
Appearance:

MR HARDIK C RAWAL for the Appellant.

Mr.H.K. Rathod, Advocate, for the respondents.

CORAM : THE CHIEF JUSTICE G.D.KAMAT and

MR.JUSTICE C.K.THAKKER

Date of decision: 31/08/96

ORAL JUDGEMENT : (Per G.D. Kamat, C.J.)

Admit. By consent, to be heard forthwith.

The appellant-Corporation challenges the order of the learned single Judge dated 15th February, 1996, under which interim order made has been vacated.

A brief reference to factual matrix may be necessary for the view that we are taking finally in this matter and also with a view to dispose of Special Civil Application No.3283 of 1989. The respondent was employed as a bus Conductor with the appellant-Corporation. He was chargesheeted for not having issued tickets to the passengers and for having misappropriated, the fare received by him from passengers. His services were accordingly terminated upon finding him guilty. The original respondent challenged the order, terminating his services, before the Labour Court. The Labour Court, by its Award, granted relief to the original respondent, with a further direction to the Corporation to pay him backwages to the extent of 60%. This Award of the Labour Court was challenged by the Corporation in Special Civil Application No.3283 of 1989. Regard being had to the fact that even before interim order was made on 4th May, 1989, the respondent was already reinstated, a Division Bench made an ad interim order on 4th of May, 1989, staying the payment of 60% of backwages. It appears that after hearing the parties, another Division Bench of this Court, on 17th January, 1992, confirmed the ad interim order, dated 4th May, 1989 and on the same day, the Civil Application instituted by the original respondent for vacating the order of 4th of May, 1989 was rejected, by observing " no orders ". However, it appears that a fresh Civil Application, bearing No.355 of 1994, was instituted on behalf of the original respondent and the learned single Judge, by the impugned order, disposed of the said Civil Application, whereby he vacated the ad interim order on the ground that ad interim order granted on 4th of May, 1989,had not been confirmed within a

period of 15 days, vide Article 226(3) of the Constitution of India. It was also pointed out that Mr.Hardik Raval could not remain present on 15.2.1996 in the Court, as otherwise, he would have brought to the notice of the learned single Judge, the order of the Division Bench dated 17.1.1992, as his name had not been shown on the Board, listing the causes and instead, the name of Mr.K.N. Raval, who was earlier appearing in the matter, was shown.

It was sought to be urged before us on behalf of the appellant-Corporation that the learned single Judge had ignored the Division Bench order of 17th January, 1992, which had confirmed the ad interim order dated 4th of May, 1989 and, therefore, there was no scope for the learned single Judge to have made a fresh order on 15.2.1996 in the Application taken on behalf of the original respondent in Civil Application No.355 of 1994.

During the course of hearing, it transpired that the original respondent has expired, leaving behind his widow and children and who have now come on record in his place. We, therefore, suggested to the learned counsels that this matter can be put an end to and accordingly, the appellant-Corporation was directed to give to this Court the idea of the amount due in the event the Award of the Labour Court was to be enforced. Accordingly, the Corporation has worked out and on the basis of the same, it is noticed that the original respondent would have been entitled to receive a sum of Rs.35,735/-, corresponding to 60% of the wages out of the total backwages, which he would have earned, viz., Rs.59,559/-. The Corporation has separately given another chart, showing the entitlement of the original respondent in the matter of revision of his pay scales once he was reinstated as also the other allowances. On computation, we find that once the original respondent was reinstated, he was entitled to receive from the Corporation a sum of Rs.10,809/-. In our view, this sum can, in no event, be denied to the original respondent and now, to his heirs and legal representatives.

The question then remains as to the entitlement of backwages to the extent of 60% as awarded by the Tribunal and which is worked out in the figure of Rs.35,735/-. We have gone through the record and it appears that the original respondent had been chargesheeted on as many as 21 times in respect of his misconduct of not issuing tickets to passengers. It appears that the departmental enquiries were held against and he was earlier even dismissed from service. But,

however, the original respondent had succeeded and obtained order of reinstatement. Therefore, in the facts and circumstances, we feel justification for reducing his backwages to some extent. In our view, a sum of Rs.20,000/-, instead of Rs.35,735/-, corresponding to 60% of backwages, be paid to the respondents, which would meet the ends of justice in the facts and circumstances of the case. Thus, the respondents be now paid a sum of Rs.30,809/-.

In this view of the matter, this Letters Patent Appeal and Special Civil Application No.3283 of 1989, to the extent indicated, are partly allowed.

The appellant-Corporation is directed to make the payment by crossed cheque in favour of Smt. Shardaben, widow of original respondent, within a period of eight weeks from today.

A grievance was also made by Mr.Rathod, on behalf of the respondents, that gratuity of the original respondent was calculated on the basis of earlier pay scale and had it been calculated according to the entitlement on the basis of revised pay scale, the respondents would have got some more amount, and which cannot be denied to them. It is not necessary for this Court to examine this matter and it is open to Smt. Shardaben, widow of the original respondent, to make appropriate representation to the appellant-Corporation, in that behalf.

(apj)