Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1756 OF 2010

Rajasthan State Road Transport
Corporation, Jaipur .....Appellant(s)

VERSUS

Shri Phool Chand(Dead)
Through L.Rs. .....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is directed against the final judgment and order dated 12.02.2008 of the High Court of Judicature for Rajasthan at Jaipur in D.B. Special

Appeal (Writ) No.912 OF 1998 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and upheld the order dated 14.07.1998 passed by the Single Judge of the High Court in S.B.Civil Writ Petition No.5534 of 1996.

2. Few facts need to be mentioned infra for the disposal of the appeal, which involves a short issue.

3. The short question, which arises for consideration in this appeal, is whether the Courts below, namely, the High Court and the Labour Court were justified in awarding full back wages to the deceased workman (now represented by his legal representatives - the respondents herein) after setting aside his dismissal order holding it to be bad in law and, in consequence, directing his reinstatement in service of the appellant.

4. The appellant is a State Road Transport Corporation for the State of Rajasthan. The deceased –Phool Chand was in the employment of the appellant as a driver.

5. The appellant dismissed Phool Chand from the service after holding departmental inquiry on the ground of dereliction of duties on various occasions while he was in the employment. The charge against the deceased-workman was his continuous absence from the work, which was proved.

6. Phool Chand felt aggrieved by his dismissal and filed an application before the Labour Court. The Labour Court, by award dated 26.02.1996 held the charge against Phool Chand as proved but interfered in the quantum of punishment.

7. The Labour Court converted the punishment of removal from service to that of "stoppage/forfeit of

four annual grade increments without cumulative effect" and directed the reinstatement of the deceased workman in service with award of full back wages for the period of 13 years (16.11.1983 to 24.02.1996).

8. The appellant (employer), felt aggrieved by the award of the Labour Court, filed a writ petition in the High Court of Rajasthan. The Single Judge of the High Court, by order dated 14.07.1998, dismissed the writ petition filed by the appellant and affirmed the award passed by the Labour Court.

9. Being aggrieved by the order of the Single Judge, the appellant filed intra court appeal. By impugned order, the Division Bench of the High Court dismissed the special appeal and upheld the order of the Single Judge, which gave rise to filing of this appeal by way of special leave by the appellant-employer in this Court.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and while modifying the impugned order award 50% back wages to the deceased workman (his legal representatives) in place of full wages.

11. 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.

12. 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. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this

Court wherein the law on these questions has been settled. Indeed, it is no longer *res integra.* These cases are, **M.P. State Electricity Board vs. Jarina Bee(Smt.)**, (2003) 6 SCC 141, **G.M. Haryana Roadways vs. Rudhan Singh**, (2005) 5 SCC 591, **U.P. State Brassware Corporation vs. Uday Narain Pandey**, (2006) 1 SCC 479, **J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr.**, (2007) 2 SCC 433, **Metropolitan Transport Corporation vs. V. Venkatesan**, (2009) 9 SCC 601, **Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr.**, (2009) 15 SCC 327) and **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya(D.Ed.) & Ors.,** (2013) 10 SCC 324.

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the

aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.

15. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages.

16. On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to the deceased workman while directing his reinstatement in service.

17. 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).

18. However, having regard to all facts and circumstances of the case such as period and money spent in litigation by the deceased workman and on his death by his legal representatives coupled with the fact that the workman–Phool Chand has since expired, we consider it just and proper and in the interest of justice to award to the respondents (legal representatives of Late Phool Chand) 50% of the total back wages.

19. This we award to the respondents in exercise of our powers under Article 142 of the Constitution of India for doing substantial justice to the parties concerned having reiterated the legal principles which govern the question of award of back wages.

20. In the light of the foregoing discussion, the appeal succeeds and is allowed in part. Impugned order is modified to the extent indicated above.

21. Let the amount be worked out and be paid by the appellant to the respondents after proper verification within 3 months from the date of this judgment.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[S. ABDUL NAZEER]

New Delhi,
September 20, 2018.