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BACK WAGES CANNOT BE CLAIMED BY WORKMAN AS A MATTER OF RIGHT UPON REINSTATEMENT: SUPREME COURT

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A division bench of the Hon'ble Supreme Court of India (the Court) consisting of Mr. Justice Abhay Manohar Sapre and Mr. Justice S. Abdul Nazeer has, in the case of *Rajasthan State Road Transport Corporation v Phool Chand (Rptd. by LRs)* (Civil Appeal No 1756 of 2010), clarified the issue of back wages being awarded to a workman pursuant to the setting aside of his dismissal order. The Court, while considering the correctness of a judgment passed by a division bench of the High Court of Rajasthan (High Court), held that a workman has no right to claim back wages from his employer solely on the grounds that the High Court has set aside his dismissal and directed reinstatement in service.

Background

Phool Chand (Respondent) remained absent from work, for a continuous period, without assigning any reason, and hence a departmental enquiry was conducted by the Rajasthan State Road Transport Corporation (Appellant). The Respondent was dismissed from service after the charge of dereliction of duty was proved against him. The Respondent approached the Labour Court, which concluded that the charges against him were sufficiently proved, however, the punishment of removal from service was converted to "stoppage/forfeiture of four annual grade increments without cumulative effect". Further, the Labour Court issued direction for reinstatement in service and awarded back wages for 13 years.

The Appellant challenged such order of the Labour Court before the High Court by way of a writ petition. The High Court upheld the order of the Labour Court and dismissed the writ petition. Further, the intra court appeal filed by the Appellant was also dismissed by the division bench.

Supreme Court's Order

The Court, while allowing the appeal, held that it is necessary for a workman to plead and prove with the aid of evidence that, after his dismissal from service, he was not gainfully employed and had no earning to maintain himself or/and his family. The Court further added that while the employer can lead evidence against the employee to prove that the employee was gainfully employed, the initial burden of proof lies on the employee.

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The Court has held that the principles governing the award of back wages is no longer *res integra* and the same are well settled in *M.P. State Electricity Board v Jarina Bee(Smt.)*, *G.M. Haryana Roadways v Rudhan Singh*, *U.P. State Brassware Corporation v Uday Narain Pandey*, *J.K. Synthetics Ltd. v K.P. Agrawal & Anr.*, *Metropolitan Transport Corporation v V. Venkatesan*, *Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr.*, and *Deepali Gundu Surwase v Kranti Junior Adhyapak*.

After referring to the above judgments, the Court held that:

“In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court *as of right to the workman consequent upon setting aside of his dismissal/termination order*. In other words, *a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.*”

The Court further held that:

“We cannot, therefore, concur with such direction of the Courts below awarding full back wages to the workman which, *in our opinion, has certainly caused prejudice to the appellant (employer)*.”

The Court, after reiterating the settled principle on awarding back wages as mentioned *supra*, awarded 50% of back wages to the legal representatives of the Respondent exercising its jurisdiction under Article 142 of the Constitution of India.

Comment

It is a welcome judgment which balances two conflicting interests namely that of employer and employee when it comes to payment of back wages. By specifying that back wages are not a matter of right for an employee upon the setting aside of his/her dismissal order, the Courts have sought to protect the interests of the employer in cases where the employee may have taken up alternate employment and may have been able to support herself or her family. The present judgment will caution Labour Courts in appropriately assessing the facts and settled principles of law governing the field before awarding back wages in cases where a termination order may be set aside.

- Vinay Joy (Partner) and Praveenkumar Hiremath (Associate)

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