

The High Court Of Madhya Pradesh

W.A. No.269/2019

(SMT. MUNNI BAI SEN VS. M.P. STATE AGRICULTURE MARKETING BOARD, BHOPAL)

Jabalpur, Dated : 26-07-2019

Shri Rajneesh Gupta, learned counsel for the appellant.

Shri Pranay Choubey, learned counsel for respondent No.1.

The present appeal has been filed by the appellant under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Peeth Ko Appeal) Adhiniyam, 2005, being aggrieved by order dated 8.1.2019 passed by the learned Single Judge whereby the writ petition, filed by the respondent M.P. State Agriculture Marketing Board, in respect of the award of full back wages to the appellant herein has been allowed.

The learned counsel appearing for the appellant, on the strength of the decision rendered in the cases of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others** (2013)10 SCC 324 and **Raj Kumar vs Dir. of Education & Ors**, (2016) 6 SCC 541, submits that the learned Single Judge has wrongly appreciated the law in this regard while denying backwages to the appellant. It is submitted that even in the absence of any pleadings, as the appellant has made a statement during her examination before the Labour Court that she was not gainfully employed and the respondent i.e. the Management did not produce any evidence to rebut the same, therefore, her claim for backwages has rightly been allowed by the Labour Court. It is submitted that

the learned single Judge, while allowing the petition filed by the respondents has not taken this aspect into consideration or appreciated the law laid down by the Supreme Court in the cases of **Deepali Gundu Surwase** (supra) and **Raj Kumar** (supra) and, therefore, the impugned order passed by the learned Single Judge deserves to be set aside.

The learned counsel for the respondents on advance copy, per contra, submits that the learned Single Judge has rightly quoted and relied upon the law laid down by the Supreme Court in the case of **Rajasthan State Road Transport Corporation, Jaipur Vs. Shri Phool Chand (Dead) through L.Rs.** (Civil Appeal No.1756/2010) decided on 20.9.2018, wherein the Supreme Court has clearly laid down that “it is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed elsewhere and had no earning to maintain himself or/and his family.”

It is submitted that in the instant case admittedly, there was no pleading or proof or any other material produced by the appellant before the Labour Court to establish that she was not gainfully employed elsewhere. It is submitted that in the absence of any pleadings, the respondents did not take up the issue contested in that regard before the Labour Court. It is submitted that in such circumstances, mere statement by the appellant at the time of her examination before the Labour Court without giving any opportunity to the respondents to respond to the same or rebut the same would not satisfy

the requirement of law or entitle the appellant to be awarded full backwages.

We have heard the learned counsel for the parties at length. We have also perused the decisions of Supreme Court rendered in the cases of **Deepali Gundu Surwase** (supra), **Raj Kumar** (supra) and **Rajasthan State Road Transport Corporation, Jaipur** (supra). All the three decisions are of the Bench of equal strength and the latest decision is that of **Rajasthan State Road Transport Corporation, Jaipur** (supra). In the said case the Supreme Court has taken into consideration the decision rendered in the case of **Deepali Gundu Surwase** (supra) and while doing so it has clearly stated that “it is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family” in para 12.

The learned Single Judge has quoted the aforesaid decision of the **Rajasthan State Road Transport Corporation, Jaipur** (supra) and has held that in view of the latest law laid down by the Supreme Court, as there was no pleading or proof produced by the appellant regarding gainful employment, the same could not be automatically awarded to her as has been done by the Labour Court.

In view of the latest decision of the Supreme Court rendered in the case of **Rajasthan State Road Transport Corporation, Jaipur** (supra) which has been quoted by the learned Single Judge wherein it has laid down that the workman is required to plead and prove

with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family, we do not find any illegality or infirmity in the order passed by the learned Single Judge warranting interference by this Court in this appeal.

The appeal filed by the appellant being meritless is, accordingly, dismissed.

(RAVI SHANKER JHA) (VIJAY KUMAR SHUKLA)

ACTING CHIEF JUSTICE

JUDGE

Mrs.mishra