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position in the present cases seems to be somewhat complicated by the finding of the learned Judges that in accordance with the custom of the parties in these cases it seemed probable that the widows had entered into some kind of so-called *Karewa* marriage with the brothers of their husbands. Thus the question which might arise is whether, if any kind of marriage is found to have taken place, they can still be regarded as widows. I would accordingly accept these applications and grant a certificate of fitness in each case, but the cases are treated as separate and not consolidated. The parties will bear their own costs on the applications.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Harbans Singh, J.

M/s. DALJEET AND CO. PRIVATE LIMITED,—*Appellant*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 229 of 1961.

1963

Nov., 28th.

Industrial Disputes Act (XIV of 1947)—Section 10—Dispute between management and workmen referred to Labour Court—Labour Court holding dismissal of some workmen wrongful and ordering their reinstatement with continuity of service and payment of two-thirds of the wages from the date of dismissal to the date of publication of the award—Some workmen held not entitled to reinstatement but full wages awarded to them for the said period—Whether proper.

Held, that the normal order, when a dismissal is set aside and the dismissed employee is reinstated with continuity of service, is for the payment of full wages from the date of the dismissal held to be wrongful to the date of reinstatement. This is so whether the dismissed employee is a Government servant or employed in a private industry. If an employer in an enquiry of this kind wishes the normal

order to be departed from, it is for him to raise this matter in the course of the enquiry and prove that the employee has been earning wages for the whole or any part of the period in question. Where this question is not raised and the Labour Court awards two-thirds of the wages for the period from the date of the wrongful dismissal to the date of reinstatement, the order is quite fair and proper and cannot be interfered with in a writ petition under Article 226 of the Constitution.

Held, that there is no difference in principle between compensation awarded by an Industrial Tribunal or Labour Court to a workman who has been wrongfully dismissed and to one who has been wrongfully and unlawfully retrenched, when no order is passed that the workman should be reinstated. It is open to the Industrial Tribunal or the Labour Court to award compensation to a workman for wrongful dismissal while rejecting his claim to reinstatement and it is not the function of the High Court under Article 226 of the Constitution to go into the question whether the sum awarded was excessive or justified.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment, dated 28th July, 1961, passed by the Hon'ble Mr. Justice S. B. Capoor, in Civil Writ No. 1530 of 1960.

H. L. SIBAL, S. C. SIBAL, AND RAMESH SETIA, ADVOCATES, for the Petitioner.

B. S. BINDRA, ADVOCATE, for the Respondents.

JUDGMENT

FALSHAW, C.J.—These are two cross appeals against an order of a learned Single Judge partially accepting a petition filed under Article 226 of the Constitution by one of the appellants, M/S. Daljeet and Co. Private Ltd. of Rupar. Falshaw, C.J.

The matter arose in the following way. The appellant company is engaged in the road transport business and in March, 1959 it entered into an agreement

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with another company, the Ambala Bus Syndicate Private Ltd., by which 28 workmen employed by the Syndicate were to be transferred to the service of the company. The result of this agreement was that the 28 workmen in question became the employees of the company as from the 10th of March, 1959, but a number of them objected to being transferred in this manner on the allegation that the transfer was intended to break up their unity and was a measure of victimisation. These workmen raised an industrial dispute which was referred for adjudication to the Industrial Tribunal at Patiala. That dispute, however, was withdrawn, the formal decision being by an award of the Tribunal dated the 31st of May, 1960 published in the Punjab Government Gazette on the 24th of June, 1960.

In actual fact that dispute had been superseded by the dispute which culminated into the award of the Labour Court at Rohtak dated the 13th of August, 1960 which was attacked by two petitions filed in this Court, one by the Company under Article 226, and one by some of the workmen under Article 227 of the Constitution.

The dispute referred to the Labour Court related to the dismissal of 18 workmen, whose names were listed serially in the notification, by M/S Daljeet and Co. with effect from the 10th of April, 1959. The issue framed was, "whether the dismissal of the following workmen is justified and in order, if not, to what relief each of them is entitled." One of the workmen named Charan Singh whose name appeared No. 18 in the list had apparently disappeared from the scene entirely. Regarding the other 17, the Labour Court held that they had never absented themselves from duty after the 11th of March, 1959, or at any date after the 23rd of March, and that they had been illegally dismissed by the management for their alleged wilful absence from duty in spite of notices.

