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**Central Administrative Tribunal  
Jabalpur Bench**

OA No.610/05

Jabalpur, this the 30<sup>th</sup> day of August 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Mr.A.K.Gaur, Judicial Member

Smt.Leelabai

W/o Kanhaiyalal

N.M.R.Mali

C/o Central P.W.D.

Mazdoor Union

Camp 3216, BNP Colony

Dewas (MP).

Applicant

(By advocate Smt. Swati Ukhale)

Versus

1. Union of India through  
Director  
Horticulture Department  
I.P.Bhawan, C.P.W.D.Office  
"Indra Prastha" Estate  
New Delhi.
2. Assistant Director of Horticulture  
Horticulture Sub Division  
C.P.W.D.,Indore.
3. Deputy Director Horticulture  
Nirman Sadan, Near Govt. Press.  
Bhopal.

Respondents

(By advocate: Shri Umesh Gajankush)

ORDER

By A.K.Gaur, Judicial Member

By filing this OA, the applicant has challenged the action of the respondents in not paying full back wages to her who was reinstated in service vide the order of this Tribunal dated 13.5.2003 (A-5).

2. The applicant initially entered the service of the respondents as casual labour. In accordance with the Scheme for regularization of

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casual labour, the applicant was granted the status of temporary employee vide order dated 14.10.94 (A-2). Subsequently, the respondents vide order dated 29.11.97 retired the applicant on ground that she had attained the age of superannuation. The action of the respondents was challenged by the applicant by filing OA No.233/98 and this Tribunal set aside the termination and directed the respondents to pass a speaking order afresh after affording an opportunity of hearing to the applicant.

3. It has been contended on behalf of the applicant that though the respondents have reinstated the applicant, they have not paid back wages to the applicant despite repeated requests made by her.

4. On the other hand, the stand taken by the respondents in their reply is that as per the order dated 24.6.2004, the applicant was reinstated as 'Mali' on the muster roll and therefore, at the time of the joining of the services in pursuance of the reinstatement order dated 24.6.2004, it was well within the knowledge of the applicant that there was no mention about payment of back wages. Thereafter, for one year the applicant slept over the matter and just before completion of one year the present OA was filed and therefore the applicant is estopped from raising her grievance. According to the respondents, grant of back wages is the discretion of the employer looking into the facts and circumstances of each case and the same cannot be claimed as a matter of right. It has also been contended on behalf of the respondents that while passing the order dated 13.5.2003 in OA No.233/98 the Tribunal had only directed the respondents to give an opportunity of hearing and then it was observed that the respondents may proceed to take a decision afresh in the matter. The Tribunal had also observed that reinstatement or any other consequential benefits would be dependent on the outcome of investigation and order passed by the respondents as directed. While passing the order of reinstatement, the competent authority did not pass any order with regard to payment of back wages. After joining the services without any demur or protest, now the applicant is estopped from raising such grievance.

5. Having heard the counsel for both the parties and perused the records, we find that back wages cannot be claimed as a matter of right consequent on reinstatement in service and the same is to be granted considering the facts and circumstances of each case. Since the applicant has not at all worked during the intervening period, she is not entitled to back wages on the basis of the principle of "no work no pay".

6. It will be appropriate to observe that the present application is also barred by the principle of order 2 of Rule 2 of CPC and the doctrine of constructive res-judicata – 1997 SCC (L&S) 135.

7. We may also observe that the reinstatement or any other consequential benefit is dependent on the outcome of the investigation and orders passed by the respondents. Looking to the directions of the Tribunal, it was left open to the respondents to take a decision with regard to reinstatement or for any other direction regarding back wages. While passing the order of reinstatement, the discretion was exercised by the competent authority and that authority did not grant payment of back wages. Now after joining the services, the applicant is not entitled to challenge non-grant of back wages and non-grant of regular status.

8. The Hon. Supreme Court in (2003) 2 SCC 212 - A.P.SRTC & another Vs. S.Narsagaud has observed in Para 9 as follows:

"There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits or to the benefit of the increments earned during the period of absence".

9. In the present case, neither there is a direction for continuity of service nor there a positive direction for entitlement of all consequential benefits. In our considered view, the applicant cannot claim the benefit of back wages.

10. The aforesaid decision has also been followed in several subsequent decisions of the Apex Court - 2005 6 SCC 36 - A.P.SRTC

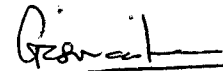
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Vs. Abdul Karim; 2005 (7) SCC 406 - Rajasthan SRTC Vs. B. Lall; 2005 8 SCC 58.

11. Learned counsel for the respondents has vehemently argued that payment of back wages having a discretionary element involved in it has to be dealt with in the facts and circumstance of each case and no straight-jacket formula can be evolved.

12. In view our aforesaid discussion, we are of the considered view that the applicant is not entitled to get back wages. The OA is misconceived and is dismissed.

  
(A.K. Gaur)  
Judicial Member

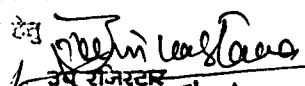
  
(Dr. G.C. Srivastava)  
Vice Chairman

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पूरांकन सं ओ/न्या.....जबलपुर, दि.....  
प्रतिलिपि जारी किया -

- (1) सचिव, राज्य सरकार, राजधानी, जबलपुर
- (2) अध्यक्ष, पी.पी.सी., पु.....के कारुसल
- (3) प्रत्यक्षी श्री/श्री/श्री/प.....के कारुसल
- (4) अध्यक्ष, को.प्र.आ., ज.प्र.रा. जलपदीत

सूचना एवं आवश्यक कार्यवाही हेतु

  
7/9/06.

Swati Ukhale  
Dr. Indore  
U. Gagan Karu  
Dr. Indore

Done  
on 7/9/06  
