

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****DIVISION BENCH****PRESENT****SHEEL NAGU & ANAND PATHAK, JJ.****(CONC. NO. 1444/2020)****Mahip Kumar Rawat****Versus****Shri Ashwini Kumar Rai & Ors.**

Shri B.P. Singh, learned counsel for the petitioner.

Shri MPS Raghuvanshi, learned counsel for respondent No. 1.

Whether approved for reporting : Yes**Law laid down:-**

(i) Concept of award of back wages is based on the fundamental principle of compensating the workman for the period he remained unemployed owing to termination which was found to be unlawful at subsequent point of time. Thus, the back wages, if to be worked out based on wages, it would have been drawn by the workman till he actually reinstated;

(ii) Any contrary approach to back wages after reinstatement would be opposed to the principle of Public Policy as per Section 23 of Indian Contract

Act {Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, (1986) 3 SCC 156 & Assistant General Manager, State Bank of India and Ors. Vs. Radhe Shyam Pandey, (2020) 6 SCC 438 relied and discussed} ;

(iii) Justice is a virtue which transcends all barriers. In construing and giving effect to the judgment of the Court and to clear the genuine doubts, Court can pass consequential orders for enforcement of execution of order {S. Nagaraj and others Vs. State of Karnataka and another [1993 Supp (4) SCC 595], Welfare Association of Absorbed Central Govt. Employees in Public Enterprises and Another Vs. Arvind Verma and Ors., (1999) 9 SCC 58 and Anil Kumar Shahi (2) and Ors. Vs. Professor Ram Sevak Yadav and Ors., (2008) 14 SCC 115 relied and discussed} ;

(iv) In contempt jurisdiction directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account within four corners of order which are alleged to have been non-complied. {See:- Sudhir Vasudeva, Chairman and Managing Director, ONGC Limited and Ors.

Vs. M. George Ravishekar and Ors., (2014) 3

SCC 373};and

(v) In a case where employee is fighting for almost 22 years for reinstatement and back wages, finality must be given to the litigation and his sufferings.

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ORDER

(Passed on this 24th Day of June, 2021)

Sheel Nagu, J.

1. The instant contempt petition preferred u/Art. 215 of Constitution of India alleges non-compliance of the final order passed by co-ordinate bench of this court in W.P.2222.2010 passed on 27/6/2011 (C/1) whereby this Court while allowing the petition of workman and setting aside the Award of the Labour Court directed for reinstatement with 50% back wages relevant paras of which are reproduced below for ready reference and convenience :-

“13. Looking to the aforesaid principle of law laid down by the Hon'ble Supreme Court in our opinion, the petitioner is entitled 50% back wages.

14. Consequently, the petition filed by the petitioner is allowed with the following directions:-

i) The impugned award, Annexure-P/1 dated 23-9-2009, is hereby quashed.

ii) The reference is answered in favour of the petitioner by holding that the termination of services of the petitioner w.e.f. 1-3-99 is illegal and void *ab initio*.

iii) The petitioner is entitled for reinstatement and other service benefits.

iv) It is further held that the petitioner shall be entitled the salary as the salary he was getting before his termination of service including D.A.

v) It is further held that the petitioner shall be entitled 50% back wages. The order be complied with within a period of three months from the date of receipt of the copy of this order.

vi) No order as to costs.”

2. It is not disputed by learned counsel for rival parties that aforesaid decision dated 27/6/2011 was initially stayed by Apex Court while entertaining SLP of the State but later the claim of State before Apex Court was dismissed vide order dated 2/3/2020 in Civil Appeal 6302/12.

3. The case of workman/petitioner to file this contempt petition arose out of the fact that though workman was reinstated but 50% back wages have been worked out based on the last wages drawn by workman prior to his termination, i.e. prior to 1/3/1999 and not the actual wages payable for period between termination and reinstatement.

4. The stand of respondents, especially respondent No.1- Shri Ashwini Kumar Rai, Additional Chief Secretary to Govt of

had been worked out on the basis of last wages drawn (the wages received by the workman immediately prior to his termination), appears to be correct and no wilful disobedience appears on part of contemnors at this stage. Thus, this Court declines to draw contempt against respondent No.1-Ashwini Kumar Rai.

6. Dismissing this case at this stage would be travesty of justice since calculation of back wages pursuant to the order of reinstatement is invariably based on the wages which the workman would have drawn had the termination never taken place. Meaning thereby that the concept of award of back wages is based on the fundamental principle of compensating the workman for the period he remained unemployed owing to termination which was found to be unlawful at subsequent point of time. Thus, the back wages have to be worked out based on wages which would have been drawn by the workman in the present case w.e.f. March, 1999 till he was actually reinstated pursuant to the order dated 27/6/2011 with all corresponding increase in wages from time to time.

7. The corollary to the above is that back wages are never relatable to the concept of last wages drawn. For the simple reason that last wages are relatable to the pre-termination period and not to the post termination period.

8. Purportedly intention and object of the Court while passing the order in the given fact situation were to ensure that

petitioner, who is a class IV employee, may not be put to disadvantageous position in any manner so far as wages are concerned like lowering down of pay scale or loss of seniority in emoluments because of long drawn ouster in service because he was removed in year 1999 and directed to be reinstated in year 2011 and meanwhile sufficiently long period of time has been consumed. Therefore, when Court refers in para 14(iv) the word “salary” then it is to be construed as concept of back wages and not particular pay and allowances or pay scale.

