

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.2891/2008**

% **Date of decision : 09.04.2008**

Sh.Ram Phal Petitioner
Through: Mr.Virender Singh, Advocate.

Versus

Delhi Transport Corporation Respondent
Through: Ms.Latika Chaudhary, Advocate.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioner has impugned the award dated 20th December, 2006 to the extent awarding 50% of the wages from the date of termination till reinstatement.

2 The petitioner was employed with the respondent and he was served a chargesheet on account of availing 54 days leave without pay during the period 1st January, 1985 to 31st July, 1985 which according to the respondent reflected lack of interest in the Corporation work and in the performance of his duty. Pursuant to the chargesheet issued to the workman an enquiry was conducted and he was terminated with effect from 30th October, 1987. An appeal filed by the petitioner was also dismissed. Thereafter the petitioner raised the industrial dispute regarding his termination of service and an award dated 11th September, 2002 reinstating the workman was passed.

3. Against the award dated 11th September, 2002 a writ petition being W.P(C) No.5703/2003 was filed where the award dated 11th September, 2002 was set aside and the matter was remanded back to the Labour Court for fresh adjudication.

4. By the award dated 20th December, 2006 the following reference has been decided again.

“Whether the removal from services of Shri Ram Pal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

5. The Labor Court has held by award dated 20th December, 2006 that the petitioner is entitled for reinstatement, however, in the peculiar facts and circumstances of the case it is further held that it will not be judicious and prudent to award the workman full back wages and, therefore, following the golden rule the petitioner has been awarded 50% of the back wages.

6. The petitioner has challenging the award of 50% of the back wages only and not the full back wages on the ground that his services were terminated in an illegal and unlawful manner and on the ground that the petitioner remained unemployed and could not find any other alternative job inspite of his best efforts.

7. The Labour Court has considered the ratio of G.T.Lad Vs. Chemicals Fibres of India Ltd, 1979 (38) 95 SC= (1979) 1 SCC 590. The Labour Court has considered the probability that the petitioner is a technical person and in order to sustain himself he must have been doing in all probabilities odd jobs. The fact that the petitioner remained absent for 29 days was also considered by the Labour Court in awarding only 50% of the back wages.

8. A division bench of this Court in 2006 IV AD (DELHI) 739 (DB); Lords Homeopathic Laboratories Private Ltd. Vs Ms. Lissi Unnikunju & ors had held that the discretion exercised by the Labor Court in awarding compensation should not ordinarily be interfered with. The Court had held as under:

21. We are of the opinion that the learned Single Judge in writ jurisdiction should not have interfered with the discretion of the Labour Court on the facts of the case.

9. The inference of the Labour Court in awarding 50% of the back wages is based on the cogent reason and the law laid down by the Apex Court. The Labor Court being the final court of facts, therefore, the superior Courts do not normally interfere with the findings of facts. In *Allahabad Jal Sansthan v. Daya Shankar Rai*, (2005) 5 SCC 124, at page 127 :

“6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration.

In the same case the Supreme Court had also held that an industry cannot be compelled to pay the workman for a period during which he apparently contributed little or nothing at all and the period

which was spent unproductively. The Supreme Court had held as under:

16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.”

In *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (2001) 2 SCC 54 this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus: (SCC p. 57, para 9)

“9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect.”

10. Factors which would be considered by the court while awarding back wages would include the time involved in the litigation and causes of the delay; the status of the management as a public body meant for public benefit; possibility of the worker being gainfully implied; nature of the alleged misconduct; ensuing financial burden; delay in raising an industrial dispute; duration of the employment and the nature of the employment. Labor Court has granted 50% of back wages after considering these factors. No manifest error has been pointed out by the learned counsel for the petitioner except that the termination of the petitioner was illegal. There is no perversity in the award dated 20th December, 2006 awarding only 50% of the back wages and this Court will not be justified in interfering with the same in the present facts and circumstances of the case.

11. In the circumstances there are no grounds to interfere under Article 226 of the Constitution of India and the writ petition is, therefore, dismissed.

April 9th, 2008.
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ANIL KUMAR, J.