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HIGH COURT OF DELHI : NEW DELHI

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WP (C) No. 5467 of 2003

Judgement reserved on: September 20, 2004

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Judgement delivered on: October 6, 2004

Management of Asiatic Air Conditioning
and Refrigeration Pvt. Ltd.
505, Sarswati House
27, Nehru Place
New Delhi-110019
through Rana Ramnik Singh
Executive

...Petitioner

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Through Mr. C.S.S. Tomar, Adv.

Versus

\$ 1. Presiding Officer
Labour Court-X
Karkardooma Court
Delhi-110032

2. Jagdish Tripathi
S/o Shri Tirath Raj Tripathi
R/- C-25, Mohan Bawa Nagar
Tajpur Road, Gali No.5
Badarpur, New Delhi-110014

...Respondents

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Through None

WP (C) No. 5467/2003

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Signature Not Verified

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Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

MD

Coram:

* **HON'BLE MR. JUSTICE MADAN B. LOKUR**

1. Whether the Reporters of local papers may be allowed to see the judgement? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgement should be reported in the Digest? Yes

* **MADAN B. LOKUR, J.**

Notice in this case was confined only to the issue of back wages to be paid to the Respondent.

2. What should be the quantum of back wages to be awarded to a worker (I deliberately use a gender-neutral word) assuming reinstatement is directed, has been the subject matter of debate and discussion in literally hundreds of cases. One of the reasons for this, I think, is that discretion in this regard is exercised depending upon the facts and circumstances of each case without formulating an identifiable norm. Therefore, each

case, and there are thousands of them, has to be individually considered, placing an avoidable and enormous burden on the courts.

3. *Aharon Barak* in his more than educative *Judicial Discretion* defines discretion most appropriately when he says it

“[I]s the power given to a person with authority to choose between two or more alternatives, when each of the alternatives is lawful.”

But, he also points out that one of the areas of discretion lies in the establishment of a norm, and judicial discretion chooses from among the normative possibilities the option that it deems appropriate. Hopefully in due course of time, a normative possibility will be established for exercising discretion in awarding back wages to a reinstated worker.

4. Respondent No.2 (the Respondent) joined the services of the Petitioner on 20th January, 1985 as a Welder on a monthly salary of Rs.700/-.

5. On 17th June, 1986, the Respondent was not allowed to join duties and he was informed that he was placed under suspension. Soon thereafter, two charge sheets were issued to him to which replies were sent denying the charges. Enquiry proceedings were then held against him in December, 1986. According to the Respondent, he was not told the date of hearing in the enquiry after 20th December, 1986 but according to the Petitioner, since he was proceeded against *ex parte* on that date, there was no occasion to inform him about further proceedings in the enquiry. The enquiry officer found the Respondent guilty of the charges levelled against him and by an order dated 12th March, 1987, the Respondent was dismissed from service.

6. The allegations against the Respondent were that on

11th June, 1986 he came to the factory premises but did not do any work and instead roamed around here and there. He threatened two workers that he would beat them if they work. On 12th June, 1986 he stood on the road at the gate of the factory, abused his superior and shouted that two of his employers were extremists. The police tried to pacify the Respondent, but when that did not help, he was arrested and produced before a Metropolitan Magistrate, where he admitted his guilt and was fined. On 25th June, 1986 he, along with two others beat up the accountant of the Petitioner, called him an extremist and put a burning cigarette in his hand. The Assistant Labour Commissioner had to intervene and rescue the accountant.

7. On 11th October, 1987, the following question was referred for adjudication to the Labour Court:

Whether the termination of services of Shri Jagdish Tripathi is illegal and/or unjustified, if so, to what relief is he entitled and what

directions are necessary in this respect?

8. The learned Labour Court framed a preliminary issue concerning the validity of the domestic enquiry and by an order dated 28th August, 2001, it was held that the domestic enquiry was vitiated since it was not conducted in accordance with the principles of natural justice. This order is not under challenge in the present writ petition.

9. Thereafter, the Petitioner did not lead any evidence to prove the Respondent's misconduct but arguments were addressed by both the parties regarding gainful employment of the Respondent and back wages due to him.

10. By the impugned Award dated 31st July, 2002, the learned Labour Court, relying upon a decision of the Supreme Court in *Hindustan Tin Works Ltd. vs. Its Employees*, (1979) 2 SCC 80, held that the Respondent was entitled to reinstatement

with full back wages and continuity of service.

11. The Petitioner challenged the Award dated 31st July, 2002 but, as mentioned above, the grievance of the Petitioner was confined to the question of back wages. It appears that the Respondent is not interested in reinstatement.

12. Learned counsel for the Petitioner contended that the Respondent was a skilled worker and could not have remained unemployed for as long as 15 years during the pendency of the industrial dispute. In fact, the Petitioner has filed some documents on record to show that the Respondent has been gainfully employed and is now the proprietor of M/s Tripathi Gas Welding Works in Okhla Industrial Area, New Delhi. It was contended by learned counsel for the Petitioner that it cannot be that in such circumstances a worker has to be awarded full back wages. He submitted that this causes an undue financial strain on the employer and necessary orders are

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required to be passed in this regard for the guidance of the Labour Courts.

