
Union Of India Vs R. P. Mishra

Writ Appeal No. 350 Of 2023

Court: Chhattisgarh High Court

Date of Decision: Aug. 29, 2023

Acts Referred:

Central Industrial Security Force Rules, 2001 " Rule 55#Industrial Disputes Act, 1947 " Section 17B, 25F#Delhi School Education Act, 1973 " Section 8(2)#Income Tax Act, 1961 " Section 89#Equal Opportunities, Protection of Rights and Full Participation Act, 1995 " Section 47

Hon'ble Judges: Ramesh Sinha, CJ; N. K. Chandravanshi , J

Bench: Division Bench

Advocate: Tushar Dhar Diwan

Final Decision: Dismissed

Judgement

1. Heard Mr. Tushar Dhar Diwan, learned Central Government Counsel for the appellant on I.A. No. 1 of 2023, which is an application for

condonation of delay.

2. After hearing the learned counsel for the appellant and considering the reasons mentioned in the application, we are of the considered opinion that

sufficient cause has been shown in the application and accordingly, I.A. No. 1 of 2023 is allowed and delay of 85 days is condoned.

3. The present intra Court appeal has been filed by the appellants/respondents against the order dated 23.03.2023 passed by the learned Single Judge

in WPS No. 3714 of 2013 (R.P. Mishra Vs. Union of India & Others), whereby the learned Single Judge has allowed the writ petition filed by the

respondent/petitioner.

3. The brief facts of the case are that :-

(i) The petitioner/respondent was working as a Constable with the CISF unit at Bhilai Steel Plant, Bhilai. On 14.09.1997, the respondent/ petitioner

was travelling in the Ahmedabad-Howrah Express for taking part in Departmental proceedings, the train met with an accident and the

petitioner/respondent sustained grievous injuries on his head and spine. Thereafter, the petitioner/respondent was retired from service.

(ii) The petitioner/respondent was directed to proceed to CISF unit KSTPP, Korba vide office order No. 11019 dated 13.09.1997. He was issued with

Railway warrant up to Bilaspur only. The journey from Bilaspur to Korba was supposed to travel by bus, but the petitioner/respondent did not get

down from train at Bilaspur Railway Station and further proceeded to Korba by Train No. 8033 i.e. Ahmedabad-Howrah Express on his own decision,

for which the petitioner/respondent had not taken permission from the Office. While the train reached at Champa it met with an accident as a result,

the petitioner/respondent sustained nervous injuries in various parts of his body and remained admitted in KSTPP, Korba Hospital and was further

admitted in BSP Sector-09 Hospital Bhilai for treatment. As per medical certificate issued by BSP Hospital dated 24.03.1998, the remarks of the

medical officer is "his present disability is about 75% and his future neural recovery is uncertain and may lead to a permanent disability."

Thereafter, as per the opinion of the medical board, the respondent/petitioner has been retired on physical infirmity from service with effect from

08.06.2000 (FN) vide USO Part-1 No. 27/2000 dated 07/08.05.2000.

(iii) Thereafter, being aggrieved the petitioner/respondent had filed WP No. 280 of 2001 before this Court and the same was decided on 14.11.2006

with a direction to the respondents/appellants to give relief in terms of Section 47 of the Act, 1995. But, as per the Gazette notification dated

13.09.2002 regarding exemption of CISF from the provision of pensions with disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 was received from FHQrs New Delhi.

(iv) The petitioner/respondent could not be reinstated as the Section 47 of the Act is not permissible to CPMFs. As such, application for review, being

R.P. No. 1262 of 2007 against the order dated 14.11.2006 passed in WP No. 280 of 2001 and application for condonation of delay were filed before

this Court on 23.04.2007. But, this Court has dismissed the above application vide order dated 19.11.2007 as there is no ground for review of the order

dated 14.11.2006.

(v) Thereafter, the appellants/respondent filed a writ appeal, being WA No. 103 of 2008 before this Court on 19.12.2007 and prayed to set aside /

quash the order dated 14.11.2006 passed by the learned Single Judge in WP No. 280 of 2001 and order passed in the review application dated

19.11.2007. On 08.10.2012, the matter came up for hearing, where the matter was disposed off by the Division Bench of this Court by affirming the

order dated 14.11.2006 passed by the learned Single Judge in WP No. 280 of 2001. Accordingly, on the basis of the order dated 14.11.2006 passed by

the learned Single Judge in WP No. 280 of 2001, the petitioner/respondent was reinstated in service on 25.12.2012 (FN) vide CISF Unit, BSP Bhilai

Service Order No. 128/2012 issued under letter No. 841 dated 27.12.2012 and his absence period from the date of retirement on medical invalidation

in service to reinstatement in service i.e. from 08.06.2000 to 24.12.2012 was treated as "DIES NON" (no work no pay basis) as per norms.

(vi) The petitioner/respondent filed writ petition, being WPS No.3714 of 2013 against the order dated 27.12.2012 passed by respondent No.

