

HIGH COURT OF MADHYA PRADESH : JABALPUR**BEFORE HON'BLE SHRI JUSTICE SANJAY YADAV****Review Petition No.736/2016**

Dy. General Manager
versus
General Secretary, Daily Wages Bank Employees' Association

Shri Vijay Tripathi, learned counsel for petitioner.

Shri R.B.Tiwari, learned counsel for respondent.

ORDER
(23.11.2016)

Petitioner, respondent in Writ Petition No.20237/2014, seeks review of order dated 20.09.2016.

2. Writ Petition No.20237/2014 at the instance of respondent, was directed against the Award dated 11.12.2013 passed by the Central Government Industrial Tribunal-cum-Labour Court while holding the retrenchment of respondent-workman, which was w.e.f. 16.10.1999 illegal, for non-compliance of Rule 77 of the Industrial Disputes (Central) Rules, 1957 (for short "Rules of 1957") has directed for the payment of compensation of Rs. One Lakh.

3. The respondent-workman in the writ petition had sought the following reliefs :

"7.1 It is therefore prayed that the Hon'ble Court may kindly be pleased to modify the award dated 11.12.2013 passed by the Presiding Officer, C.G.I.T. enhancing the compensation amount in

view of judgment passed by Hon'ble Apex Court vide Annexure P/8.

7.2 Any other relief deemed fit in the circumstances of the case may kindly be given in the interest of justice.”

4. Thus, besides seeking enhancement of compensation amount, the respondent also sought “any other relief deemed fit in the circumstances of the case in the interest of justice”

5. Evidently, the finding by the Labour Court that the termination stands vitiated because of non-compliance of Rule 77 of the Rules of 1957 was never challenged by the petitioner-employer and is thus allowed to attain finality. (Therefore, the decision in **State Bank of Bikaner & Jaipur vs. Om Prakash Sharma** (2006) 5 SCC 123 which interprets Rule 77 of Rules of 1957 is of no assistance to the petitioner.

6. As the retrenchment was held to be bad by the Labour Court following the law laid down in **M/s Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd.** (1979) 2 SCC 80 and reiterated in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.)** (2013) 10 SCC 324 and **Tapash Kumar Paul vs. BSNL**: (2014) 4 SCR 875 and in order to do complete justice, the relief has been moulded from that of compensation to reinstatement.

7. It has been held in **B.C.Chaturvedi vs. Union of India**

(1995) 6 SCC 749 that :

“25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment /penalty. But then, while seized with this question as a writ court interference is

permissible only when the punishment/penalty is shockingly disproportionate.

26. I had expressed my unhappiness qua the first facet of the case, as Chief Justice of the Orissa High Court in paras 20 and 21 of Krishna Chandra v. Union of India, AIR 1992 Orissa 261 (FB), by asking why the power of doing complete justice has been denied to the High Courts ? I feel happy that I have been able to state, as a Judge of the Apex Court, that the High Courts too are to do complete justice. This is also the result of what has been held in the leading judgment.”

8. Reliance placed on the decision in Ranu Hazarika vs. State of Assam : (2011) 4 SCC 798, wherein their Lordships were pleased to observe that – “We are of the view that the impugned observation by the High Court would be clearly inimical to the rule of law. While it is trite that Courts can exercise judicial discretion in moulding the relief, however, such discretion cannot be exercised to perpetuate and encourage an illegality. (See : M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu)”; is of no assistance to the petitioner, as the petitioner having accepted the finding by the Labour Court that retrenchment of the workman is illegal, it does not lie with the petitioner to seek a finding vide a Review petition that the termination held to be bad on the anvil of violation of Rule 77 of Rules of 1957 be held to be illegal because of the decision in State Bank of Bikaner & Jaipur (supra).

9. On the contrary, in Jasmer Singh vs. State of Haryana :

(2015) 4 SCC 458, it has been held :

“20. In view of the aforesaid statement of law the setting aside of the Award by the learned Single Judge which is affirmed by the Division Bench is vitiated in law as the same is contrary to the judgments of this Court referred to supra, upon which the learned counsel for the appellant has rightly placed reliance in support of the correctness of the finding recorded by the labour court on the various issues, particularly the finding of fact that the workman has worked for more than 240 days in a calendar year and termination order is void ab initio in law for non-compliance of Sections 25-F (clauses (a) and (b)), 25-G and 25-H of the Act, therefore, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workman and awarded the order of reinstatement with continuity of service and full back wages.”