13. No one appeared on behalf of the Respondent to make submissions on the issues raised.

14. It appears to me that cases decided by the Supreme Court show that even though the normal rule is to grant full back wages to the worker, yet the power to grant wages involves the exercise of discretion. I think the normal rule now flows from the statutory requirement of making an Award within three months of the reference of an industrial dispute involving an individual worker [Section 10(2A) of the Act] or within such period as may be prescribed by the appropriate government. Once the statutory period is exceeded, the industrial adjudicator has to exercise its discretion judicially and judiciously in awarding back wages. While exercising its discretion, several factors are required to be taken into consideration. Case law

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show that some illustrative factors are:

- a. **The time involved in litigation.** In *Municipal Corporation of Delhi vs. Prem Chand Gupta*, (2000) 10 SCC 115 the Supreme Court took into consideration the fact that the industrial dispute lingered on for as long as 33 years and nobody was really to blame for the delay, except the justice delivery system. Only 50% back wages were awarded to the worker. A similar view was taken in *Bharat Coking Coal Ltd. vs. Presiding Officer*, (2002) 9 SCC 690 while awarding only 50% back wages. In *Anil Kumar Puri vs. Presiding Officer*, (2000) 9 SCC 129 a worker approached the Central Administrative Tribunal for relief. He was told five years later that the Tribunal had no jurisdiction to entertain the dispute. Thereafter, the worker raised an industrial dispute. It was held that since the management was not responsible for the delay, the worker would be entitled to only 50% back wages. Delay in

disposal of an industrial dispute resulting in payment of 15 years back wages (and the other facts and circumstances of the case) prompted the Supreme Court to award only 50% back wages in *Vikramaditya Pandey vs. Industrial Tribunal*, (2001) 2 SCC 423. Similarly, in *HMT Ltd. vs. Labour Court*, (1994) 2 SCC 38, litigation between the parties went on for 14 years. The Supreme Court noted that it is accepted that no party should suffer on account of delay in rendering a decision by the Court. Consequently, only 60% back wages were awarded to the worker.

Causes of delay in disposal of a reference may be due to various reasons, and the industrial adjudicator must apply his mind to the relevant factors causing delay, and who is responsible for them. For example, an employer may delay filing a written statement or cross-examining the worker's witnesses or leading its own evidence. Similarly, the worker may delay filing a statement of claim or leading

evidence or cross-examining the witnesses of the employer.

b. **The management is a public body meant for public benefit.** In *Prem Chand Gupta* this was considered a relevant factor for denying full back wages to the worker, particularly in view of the enormous delay in deciding the industrial dispute.

c. **Possibility of the worker being gainfully employed.** It is unlikely, as implied in *Prem Chand Gupta*, that a worker can remain unemployed for an indefinite period. The Supreme Court found it difficult to accept that the worker had remained unemployed for 33 years. Prem Chand Gupta was awarded 50% back wages. Similarly, in *Haryana Urban Development Authority vs. Devi Dayal*, (2002) 3 SCC 473 it was noted that it was reasonably possible that the worker, being a helper doing manual

labour, would have possibly got some daily wage or intermittent employment during the pendency of the industrial dispute. This was one of the factors taken into account while awarding him 50% back wages.

d. **Nature of the alleged misconduct.** In *U.P. SRTC vs. Bhagwati Prasad Pathak*, (2000) 10 SCC 425 the worker was an Assistant Cashier accused of embezzlement. Though he was found not guilty and could not be reinstated because he had reached the age of superannuation, the Supreme Court nevertheless reduced the quantum of back wages awarded by the High Court from 50% to 25%. In *Hissar Central Cooperative Bank Ltd. vs. Kali Ram*, (2003) 9 SCC 221, the allegation against the worker was of embezzlement of money of a society. Even though the allegations against the worker were not proved, the Supreme Court considered that since

he did not generally possess a clean record, only 25% back wages should be given to him.

e. **Financial burden.** It appears that in *Management, Lokashikshana Trust vs. Presiding Officer*, (2000) 9 SCC 451 the Supreme Court found the burden of full back wages to be too onerous. Accordingly, only 60% of the back wages were awarded to the worker. Similarly, in *Hindustan Tin Works* the quantum of back wages was reduced to 75% in view of the financial condition of the employer. Also, in *U.P. Drugs & Pharmaceuticals Co. Ltd vs. Ramanuj Yadav*, (2003) 8 SCC 334 the financial position of the appellant and proceedings against it before the Board of Industrial and Financial Reconstruction were taken into consideration for denying back wages to the worker.