3/appellant, whereby the period i.e. from 08.06.2000 to 24.12.2012 has been treated as "DIES NON" (no work no pay basis) and also against the

orders dated 09.09.2013 and 16.09.2013 passed by the Department, whereby the representation / appeal of the petitioner/respondent has been

rejected.

(vii) The learned Single Judge after hearing the matter on 29.11.2022 passed the judgment on 23.03.2023 and allowed the writ petition, granting relief

to the petitioner, whereby period i.e. from 08.06.2000 to 24.12.2012 has not been treated as "DIES NON", and also set aside the order dated

09.09.2013 and 16.09.2013 passed by the Department, allowing the writ petition granting consequential relief.

4. Learned Central Government Counsel for the appellants/respondents submits that the learned Single Judge has committed grave illegality while

allowing the writ petition, as such, the present writ appeal deserves to be allowed and the order of the learned Single Judge deserves to be set aside.

5. We have heard learned counsel for the appellants/respondents and perused the impugned judgment and materials available on record.

6. The learned Single Judge after hearing learned counsel for the parties and on the basis of materials available on record has rightly allowed the writ

petition observing as follows :

"6. Writ petition No. 280/2001 was allowed by this Court vide order dated 14.11.2006 where it was held in para-9 as under:-

"9. Therefore, the petitioner cannot be denied protection available to him under Section 47 of the Act merely because he is getting

invalidity pension under Rule 38 Considering that the petitioner acquired disability during his service and further considering that after

discharge from the hospital, he joined his services on 31st January, 1998 and discharged his duties assigned to him for a period of

approximately 2 ½ years, if the respondents found him not suitable for the post he was holding; he could be shifted to some other posts

with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post

until a suitable post was available or he attains the age of superannuation whichever is earlier. No such efforts were made by the

respondent. They have proceeded to hold that he is permanently incapacitated to continue in service without considering the effect of other

provisions of Section 47 of the Act.

The respondent authorities filed review Application No. 1262/2007 which was dismissed on 19.11.07. The respondent again filed writ

appeal (WA) No. 103/2008 which was also dismissed by the Division Bench of this Court. Admittedly, the petitioner was out of service from

08.06.2000 to 24.12.2012 and respondent authorities treated this period as "DIES NON" (no work no pay basis).

7. The Hon'ble Apex Court in the matter of Rajkumar (Supra) held in paras 37 and 38 which reads as under:-

"37. The termination of the appellant is bad in law for non-compliance with the mandatory provisions of Section 25-F of the ID Act and

also section 8(2) of the DSE Act. Further, the respondent-School has not produced any evidence on record to show that the retrenchment of

the appellant was necessary as he had become "surplus". The termination of the appellant was ordered in the year 2003 and he is

unemployed till date. The respondents have been unable to produce any evidence to show that he was gainfully employed during that period

and therefore he is entitled to back wages and other consequential benefits in view of the law laid down by this Court in the case of Deepali

Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala (D.ED.) and others, reported in (2013) 10 SCC 324, wherein it was held as under;

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies

that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury

suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money.

With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets

dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance.

The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow

from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on

the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent

judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of

natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his

entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the

employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an

illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the

obligation to pay back wages including the emoluments."

"38. For the reason stated supra, we are of the view that the impugned judgment and order dated 28.07.2008 passed by the Delhi High

Court is liable to be set aside and accordingly set aside, by allowing this appeal. The retrenchment of the appellant from his service is bad

in law. The respondent-Managing Committee is directed to reinstate the appellant at his post. Consequently, the relief of back wages till the

date of this order is awarded to the appellant, along with all consequential benefits from the date of termination of his services. The back

wages shall be computed on the basis of periodical revision of wages/salary. We further make it clear that the entire amount due to the

appellant must be spread over the period between the period of retrenchment and the date of this decision, which amounts to 13 years, for

the reason that the appellant is entitled to the benefit under Section 89 of the Income Tax Act. The same must be complied with within six

weeks from the date of receipt of the copy of this judgment.Ã¢â¬â€œ

8. Learned counsel for the respondent submits that as per Rule 55 of CISF Rules 2001, the petitioner is not entitled to any relief. Rule 55 of

CISF Rules, 2001 prescribed as under:-

Ã¢â¬â€œ55. Notwithstanding anything contained in these rules a disciplinary authority while passing final order to impose a penalty upon an

enrolled member of the Force or an appellate authority or a revising authority may, on reinstatement of an enrolled member of the Force in

service after setting aside without exonerating such enrolled member of the Force of the charges which resulted in any of these penalties,

after giving an opportunity to the enrolled member of the Force concerned to show cause against such action and for reasons to be

recorded in writing, order that the intervening period between the date of dismissal, removal or compulsory retirement as the case may be

and the date of reinstatement be treated as dies-non for purposes of service.Ã¢â¬â€œ

But in the instant case, High Court allowed the petition of the petitioner and directed the respondent authorities to give relief in terms of

Section 47 of Equal Opportunities, Protection of Rights and Full Participation Act, 1995 which reads as under:-

