWRAMMA C (DEAD) BY LRS v. MANAGER (PERSONNEL) HINDUSTAN AERONAUTICAL LTD.

CIVIL APPEAL NOS. 1575 – 1576 OF 2022

23rd February 2022

Industrial Disputes Act, 1947, Section 11 – No work no pay – Is a principle which is apposite in circumstances where the employee does not work but it is not an absolute principle, which does not admit of exceptions – The most important question is whether the employee is at fault in any manner – If the employee is not at all at fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee – In such circumstances, no doubt, the question relating to alternative employment that the employee may have resorted to, becomes relevant – There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. On facts, this is a case where apart from the charge of the employee having produced false caste certificate, there is no other charge – Enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. [Para 12]

Cases referred to :

1. *State of Kerala v. E.K. Bhaskaran Pillai, 2007 (6) SCC 524*
2. *P.V.K. Distillery Ltd. v. Mahendra Ram, 2009 (5) SC 705*
3. *Canara Bank v. Damodar Govind Idoorkar, 2009(4) SCC 323*
4. *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others, 2013 (10) SCC 324*

Petitioner Counsel: H. CHANDRA SEKHAR Respondent Counsel: KHAITAN & CO.

JUDGEMENT

Leave granted.

1. The appellant impugns the judgment of the Division Bench by which the High Court confirmed the view taken by the learned single Judge. The original appellant passed away and the legal representatives pursue the appeal as additional appellants.

2. The appellant was appointed as Staff Nurse (Group-C) with the respondent. There was an inquiry against her by the respondent on the charge that the appellant had professed to belong to the Scheduled Caste category and secured employment, whereas, she did not belong to the Scheduled Caste community. The Tahasildar verified the caste certificate and

vide order dated 10.07.2009, it was found that the appellant did not belong to the community 'Adi Karnataka' which is a Scheduled Caste. The appellant challenged the order of the Tahasildar before the High Court and the learned single Judge repelled the challenge to the order by its judgment dated 29.12.2009. Following the said judgment, it is that the Disciplinary Authority, by order dated 08.10.2010, dismissed the appellant from service relying upon the order of the Tahasildar. The appellant challenged the judgment of the learned single Judge before the Division Bench and the Division Bench by judgment dated 28.06.2011 allowed the appeal filed by the appellant and found that actually the power to rule on the Caste status did not lie with the Tahasildar but with another authority and verification of the caste certificate was directed to be made over to the Bangalore District Caste Verification Committee, which was the Competent Authority. The said authority verified the caste status of the appellant and found that the appellant, in fact, belonged to the Scheduled Caste in question. There upon the appellant gave a representation and on 12.04.2014, the appellant was reinstated without any consequential benefits. A representation dated 28.04.2014, did not yield results. This occasioned the filing of the writ petitions, which has finally generated the appeals before us.

3. The learned Single Judge partly allowed the Writ Petitions filed and directed the first respondent to give promotion, if any, notionally and 50 per cent of the back wages and the retirement benefits on the basis of the last pay cheque that she would be entitled to, in case, she were granted any notional promotion. The appellant filed a review petition which was dismissed. Thereafter, the writ appeals were filed, which culminated in the impugned order being passed, affirming the judgment of the learned Single Judge.

4. Heard the learned counsel for the appellants and learned counsel for the respondents.

5. Learned counsel for the appellants would contend that denial of the full back wages is unsustainable as it is a case where the appellant was not at fault. She was kept out of the employment without any misconduct on her part. She always belonged to the caste in question and denial of the full back wages is not justified.

6. Per-contra, learned counsel for the respondents would point out that impugned orders would reflect that the Court had reconciled the relevant aspects that both the appellant and the respondents were not at fault. He would further project the dimension that it is a case where in the writ petition the appellant had not specifically pleaded that she was not gainfully employed during the period in question. It was only in the review petition that the case was set up which was rightly rejected. He also sought to draw support from a line of judgments for the contention that Courts have recognised that merely upon an employee being reinstated it does not ipso facto follow that he becomes entitled for full back wages. In such circumstances, those decisions will decide the destiny of such a claim. In the facts of this case, having regard to the fact that two Courts have concurrently found that the respondents were acting on the basis of the report of Tahasildar who had opined that the appellant was not a member of the Scheduled Caste, the respondents were entitled to take shelter under the principle that when the employer was not at fault, the employee cannot have the absolute right to claim full back wages.

