

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6296/1997

M/s Tannery & Footwear Corpn. of India .. Appellant (s)
Petitioner(s)

Vs.

Raj Kumar & Anr. .. Respondent(s)
(With appln(s) for stay and permission to place addl.
documents on record)

With I.A. No. 3 as application for taking additional facts
and additional documents on record.

DATE :14.2.2001 : This/These matter (s) was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE S.N. PHUKAN

For Appellant (s) : Ms. Rachana Srivastava, Adv.

For Respondent (s) : Mr. Subhash Chandra Jain, Adv.(NP)

UPON hearing counsel the Court made the following
O R D E R

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The appeal is partly allowed by modifying the award
made by the Labour Court in the terms stated in the
signed order.

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(Meenu Sethi) (D.D. Jindal)
Court Master Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6296 OF 1997@@
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M/s Tannery & Footwear Corpn. of India .. Appellant

Vs.

Raj Kumar & Anr.

.. Respondents

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On the ground that the services of the respondent - Raj Kumar had been illegally terminated, a dispute was raised in the Labour Court at Kanpur. The Labour Court examined the matter and on consideration of pleadings and evidence on record came to the conclusion that the termination of services of the respondent from 20.7.1976 is illegal and he deserves to be reinstated in service with full back wages. When the matter was carried by way of a writ petition to the High Court against the order made by the Labour Court, the High Court dismissed the writ petition but limited to payment of 75% of the back wages calculated from 20.7.1976 upto the date of the reinstatement and thereafter full back wages. It is, thereafter this appeal had been filed by special leave and this Court granted an interim order staying the order of the High Court at the time of grant of leave.

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It is brought to our notice that during pendency of the proceedings, the appellant has been able to get the information that the respondent had been employed with the Elgin Mills Company Limited from 27.9.1979 to 16.9.1997.

Learned counsel for the appellant submitted that the burden of proof lay upon the respondent to establish that he was in the employment of the appellant and had worked for a period of 240 days in a year before termination of his services and no such material was made available. It is clear that neither the respondent produced any material in support of his case, nor to rebut the claim made by him any material was produced by the appellant. It is in these circumstances that the Labour Court came to the conclusion that on appreciation of the material on record such as Exhibit E-1 (Appointment letter) and Exhibit E-4 (the order of termination that the services of the respondent are not required from 20.7.1976) that the respondent had worked with the appellant for 240 days in a year. If that was the material on which the Labour Court placed reliance as no other material was placed by the appellant in rebuttal of the same, we think that the view taken by the Labour Court is in order. Therefore, the High Court was justified in not interfering with the award made by the Labour Court.

Inasmuch as material has been made available before us that the respondent was in employment from 27.9.1979 to 16.9.1997, it would not be appropriate to grant any back wages for that period. The respondent will be entitled to back wages from 17.9.1997 onwards. Therefore, in modification of the award made by the Labour Court and affirmed by the High Court with 75 % of back wages, the respondent shall be reinstated with back wages from 17.9.1997 onwards and not for the earlier period. The appeal is partly allowed by modifying the award made by the Labour Court in these terms.

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(S. RAJENDRA BABU)@@
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(S.N. PHUKAN)@@
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New Delhi,@@
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February 14, 2001.@@
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