

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

+ **W.P.(C) No.2895/2008**

% **Date of decision : 09.04.2008**

Bharat Sanchar Nigam Ltd. & Others Petitioners
Through: Ms.Raavi Birbal, Advocate.

Versus

Satyavir Respondent
Through: Nemo.

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/management has impugned the award dated 19th September, 2007 of the Central Government Industrial Tribunal cum Labour Court II directing reinstatement of the respondent with 25% of the back wages.

2. Learned counsel for the petitioner has not disputed that the respondent was a workman and he had worked for more than 240 days

in the years 1998, 1999, 2000, 2001 and 2002. Learned counsel contends since the respondent was not a regular workman, he cannot be reinstated. While ordering the reinstatement, the Tribunal has noted that compensation is payable in a case where an undertaking has become sick or which has been closed or it is in economic losses. The petitioner has neither become sick nor has been closed nor there is any evident that it is running in the economic loss.

3. Learned counsel for the petitioner has relied on case of Uma Devi, however, the finding of the Tribunal that the Apex Court has not declared the provisions of I.D. Act unconstitutional and in cases of violation of Section 25 F, the workman is entitled for reinstatement cannot be faulted. While directing the petitioner to reinstate the workman, the Industrial Tribunal has not directed the petitioner to regularize the worker. The Tribunal has categorically noted that the management/petitioner is at liberty to engage the daily wager but at the time of termination of their services the provisions of Section 25 F has to be complied with and in case the provisions of Section 25 F are not complied, the petitioner is liable to reinstate the workman. The reasoning and finding of the Industrial Tribunal cannot be faulted in the facts and circumstances nor the learned counsel for the petitioner is able to show to the contrary.

4. Learned counsel for the petitioner has relied on Rolston John v. Central Government Industrial Tribunal-cum-Labour Court and Others, 1995 Supp (4) Supreme Court 549 and 2005-III-LLJ Supreme Court 52, General Manager, Haryana Roadways v. Rudhan Singh. Perusal of the judgments relied on by the petitioner, it is apparent that they are distinguishable. In Rolston John (supra), it was rather held by the Apex Court that retrenchment without complying with its requirements is void. In the abovementioned case relied on by the petitioner, the workman was not reinstated, as time of 18 years had lapsed since the workman was dismissed without complying with the provisions of Section 25 F. Apparently, the case of the respondent is different and distinguishable as his services were terminated in December 2002 without complying with the requirement of Section 25 F of Industrial Disputes Act, 1947 and in the circumstances, reinstatement of the workman cannot be faulted nor on the basis of the ratio of Rolston John (supra) it can be held that the respondent was not liable to be reinstated.

5. In General Manager, Haryana Roadways (supra), the Supreme Court had held that there is no rule of thumb that in every case where the termination of service was held to be in violation of Section 25 F of the Act, entire back wages should be awarded. It was held that host of

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facts like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, i.e., ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like has to be considered inferring as to the quantum of back wages to be awarded.

6. In the present case, the respondent/workman has been reinstated after his termination in 2002 and only 25% of the back wages has been awarded. 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. 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.

7. The Labor Court being the final court of facts, therefore, the superior Courts do not normally interfere with the findings of facts. In *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (2001) 2 SCC 54 Supreme 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.”

8. The learned counsel for the petitioner has relied on the case of Uma Devi (supra) which was on service law. Apparently the ratio of the case of Uma Devi (supra) is not applicable to the present case. The respondents were workmen under the Industrial Disputes Act, 1947. Section 25-F of the Act had to be complied with if the respondent had put in 240 days of service in the year prior to the date of termination of service. Respondent had admittedly put in over 240 days of service.

Hence the termination of his service was illegal, since compliance of Section 25-F is a condition precedent to the termination of service. The plea of the petitioner that in the circumstances, the respondent could not be reinstated cannot be accepted.

9. In the circumstance, there are no ground to interfere with the award dated 19th September, 2007 which neither has any manifest error or any error apparent so as to entail interference by this Court under Article 226 of the Constitution of India.

10. The writ petition, therefore, is without any merit and it is dismissed.

April 9th, 2008
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ANIL KUMAR, J.