7. Having heard the learned counsel for the parties, we are of the view that the appellant is entitled to partial relief. This is for the following reasons:-

The appellant was employed by the respondent which is State under Article 12 of the Constitution of India. The appellant was dismissed from service only on the report given by the Tahasildar. There is no other charge against the appellant regarding any kind of misconduct or misrepresentation. The appellant relying on a caste certificate entitling her to be treated as member of the Scheduled Caste secured employment. This was put under a cloud. The doubt regarding her caste certificate was fortified in favour of the respondent by the report of the Tahasildar. It was, however, found that the Tahasildar was incompetent to give such an opinion. The competent authority has cleared the appellant and she stood vindicated by the view expressed by the authority, which, in law, could possibly have found as to which caste she belonged to. It is a case, therefore, where the appellant was completely blameless in the matter. She had to go through a long series of sittings even according to the respondent which was held by way of enquiry and at the end of the day though on the basis of decision of the Division Bench which again she was constrained to appeal to, matter reached the hands of the competent authority which conclusively and finally found that she belonged to the Scheduled Caste which she always professed she was a member of.

8. At the same time, the respondent has a case that the appellant did not specifically plead about her being unemployed during the relevant period. It is also pointed out that an attempt was made in the review which proved futile. In this regard support is sought from the decision in 2018 (18) SCC 299 by the respondent.

9. It is true that no work no pay is a principle which is apposite in circumstances where the employee does not work but it is not an absolute principle, which does not admit of exceptions. In this regard we may notice that in one of the judgments relied upon by the respondents, namely, *State of Kerala v. E.K. Bhaskaran Pillai* 2007 (6) SCC 524 which, in fact, dealt with issue as to monetary benefits when retrospective promotion is given, this Court held:

"... So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts

have granted monetary benefits also."(Emphasis supplied)

10. In the decision in *P.V.K. Distillery Ltd. v. Mahendra Ram* 2009 (5) SC 705 again relied upon by respondent, the matter arose out of an award by the Labour Court where exercise of power under Section 11 A of the Industrial Disputes Act was made. This is also a case where incidentally the court noted that the appellant-employer remained closed for years together and it was declared as a sick unit. In this regard, a fact which weighed with the court is found reflected in following statement :

"18. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched."(Emphasis supplied)

11. In regard to interference in such matters, i.e., cases relating to back wages, we find similar approach adopted in other decisions which no doubt the respondent lays store by [see in this regard 2007 (5) SCC 742]. Though the decision reported in *Canara Bank v. Damodar Govind Idoorkar* 2009(4) SCC 323 again relied upon by the respondent did involve the service of the employee being terminated as he had secured employment in the reserved category using a false caste certificate and the court modified direction of the High Court which ordered full back wages by substituting the order by reducing it to 50%, we do not find that any principle has been laid down which could be treated as constituting it as a precedent. The decision in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others* 2013 (10) SCC 324 involved the High Court setting aside the award of back wages on the ground that the appellant had not proved the factum of non-employment. The court inter alia laid down as follows:

"(vi) In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties re not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalized. It would amount to grave injustice to an *employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P)Ltd., (1979) 2 SCC 80.*

12. The most important question is whether the employee is at fault in any manner. If the employee is not at all at fault and she was kept out of work by reasons of the decision

taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee. In such circumstances, no doubt, the question relating to alternative employment that the employee may have resorted to, becomes relevant. There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. As we have already noticed, this is a case where apart from the charge of the employee having produced false caste certificate, there is no other charge. Therefore, we would think that interests of justice, in the facts of this, would be subserved, if we enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. The appeals are partly allowed. The impugned judgments will stand modified and the respondents shall calculate the amount which would be equivalent to 75% of the back wages and disburse the amount remaining to be paid under this judgment within a period of six weeks from today to the additional appellants.

13. Pending application(s), if any, stands disposed of.