By way of relief the Labour Court ordered the reinstatement of 13 of the workmen with continuity of service and ordered the payment of two-thirds of their wages from the date of their dismissal to the date of the publication of the award. These workmen were directed to report for duty within 15 days from the publication of the award.

Regarding the remaining four workmen named Ram Gopal, Sadhu Singh, Baldev Singh and Ram Singh, it was found that there were grounds for not ordering their reinstatement, which would be bound to cause disharmony and disturb the peace of the business, because it was found in the enquiry that they had made and supported a false report to the police against the Managing Director of the company. In these circumstances they were awarded compensation equivalent to their full wages from the date of their dismissal to the date of the publication of the award.

The learned Single Judge dismissed the petition of the workmen and also dismissed the petition of the company as regards the order of the reinstatement of 13 of the workmen and payment of arrears at the rate of two-thirds of their wages. The petition of the Company was, however, accepted to the extent that the part of the award by which compensation was awarded to the four workmen whose reinstatement was not considered to be justified was quashed. Appeals have been filed against his order by the company and by the four workmen who have thus been deprived of compensation.

In the appeal of the company, although in the grounds of appeal all that part of the award which has been left intact by the learned Single Judge was attacked, including the findings of fact as to the rights and wrongs of the dismissal, the learned counsel for the appellant has confined his argument to an

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attack on the award of wages at the rate of two-thirds for the period from the date of dismissal, the 10th of April, 1959, to the date of the publication of the award, the 13th of August, 1960. His argument is that there is no material whatever on the record to show to how much compensation the workmen whose reinstatement was ordered were entitled, and thus in fact only one of these workmen actually appeared as a witness before the Labour Court. Reliance is placed on the decision in *The Rohtak Delhi Transport* (P) *Ltd.* v. *Ch. Risal Singh and another* (1). In that case a driver had been dismissed and the resulting dispute was referred to a local lawyer as arbitrator under section 10-A of the Industrial Disputes Act. The terms of reference were, "whether Shri Manohar Lal who has since been dismissed at the inquiry is entitled to any compensation, and if so, to what amount". The arbitrator in his brief award found that the enquiry had not been properly conducted and was almost *ex parte,* and that the workman had not been given any opportunity for his defence, which was against the principles of natural justice and law, and he then proceeded to award the driver Rs. 2,700 as compensation without indicating how this sum was arrived at. It seems that the driver had put in a detailed statement of his claim which was for Rs. 4,578. Grover J. held that the award must be quashed because the award of the arbitrator exercising judicial functions should *ex facie* show the reason on which it was based and should disclose that it is the result of a quasi-judicial approach by one who is called upon to adjudicate upon important contested claims. The learned Judge was of the opinion that the arbitrator ought in his award to have given some indication of the various accounts on which he awarded compensation totalling Rs. 2,700 and given some indication

(1) I.L.R. (1963) 2 Punj. 84=AIR 1963 Punj. 472.

of what items in the detailed statement of claim he was allowing and what items he was disallowing. Dua J. agreed with the order, but wrote a separate judgment in which he considered that the matter was one of some difficulty, and that he had some hesitation in agreeing with the views of his learned brother.

In my opinion this decision has little or no bearing on the question raised by the learned counsel for the appellant in the present case. In the first place it only deals with damages for dismissal and not with reinstatement and it seems to me that the normal order when a dismissal is set aside, and the dismissed employee is reinstated with continuity of service, is for the payment of full wages from the date of the dismissal held to be wrongful to the date of reinstatement. This is so whether the dismissed employee is a Government servant or employed in a private industry, and in the present case the Labour Court has actually only allowed wages for the period in question at the rate of two-thirds. It seems to me that if an employer in an enquiry of this kind wishes the normal order to be departed from, (and the only ground I can think of which would justify such a course would be that during the period in question the dismissed employee had obtained employment and been paid wages by another employer,)it is for the employer to raise this matter in the course of the enquiry and prove that the employee has been earning wages for the whole or any part of the period in question, but no such allegation appears to have been made at any stage in the present case. I am therefore of the opinion that there is no force in the appeal of the company.

