

A

FAZIKA COOP. SUGAR MILLS  
v.  
JATINDER KUMAR GUPTA AND ANR.

APRIL 25, 2007

B

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

*Labour Laws:*

C

*Dismissal from service—Management directed to pay subsistence allowance to workman on a Writ Petition by workman—Management did not pay the same—Labour Court denied permission to management to lead evidence—Ordered reinstatement with back wages—High Court upheld the same—Challenge against—Held, on facts, after long passage of time, it is not proper to direct reinstatement—High Court's order in law is irreversible—*

D

*But in view of peculiar circumstances, management directed to pay Rs.2 lacs to workman in full and final settlement.*

E

The respondent-workman was dismissed from service and he raised industrial dispute. In Writ Petition filed by workman, the High Court directed the management to pay the subsistence allowance to the workman. As appellant-management did not pay the subsistence allowance, the Labour Court decided in favour of workman and refused the permission to the management to lead evidence. Thereafter they paid the subsistence allowance.

F

Aggrieved management filed writ petition before the High Court. High Court dismissed the writ petition. Hence the present appeal.

Disposing of the appeal, the Court

G

**HELD: 1.** One factor is clear that there was no date fixed for payment but dates were fixed before the Labour Court in the proceedings. The payment of subsistence allowance after the order of the Labour Court closing the evidence so far as the management is concerned cannot be termed as in any manner arbitrary. However, the order of dismissal was passed in 1992 and the industrial dispute was raised under s. 2A of the Industrial Disputes Act, 1947 on 11.5.1994 and a reference was made under Section 10(1)(c) of the Act thereafter. [Para 5] [620-D, E, F]

H

2. The management was required to give opportunity to the respondent to lead evidence on merits. Since the enquiry was allegedly not conducted in fair and proper manner, opportunity was granted to the management to adduce evidence. On the writ petition filed by the respondent-workman the High Court had issued notice. After this long passage of time it would not be proper to direct re-instatement and that too with back wages. It has been pointed out that the appellant is suffering huge amount of loss amounting to Rs.35 crores. In the facts and circumstances of the case of High Court's order in law is irreversible. But keeping in view the peculiar facts of the case, in full and final settlement of the claims of the respondent-workman a sum of rupees 2 lakhs is directed to be paid within a period of 6 months. The respondent-workman shall not have any further claim and/or the appellant shall have no liability so far as against respondent-workman is concerned.

[Para 6] [620-F, G, H; 621-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2144 of 2007.

From the Judgment and Order dated 08.04.2004 of the Punjab & Haryana High Court at Chandigarh in Civil Writ Petition No. 1655 of 2004.

S. Janani and Deepak Goel for the Appellant.

Paramjit Singh Patwalia, Amanpreet Singh Rahi, Kiran Suri and Devesh Tripathi for the Respondents.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant. In the writ petition challenge was to the award dated 10.12.2003 made by the Labour Court, Bhatinda, Punjab. By the said award the respondent No.1-workman was directed to be re-instated in service with continuity of service alongwith 50% back wages from the date of demand notice. Grievance before the High Court was that the appellant was not granted opportunity to lead evidence. It appears that in the writ petition No.14465 of 2001 the workman was directed to be paid the subsistence allowance. Since the subsistence allowance was not paid the Labour Court decided in favour of the respondent and the appellant was not granted permission to lead evidence. According to the learned counsel for the appellant, the course adopted was illegal. Learned counsel for the respondent-workman, however, supported the orders stating that the order of the Labour Court for payment of subsistence

A allowance was not illegal and, therefore, the High Court was justified in dismissing the writ petition.

3. A few details so far as the factual position is concerned need to be noted.

B 4. By order dated 18.9.2001 passed in C.W.P.No. 14465 of 2001 a Division Bench of the High Court had directed the matter to be listed before a learned Single Judge on 19.2.2002. Meanwhile, it was ordered that the pleadings in the case before the Labour Court were to be completed. It appears that the subsistence allowance amounting to Rs.5291/- was paid by the appellant vide demand draft dated 30.1.2002. But the Labour Court had closed the evidence C of the management vide order dated 5.12.2001 on the ground that the order dated 18.9.2001 passed by the High Court had not been complied with by that date. Undisputedly, the amount of subsistence allowance was paid to the workman after the evidence was closed by order dated 5.12.2001. The management had not paid the subsistence allowance to the workman. He was D not re-instated into service during the enquiry proceedings being conducted by the Enquiry Officer. It is true that no date was fixed. The High Court was of the view that looking at the conduct of the management no interference with the award of the Labour Court was called for.

E 5. One factor is clear that there was no date fixed for payment but dates were fixed before the Labour Court in the proceedings. The payment of subsistence allowance after the order of the Labour Court closing the evidence so far as the management is concerned cannot be termed as in any manner arbitrary. However, the order of dismissal was passed in 1992 and the industrial dispute was raised under Section 2A of the Industrial Disputes Act, 1947 (in short the 'Act') on 11.5.1994 and a reference was made under Section 10(1)(c) of F the Act thereafter.

G 6. There appears to be some confusion so far as factual position is concerned. The management was required to give opportunity to the respondent to lead evidence on merits. Since the enquiry was allegedly not conducted in fair and proper manner opportunity was granted to the management to adduce evidence. On the writ petition filed by the respondent-workman the High Court had issued notice. After this long passage of time it would not be proper to direct re-instatement and that too with back wages. It has been pointed out that the appellant is suffering huge amount of loss amounting of Rs.35 crores. In the facts and circumstances of the case the H High Court's order in law is irreversible. But keeping in view the peculiar facts

of the case we direct that in full and final settlement of the claims of the respondent-workman a sum of rupees 2 lakhs shall be paid within a period of 6 months from today. The respondent-workman shall not have any further claim and/or the appellant shall have no liability so far as against respondent-workman is concerned. A

7. The appeal is accordingly disposed of. There will be no order as to costs. B

DG.

Appeal disposed of.