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MP-1001-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 18th OF NOVEMBER, 2025

MISC. PETITION No. 1001 of 2024

*UNION OF INDIA THROUGH SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF TEXTILE AND OTHERS*

Versus

SOHANLAL UPADHYAY

.....
Appearance:

Shri Jitendra Bharat Mehta - Advocate for the petitioners.

Shri L. C. Patne with Shri Praveen Bawse, counsel for respondent.
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ORDER

Per. Justice Vijay Kumar Shukla

The present petition is filed under article 227 of Constitution of India challenging the order dated 5.01.2023 passed by Central Administrative Tribunal (in short 'CAT') by which the O.A. filed by the respondent was allowed and the petitioner-department has been directed to refix the pay of the respondent and to grant him one notional increment due for the period when he was out of service and also directed for arrears after revision of his pay.

2. Facts of the case are that the respondent was working as light motor vehicle driver as a daily wager w.e.f. 26/07/1985. He was engaged on ad-hoc basis for a period of 120 days. As the service of the respondent was no more



required hence, the respondent was terminated w.e.f. 13/03/1997. This order of termination was challenged before the Labour Commissioner, Jabalpur. The learned Labour Court vide order dated 04/06/2010 had directed the department to reinstate the respondent from the date of termination without back wages. The order dated 04/06/2010 was challenged by the petitioner department by filing Writ Petition No. 16288/2010 (re-numbered as 7203/2011) before this Court and the said petition has been dismissed vide order dated 08/02/2012. The respondent after joining his duty moved an application for review for grant of back wages and the said review petition was rejected on 26/11/2014. A representation for rectifying pay fixation was filed claiming re-fixation from 26/07/1985 instead of 09/10/2012 by the respondent. As the respondent was not in service w.e.f 14/03/1987 to 08/10/2012 therefore, the claim was rejected. The benefit of increment was granted from the actual date of the joining of the respondent in the department i.e. 09/10/2012. This request was denied by order dated 08/05/2017 which was put to test before the Central Administrative Tribunal. The CAT vide impugned order dated 05/01/2023 has allowed the Original Application whereby the department has been directed to re-fix the pay of the respondent by granting him one notional increment due for the period when he was out of service. The arrears after revision of his pay were also granted. Hence, the present petition.

3. Learned counsel for the petitioners argued that respondent was directed to be reinstated by an order passed by the Central Government Industrial Tribunal where there was no specific direction with regard to grant



of notional increment, therefore the Central Administrative Tribunal erred in granting the notional increment. The order passed by the Central Administrative Tribunal is contrary to the judgement passed by the Apex Court in the case of Andhra Pradesh State Road Transport Corporation and others Vs. Abdul Kareem, (2005) 6 SCC 36 wherein it has been held that an employee would not be eligible for notional increment for the period when he was not in service.

4. Per contra, learned counsel for the respondent argued that view taken in the said judgement was similar to the view taken by the Apex court in the case of **J.K.Synthetics Ltd. Vs. K.P.Agrawal and another**, (2007) 2 SCC 433. The aforesaid judgement was considered by the Apex court in the case of **Deepali Gundu Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324 and the said judgement of J.K.Synthetics was held to be *per incuriam*. He referred para 37 and 38 of the said judgment in which it has been held that in case of reinstatement of an employee by the court of law, the back wages is not automatic but the continuity of service should follow. He argued that CGIT after setting aside the termination order, had directed for reinstatement from the date of termination without back wages, therefore the continuity of service has to be maintained and the petitioner would be entitled for increment from the date due after the reinstatement from the date of termination.

5. On going through the judgement passed in the case of Deepali Gundu (supra), we find that question before the Apex Court was that whether an employee on his reinstatement by the court order is entitled for



backwages automatically or question of backwages has to be decided by the adjudicating authority or Court. After considering various earlier judgments, it was held that normal rule of reinstatement with continuity of service and back wages, however in case of termination, the employee has to show that he was not gainfully employed after termination. The burden is on the employer to prove that employee was gainfully employed or was getting some substantial emoluments. In the case of Rajasthan State Road Transport Corporation (supra), the Apex Court has held that for claiming back wages the employee has to plead that he was not gainfully employed and thereafter burden shifts on the employer to prove that he was gainfully employed. Backwages do not follow reinstatement as a matter of fact and same depends upon facts of each case.

6. Upon careful consideration of the judgment in the case of Deepali Gundu (supra), we find that the judgment passed in the case of Andhra Pradesh State Road Transport (supra) has not been overruled. In the case of Andhra Pradesh State Road Transport Corporation Vs. Abdul Kareem, (2005) 6 SCC 36, the Apex Court relying on the earlier judgment passed in the case of Andhra Pradesh State Road Transport Vs. Narsagoud, (2003) 2 SCC 212 held that :-

11. "Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without backwages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without backwages, he cannot claim a benefit of increments notionally earned during the period when he was not on duty



during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence."

7. Thus, the Apex Court has held in clear terms that in absence of specific direction that employee would be entitled to all consequential benefits, merely because an employee has been directed to be reinstated without backwages, he cannot claim benefit of increment notionally or during the period when he was not on duty during the period when he was out of service.

8. Relying on the aforesaid judgments, the Division Bench in the case of **Smt. Munni Bai Sen Vs. M.P.State Agriculture Marketing Board, Bhopal (W.A.No. 269/2019)** held that when there is no pleading or proof produced by the employee regarding gainful employment, the same could not be automatically awarded to the said employee.

9. Regarding the increment, the Apex Court in the case of **Director (Adminsitration and Human Resources) KPTCL and others, (2023) 14 SCC 411** held that the "increment accrues from day following that on which it is earned" occurring therein. In para-17 of the said judgment it is held that increments are given annually to the officers with good conduct unless such increments are withheld as measure of punishment or linked with efficiency. In the case of **V.V.G. Reddy Vs. A.P.State Road Transport Corporation, Nizamabad Region, (2009) 2 SCC 668** it has been held that an employee not in service during termination period is not entitled to the increment.

10. Thus, from the aforesaid judgments, it is pellucid that increment is



not automatic like backwages on reinstatement after termination of service unless there is specific direction. In the present case the CGIT had directed the reinstatement of the respondent-employee without backwages. The CGIT has passed an order of reinstatement of the respondent-employee from the date of termination, the same means continuity of service for the purpose of seniority and pension and not for backwages or increment. The increment can only be earned when an employee is actually in service and not notionally.

In view of aforesaid, the petition is allowed. The impugned order passed by the CAT is set aside and the O.A. filed by the respondent is dismissed.

(VIJAY KUMAR SHUKLA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

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