

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL NO.1574 OF 2007

DIVISIONAL ENGINEER, PHONES KOCHI & ORS. ...
 APPELLANTS

VERSUS

GANAPATHI IYER ...
 RESPONDENT

ORDER

The respondent was working as a Telephone Operator under the appellant. Disciplinary proceedings were initiated against him in regard to a serious misconduct. After due inquiry, the Inquiry Officer submitted a report holding that the misconduct was proved. Consequently, the Disciplinary Authority passed an order dated 28.10.1997 imposing the punishment of compulsory retirement from service. That was challenged by the respondent before the Central Administrative Tribunal. Central Administrative Tribunal by order dated 25.02.2000 allowed the application filed by the respondent. It held that the inquiry was not valid. Consequently, the finding that the respondent was guilty and the punishment of "compulsory retirement from service" were set aside. The Tribunal directed reinstatement of respondent with all consequential benefits including full back wages. The said order was challenged by the appellant in OP No. 8485/2000 before the Kerala High Court. The High Court allowed the writ petition in part by order dated 6.6.2005. It held that the inquiry was valid and there was no arbitrariness. It also held that the evidence showed that the respondent was indiscreet and he should thank himself for his predicament. Having held the respondent guilty, the High Court however was of the view that the punishment of 'compulsory retirement from service' was disproportionate to the gravity of the proved misconduct. It therefore set aside the punishment of compulsory retirement and directed reinstatement with 75% of back

wages. The said order is under challenge in this appeal.

The respondent has already crossed the age of Superannuation and the only grievance is about the back wages to an extent of 75% awarded by the High Court. The principle relating to back wages where the Court finds that the inquiry was valid and the misconduct was proved but interferes with the punishment as being excessive has been considered by this Court in J.K. Synthetics Ltd. vs. K.P. Agrawal and another - 2007(2) SCC 433. This Court held :

"Where the power under article 226 or Section 11-A

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of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force....

Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc."

In this case, the respondent having been found guilty and the Court having interfered with the punishment only on the ground that it

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was excessive, the award of back wages was not justified. As the respondent was already reinstated by reason of the punishment being set aside on the ground that it was excessive, and as he subsequently retired from service, we do not propose to impose any lesser punishment in lieu of compulsory retirement from service. The direction for payment of back wages however is deleted. The appeal is allowed in part accordingly.