Ã¢â¬â€œ47. Non-discrimination in Government employment-(1) No establishment shall dispense with, or reduce in rank, an employee who

acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with

the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable

post is available or, he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and

subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

9. The Hon'ble Apex Court in the matter of Central Bank of India (Supra) held in paras 10, 15, 18 and 19 which reads as under:-

“10. By a judgment and order dated 7-8-2015, the learned Single Judge of the High Court, allowed the writ petition. The Single Judge

held; (Dragendra Singh case, SCC OnLine MP para 6)

“6. The Tribunal, upon reference made to it by the Central Government to adjudicate as to whether the respondents were justified in

removing the petitioner from service, has answered the reference in negative and in favour of the petitioner workman holding that petitioner

was wrongly removed from service. Accordingly, the Tribunal ordered for reinstatement, but without back wages. Legal meaning attributed

to word “reinstatement” is beyond any cavil of doubt as by catena of decisions of the Hon'ble the Supreme Court and various High

Courts, word “reinstatement” has been unequivocally explained to the effect that once an Authority or Court orders for reinstatement of

an employee, then the position of that employee is restored back to the date on which he was removed from services. As such, the

respondents were not justified having excluded the period from the date of removal of the petitioner to the date of his reinstatement and

treating the same as completely dies non and also in not allowing the petitioner to get the service benefits attributable to him by virtue of

the aforesaid length of service. In the opinion of this Court, the order (Annexure P-1) passed by the respondent Bank is not in conformity

with the order passed by the Tribunal. Hence, the impugned order (Central Bank of India vs. Dragendra Singh Jodon, 2017 SCC Online

MP 2334), so far as it relates to denying benefits to the petitioner for the intervening period (the period from the date of removal of the

petitioner from service to the date of his reinstatement), excepting denial of back wages is quashed and it is held that the petitioner shall be

held entitled for all the benefits except back wages construing him to be in service from the date of removal till the date of actual

reinstatement in service. Needless to mention that consequent upon the reinstatement, the petitioner is entitled for regular salary from the

date of award subject to adjustment of the amount already paid under Section 17-B of the Industrial Disputes Act.”

“15. The principles of res judicata are attracted where the matter in issue in the later proceedings have directly and substantially been in

issue in earlier proceedings, between the same parties, in a competent forum having jurisdiction. Res judicata debars the Court from

exercising jurisdiction to determine the lis, if it has attained finality between the parties. There is a distinction between res judicata and

issue estoppel. In the case of issue estoppel, a party against whom an issue has been decided would be estopped from raising the same issue

again.”

18. In our considered view, the learned Single Bench of the High Court rightly granted relief to the respondent. By the impugned

judgment and order, the Division Bench of the High Court dismissed the appeal of the appellants and directed that the respondent would

have to be treated in service from the date of removal till the date of actual reinstatement in service and would accordingly be entitled to

seniority and the right to be considered for promotion, but would not be entitled to back wages.

19. We find no infirmity with the concurrent findings of the Single Bench and the Division Bench of

the High court. There is a difference between reappointment and reinstatement. Reinstatement means to return a person or thing to its

previous position or status. An order of reinstatement puts a person back to the same position.

10. Looking to the facts and circumstances of the case, it is clear that the illegal retirement of the petitioner was quashed by respondent

authorities on the direction of this Court, therefore, in this background the principle of no work no pay would certainly not be attracted or

applicable so far as the petitioner is concerned. This Court found that the premature retirement of the petitioner was unjustified and

directed the respondent authorities to give relief in terms of Section 47 of the Act, against this order respondent authorities filed review and

writ appeal and finally, the writ appeal was dismissed on 08.10.2012. During this period the petitioner was out of service without there

being any fault on his part.

11. The Hon'ble Apex Court in the matter of Central Bank of India (Supra) dismissed the appeal holding in para 21 that the

appellant Bank cannot take advantage of its own wrong of wrongfully dismissing the respondent from service, to deny him the benefit of

seniority, promotion and other benefits to which he would have been entitled, if he had attended to his duties.

12. Accordingly, looking to the facts and circumstances of the case and the principles of law laid down by the Hon'ble Apex Court in

the subject matter, this petition is allowed. The orders dated 09.09.2013 and 16.09.2013 are hereby set aside. The petitioner is entitled to all

consequential benefits in accordance with the law.

7. Considering the submissions made by the learned Central Government Counsel for the appellants/respondents and upon perusing the impugned

order, we are of the opinion that there was no fault on the part of the petitioner/respondent to remain out of employment from the date of illegal

retirement, whereas right from the beginning the petitioner/respondent was ready to work with the appellants/respondents authorities, but the

appellants/respondents authorities did not allow the petitioner/respondent to work by way of illegal retirement on medical ground, hence, the

petitioner/respondent is entitled for all the consequential benefits from the date of premature retirement to the date of the reinstatement. Therefore,

there is no illegality or infirmity warranting interference with regard to the order passed by the learned Single Judge.

8. Accordingly, the present writ appeal being devoid of merit is liable to be and is hereby dismissed.