10. Thus, when there is violation of the provisions contained under Section 25H of Industrial Disputes Act, 1947 (and Rule 77 of the Rules of 1957 emanates therefrom), reinstatement with continuity and full back-wages can be awarded.

11. In Om Prakash vs. Ram Kumar (1991) 1 SCC 441, Mohan Amba Prasad vs Bhaskar Balwant Aher (Dead) through LRs (2000) 3 SCC 190 and Waryam Singh vs Amarnath AIR 1954 SC 215 relied on by the petitioner were the cases between landlord and tenant and in the context of controversy therein that in an action by the landlord the tenant is expected to defend only the claim made against him and if a cause of action arises to the landlord on the

basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeks to enforce that cause of action in the same proceedings by suit at the amendment or by separate proceedings to entitle the landlord to relief on the basis of such cause of action. It was held that the principle that the Court is to mould the relief taking into consideration subsequent events is not applicable in such cases. These decisions are distinguishable on facts and the principle of law in the matter relating to a workman governed by Labour Law.

12. In State of Bihar vs. Dr. Radha Krishna Jha (2002) 6 SCC 308 whereon the reliance is placed, while dwelling upon the issue as to re-designation of Lab Assistants/Technicians/Incharges/Instructors in different colleges under Ranchi University as demonstrators, the learned Single Judge therein instead of passing an order for re-designating as demonstrators, directed the State Government to treat them as Teachers. This order was found fault with by the Division Bench which set-aside the direction. It was in this context that the Supreme Court was pleased to observe that general direction could not be issued as the qualifications and other relevant facts in respect of each Lab Assistants may have to be examined by the State Government while considering their representation. The principle laid down is of no assistance

to the petitioner in the present fact situation. As, in the case at hand, there is pronouncement of law by the Supreme Court in Hindustan Tin Works (supra) that in a case where retrenchment/termination is found to be illegal, reinstatement is the normal rule.

13. In Management of Narendra & Company Private Limited vs. Workmen of Narendra & Company (2016) 3 SCC 340, their Lordships were pleased to observe that merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief, is also of no avail to the petitioner.

14. In Board of Control For Cricket in India vs. Netaji Cricket Club (2005) 4 SCC 741 while dwelling upon the scope of interference on an application under Order 47 Rule 1 of the Code of Civil Procedure, 1908, their Lordships were pleased to observe that an application would be would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. As to sufficient reason Their Lordships were pleased to express that the words 'sufficient reason' is wide enough to include a misconception of fact or law by a court or even an Advocate.

15. In Shalini Shyam Shetty vs Rajendra Shankar Patil (2010) 8 SCC 329, reliance whereon has been placed by the petitioner, is in respect of scope of exercise of jurisdiction under Article 227 of the Constitution of India; wherein, their Lordships were pleased to observe :

48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

16. In the case at hand, while dwelling upon the issue raised by the respondent (petitioner in WP-20237-2014) and taking into consideration the law laid down in M/s

Hindustan Tin Works (supra); As the termination of respondent-workman was found to be illegal, the workman has been directed to be reinstated by the order under review. There being no error of law or facts, as would warrant an interference in a review petition preferred by the petitioner.

17. Furthermore, reliance placed on the decisions in Talwara Cooperative Credit & Service Society Limited vs. Sushil Kumar (2008) 9 SCC 486, Ghaziabad Development Authority vs. Ashok Kumar (2008) 4 SCC 261, Jagbir Singh vs Haryana State Agriculture Marketing Board (2009) 15 SCC 327 and Rajkumar vs Jalagaon Municipal Corporation (2013) 2 SCC 751 are of no assistance to the petitioner in view of the decision in M/s Hindustan Tin Works Pvt. Ltd. (supra) subsequently followed in Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) (2013) 10 SCC 324 and Tapash Kumar Paul vs. BSNL (2014) 4 SCR 875.

18. Having thus considered, this Court does not find any merit in the review petition.

19. Consequently, the review petition is **dismissed**. No costs.

(SANJAY YADAV)
JUDGE