Turning to the appeal of the four workmen who were held not to be entitled to reinstatement, but were awarded full wages for the period in question, of

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which they have been deprived by the decision of the learned Single Judge, the learned counsel for these appellants has argued that this part of the order could not properly be passed by the learned Single Judge. It is pointed out that the ground on which the dismissal of all the 17 workmen was ordered by the company on the 10th of April, 1959 was the same, namely that they had wilfully absented themselves from duty from the 11th of March, 1959 onwards in spite of notices, and no separate charge was brought in the enquiry which led to the omnibus order of dismissal against these four workmen regarding any alleged false report made to the police about an assault by an officer of the company on any workman. It was argued that the Labour Court was quite justified in coming to the conclusion that although this false charge might justify the refusal of an order for reinstatement on the ground that the strained relations resulting therefrom might cause future trouble, they were nevertheless entitled to some compensation for their wrongful dismissal and it was contended that it was not for this Court in a petition under Article 226 to enter into the question of whether the quantum of compensation awarded was justified or not.

In this connection reliance is placed on a decision in *M/S Swadesamitran Ltd.* v. *Their workmen* (2). This was a case relating to compensation for retrenchment and two main points of contention arose, firstly whether the retrenchment was unjustified and improper and secondly the amount of compensation found suitable by the Industrial Tribunal which had adjudicated on the dispute.

It is to be remembered that this was an appeal in the Supreme Court under Article 136 of the Constitution, and I do not think it can be questioned that the

(2) A.I.R. 1960 S.C. 762.

powers of the appellate Court in such a matter are wider than the powers of this Court under Article 226 of the Constitution. In that case it was found that the retrenchment was unjustified and improper, and regarding compensation it was held that compensation to be awarded to retrenched workers is a matter of discretion for the Labour Tribunals and as such is not open to challenge in appeal before the Supreme Court.

I cannot see any difference in principle between compensation awarded by an Industrial Tribunal or Labour Court to a workman who has been wrongfully dismissed and to one who has been wrongfully and unlawfully retrenched, when no order is passed that the workman should be reinstated.

I find it impossible not to sympathise to some extent with the view of the learned Single Judge that there is something illogical in awarding wages at full rate to the four workmen whose reinstatement was considered inadvisable because of some act of misconduct on their part, while only awarding wages at the rate of two-thirds to the workmen who were being reinstated, and I would have had no hesitation at all in holding that the workmen should not be held to be entitled to any compensation at all if their dismissal had been based on the alleged false report to the police as well as on their alleged absenting themselves from duty. Nevertheless, I am of the opinion that the Labour Court could award them compensation for wrongful dismissal while rejecting their claim to reinstatement, and that it is not the function of this Court under Article 226 to go into the question whether the sum awarded was excessive or justified. The result is that I would dismiss the appeal of the company and accept that of the four workmen and set aside the order quashing the award of the Labour Court for payment of wages to them from the date of their dismissal to the date of the publication of the

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award. I consider it a fit case in which the parties may be left to bear their own costs.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

GOBINDA,—*Appellant*

versus

ARJAN AND OTHERS,—*Respondents*

Regular Second Appeal No. 528 of 1957.

1963

Dec., 2nd.

Code of Civil Procedure (V of 1908)—Section 152—Appeal from a decree filed—Decree corrected thereafter—No appeal filed from corrected decree—Appeal from original decree—Whether competent.

Held, that the real test to determine whether it is the original decree or the amended decree from which an appeal has to be filed is to see whether the first decree had been substituted by the second one. Section 152 of the Code of Civil Procedure in reality refers only to correction of a decree and not to an amendment. Where, therefore, a correction is made at the instance of one of the parties after the appeal had been filed from the original decree and it does not in substance alter the nature of the decree, the appeal from the original decree was competent and it was not necessary to file an appeal from the corrected decree.

Regular Second Appeal from the decree of the Court of Shri G. K. Bhatnagar, Senior Sub-Judge, with Enhanced Appellate Powers, Hissar, dated the 29th day of January, 1957, modifying on the plaintiff's appeal that of Shri Rampal Singh, Sub-Judge, 1st Class, Hissar, dated the 8th May, 1956.

GANGA PARSHAD JAIN, ADVOCATE, for the Appellant.

FAQIR CHAND MITTAL, ADVOCATE, for the Respondent.