f. **Delay in raising an industrial dispute.** Back wages for a period of about 8 years delay in raising an industrial dispute were denied to the worker in *Gurmail Singh vs. Principal, Government College of Education*, (2000) 9 SCC 496. For the subsequent period till his reinstatement, the worker was awarded only 50% back wages. A similar view was taken in *Executive Engineer vs. C. Guddappa*, (2002) 10 SCC 577. In *Karnataka Power Transmission Corpn vs. Amalgamated Electricity Co. Ltd*, (2001) 1 SCC 586 delay in seeking a reference long after the dispute arose between the parties prompted the Supreme Court to reduce the back wages from 50% awarded by the industrial adjudicator to 40%. However, in *S.M. Nilajkar vs. Telecom District Manager*, (2003) 4 SCC 27 the Supreme Court declined to interfere with an order of a Single Judge of the High Court granting reinstatement without back wages, even though blame for the delay of about 4 years in raising an industrial dispute could not be put on the

employee. Additionally, in this case the employee did not put this in issue by filing an appeal.

g. **Duration of employment.** In *Talwinder Singh vs. PO, Labour Court, (2003) 10 SCC 283*, the Supreme Court did not grant any back wages to the reinstated workman apparently because he had put in just 240 days of service. The Supreme Court, however, noted that there was no material to show on what ground his services had been terminated. Similarly, in *Devi Dayal*, the worker had rendered duty for 340 days, which was also not continuous, and he frequently remained absent from duty. This was taken into consideration by the Supreme Court while granting only 50% back wages. It was also noted that the worker was a helper, which apparently involved manual labour. There was a reasonable possibility, therefore, of the worker being employed elsewhere at least for some days in a month, on daily wages if not regularly.

Nature of employment. In *Chief Conservator of Forests vs. Rahmat Ullah*, (2003) 10 SCC 92 the worker, a *mali*, was out of service since 1990 and since "he was an ordinary worker, he must have been working elsewhere to earn his livelihood. There is no material to show that he was not gainfully employed." Consequently, back wages awarded to him were reduced from 100% to 50%. Similarly, in *Devi Dayal* the reinstated worker was a helper. The Supreme Court said that since his work involved manual labour, there was a reasonable possibility of his finding some employment, on a daily wage basis, if not regularly. Interestingly, it may be mentioned that the *Second Report of the National Commission on Labour* concluded in Chapter 12.74 that only 5% of the workforce had necessary vocational skills. In view of the shortage of skilled workers, a reasonable presumption can be drawn that such a person will not remain unemployed for long.

15. A few recent decisions will, I think, clear the air of any doubts and ambiguities. In *P.G.I. of Medical Education & Research vs. Raj Kumar*, (2001) 2 SCC 54 the Supreme Court noted that in the normal course of events an industrial adjudicator is supposed to award back wages in its entirety, but even in *Hindustan Tin Works* where this observation was made, the Supreme Court itself reduced the back wages from 100% to 75%, the reason being the contextual facts and circumstances of the case. Therefore, *Hindustan Tin Works* itself permits flexibility in award of back wages, a discretionary alternative that in the present case the learned Labour Court seems to have lost sight of.

16. *Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya*, (2002) 6 SCC 41 discussed both *Hindustan Tin Works* and *PGIMER* and clearly laid down that a worker's statement of claim must have some pleading regarding his employment and there must also be some oral evidence in this

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regard. Additionally, the industrial adjudicator must state and discuss the reasons for grant or denial of back wages. An order of reinstatement with full back wages does not follow as a matter of course. The vicissitudes of a long drawn litigation were considered by the Supreme Court for reducing back wages from 100% to 50%.

17. The Supreme Court was quite categorical and emphatic in *M.P. State Electricity Board vs. Jarina Bee*, (2003) 6 SCC 141 when it said, after discussing the relevant case law, that

“[T]he inevitable conclusion is that the High Court committed an error in holding that the award of full back wages was the natural consequence (of reinstatement).”

18. An analysis of the facts of the present case would show that the Respondent worked with the Petitioner for about 1½ years before he got into trouble with his employer. The

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grievances of the Respondent had nothing to do with his conditions of service or his employment, which could in a given case have some importance. The industrial dispute was not raised after any delay, but its disposal took almost 15 years. There is nothing in the pleadings before me to indicate who was responsible, any of the parties or the system, for delay in disposal of the reference. There is nothing to suggest that the Petitioner is such a large organization that it can absorb the cost of paying the Respondent 15 years back wages without having taken any work from him. The Respondent is a skilled person and appears to be gainfully employed and perhaps carrying on his own business. In fact, the Respondent has not shown any interest in being reinstated, nor has he asked for payment of wages under Section 17-B of the Industrial Disputes Act, 1947. Taking all these facts into consideration, I am of the view that this is not a fit case in which back wages ought to have been awarded to the Respondent.

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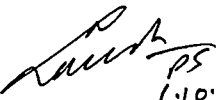
19. Consequently, since reinstatement of the Respondent was not an issue before me, while upholding the impugned Award, I would hold that the Respondent is not entitled to any back wages. To this extent, the impugned Award is set aside.

20. The writ petition is disposed of in the above terms. No costs.

October 6, 2004
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(Madan B. Lokur)
Judge

Certified that the corrected copy of the judgment has been transmitted in the main Server.


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