9. If the arguments advanced by the contemnors is accepted then it would be not only be prejudicial to the concept of back wages after reinstatement but would also be contrary to the principle of Public Policy as per Chapter II of Indian Contract Act, especially under Section 23. In Master and Servant or Employer-Employee relationship, employer cannot rest on “inequality of bargaining power”. Any “unconscionable term of contract” cannot be enforced and Court may even refuse to enforce such unconscionable term of contract from the remainder of the contract.

10. Apex Court in the case of *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, (1986) 3 SCC 156* has delineated the principle and recently in the case of *Assistant General Manager, State Bank of India and Ors. Vs. Radhe Shyam*

Pandey, (2020) 6 SCC 438, Apex Court has reiterated the principle while relying upon the earlier judgment. Para 50(a) to (j) of judgment explained the said concept in detail.

11. In the instant case also, arguments of the contemnors and their reliance over the notion that back wages would be stagnated as last drawn salary is opposed to the principle of Public Policy and therefore, cannot be countenanced in any manner. This way employer or master would gain undue premium over their acts of removal of an employee and thereafter, even if, reinstatement is made then employee would be made to suffer by paying the back wages stagnated on the day when he was removed. On this count (of Public Policy) and the explanation provided by the Apex Court in the case of *Central Inland Water Transport Corporation Limited (supra)* & *Radhe Shyam Pandey (supra)*, the arguments of the contemnors lack merits.

12. In view of above discussions, direction passed in para 14(iv) of the order dated 27/6/2011 of this court is either a product of typographical error or inadvertent mistake on the part of the author of the judgment.

13. The easier course available to this Court would be to go by the literal construction of para 14(iv) of order dated 27/6/2011 and leave it to the petitioner to seek clarification by way of review. However, looking to the fact that petitioner is a workman and low paid employee and is fighting for his

legitimate right since last nearly 21 years, this Court in exercise of its inherent powers u/Art. 226 of the Constitution proceeds to clarify the anomaly which had inadvertently crept into the direction contained in para 14(iv) of the order dated 27/6/2011.

14. It is an undisputed fact that while allowing the petition on 27/6/2011 this Court had held the termination of workman to fall within the category of unlawful retrenchment and therefore same was truncated with consequential direction of reinstatement with 50% back wages.

15. As explained above, the concept of back wages being relatable to the wages which would have been drawn by the workman in the post-termination period when he was unemployed till his reinstatement and not to the pre-termination period, this court has to iron out the creases which appear to have crept in the direction contained in para 14(iv) either due to inadvertence or by mistake or by oversight. Thus this Court proceeds to invoke its inherent power u/Art. 226 to rectify the said defect and replace para 14(iv) with following paragraph:-

“14.(iv) 50% back wages shall be worked out on the basis of salary/wages which the workman would have received during the period of unemployment i.e. from the date of his termination till actual reinstatement by treating the order of termination to be non-existent.”

16. The aforesaid view is taken by this Court in the extraordinary situation of preventing the workman from

undergoing travails on another round of litigation and in the interest of justice in regard to which this court is bolstered by the decision of Apex Court in the case of *S. Nagaraj and others Vs. State of Karnataka and another [1993 Supp (4) SCC 595]*.

The relevant para is as under:-

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order.”

17. This aspect has been dealt with by Apex Court in the case of *Welfare Association of Absorbed Central Govt. Employees in Public Enterprises and Another Vs. Arvind Verma and Ors., (1999) 9 SCC 58* also. In the said judgment clarification issued in following words:-

“6.After hearing counsel on both sides, we make it clear that the respondents are liable to restore not only the pension as ordered by this Court in the said judgment but also all the attendant benefits as given to the Central Government pensioners. We hold that there was some genuine doubt on the part of the respondents in construing and giving effect to the judgment of this Court and, therefor, there is no contempt. We now direct the respondents to comply with the judgment of this Court as explained hereinbefore within three months from this date.”

18. Later on, Apex Court in the case of *Anil Kumar Shahi (2) and Ors. Vs. Professor Ram Sevak Yadav and Ors., (2008) 14 SCC 115*, held in para 50 as under:-

“50.It is by now well-settled under the Act and under Article 129 of the Constitution of India that if it is alleged before this Court that a person has wilfully violated its order it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true it can punish the offenders for having committed “civil contempt” and if need be, can pass consequential orders for enforcement of execution of the order, as the case may be, for

violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of Court. There is no wilful disobedience if best efforts are made to comply with the order.”

19. It is true that Court cannot travel beyond the four corners of the order which are alleged to have been non-complied but such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account. {See:- *Sudhir Vasudeva, Chairman and Managing Director, ONGC Limited and Ors. Vs. M. George Ravishekar and Ors., (2014) 3 SCC 373*}.

20. Therefore, looking to the peculiar facts and circumstances of the case where petitioner is fighting for almost 22 years for reinstatement and back wages, therefore, it is in the interest of justice that a finality be given to the litigation as well as sufferings of a Class IV employee and thus cannot be perpetuated on interpretational pretext.

21. In view of the above, although at present no wilful disobedience is committed at the instance of

respondents/contemnors but now with the said clarification / explanation / modification in para 14(iv) of order dated 27/6/2011 in W.P.No. 2222/2010, **further three months time (from date of order)** is granted to the respondents / contemnors to comply the order dated 27/6/2011 (to be read with the instant order) and grant the necessary benefits of 50% back wages till reinstatement as if, petitioner was in the services and on the basis of clarification made above.

22. Contempt Petition accordingly disposed of and *Rule Nisi* issued against respondent No.1 stands dropped.

(Sheel Nagu)
Judge
24/6/2021

(Anand Pathak)
Judge
24/6/2021

(Bu)/ jps/-