

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

+ **WP (C) Nos. 4457/2000**

% Judgment delivered on: 01.04.2009

Haryana Roadways Petitioner
Through: Mr. Yashpal Rangi, Advocate

Versus

Sh. Ramesh Kumar Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. (Oral)

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1 . By way of this petition filed under Article 226 of the Constitution of India the petitioner seeks to challenge the impugned award dated 2.12.1999 whereby directions were given to the petitioner to reinstate the respondent into service with continuity of service with 50% back wages.

2 . Brief facts relevant for deciding the present petition are as under:-

 The respondent/workman started working with the petitioner management on daily wage basis w.e.f. 17.3.1988. On 18.11.1988 after continuous service of 240 days the respondent was terminated from his service by the petitioner without complying the principles of Section 25 F of the I.D. Act and since no retrenchment compensation was paid or offered to him, the termination of his services was held to be illegal. The management/petitioner did not follow the principles of 'first come, last go' in as much as the persons junior to the workman continued to work while his services were terminated. Although a writ petition bearing No. CW No. 1083/1989 was filed by the respondent/workman in the High Court of Punjab and Haryana at Chandigarh but the same was dismissed as withdrawn with the direction that he should approach the Labour Court. Thereafter the workman raised the Industrial Dispute and on failure of the conciliation proceedings the appropriate government referred the dispute before the Labour Court wherein the Tribunal held the termination of services of the workman to be illegal and unjustified. The Tribunal further

directed the petitioner management to reinstate the workman/respondent into service with continuity of service with 50% back wages. Aggrieved with the said award the management has preferred this petition.

3 . Counsel for the petitioner states that the award dated 2.12.1999 was complied with by the petitioner so far as the reinstatement of the respondent was concerned and therefore this court has only to decide the controversy with regard to the entitlement of the respondent to the grant of 50% back wages as awarded by the Tribunal. Opposing the grant of 50% back wages to the respondent/workman the counsel for the petitioner submits that the respondent was not entitled to the said 50% back wages as the respondent himself caused considerable delay in raising the dispute against his alleged termination. In support of his argument counsel for the petitioner placed reliance on the judgment of the Apex Court reported in **1997 SLR 237 Himanshu Kumar Vidyarthi Vs. State of Bihar and others.** Counsel further submits that the respondent had worked with the petitioner management only for a period of eight months and after his alleged termination he was not sitting idle and was doing agriculture work in his village.

4. Refuting the said submission of the counsel for the petitioner, counsel for the respondent submits that simply because the respondent had been doing some agriculture work in his village cannot come in his way so as to deny him the benefit of back wages. Counsel further submits that already the court has taken the said fact into consideration and had awarded only 50% back wages. Counsel further submits that there was no delay on his part to raise the dispute against his termination as earlier the respondent had filed a writ petition against his termination but the same was dismissed as withdrawn with the liberty to the respondent to raise an industrial dispute. Counsel thus submits that respondent has always been diligent to seek his remedy against the illegal action of the petitioner.

5. I have heard counsel for the parties and gone through the record.

6. The judgment of the Apex Court reported in **Himanshu Kumar Vidyarthi (Supra)** no doubt lays down the guidelines that it is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service is held illegal entire back wages necessarily should be awarded. A host of other factors have to be taken into

consideration by the Tribunal before giving directions for granting back wages. Para 8 of the said Apex Court judgment is referred as under:-

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors 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, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

7. No doubt that in the recent past there has been a shift in the approach as in certain cases the courts have also awarded compensation but facts of each case have to be taken into consideration for giving appropriate and just directions. In this regard, the Hon'ble Apex Court has in **G.M. Haryana Roadways Vs. Rudhan Singh - (2005) 5 SCC 591** has followed the said decision in Himanshu Kumar Vidyarthi (Supra)

reiterating that facts of each case are to be considered prior to giving appropriate directions.

8 . In the facts of the present case, already the Tribunal had given a direction for reinstatement of the respondent and which infact has already been granted by the petitioner but full back wages were denied to the respondent considering the fact the he was partially employed in carrying on the agriculture work. Already the Labour Court has taken the said partial employment into consideration. I do not find that there is any further justification to deny 50% back wages to the respondent. The termination of the respondent was held to be illegal and once that view was taken, the normal rule is to grant full back wages but the same can be denied depending upon the facts of each case. Nevertheless, when such wages are denied then the courts must spell out sufficient reasons for denying the said wages. The Apex Court judgment cited by the petitioner is not applicable to the facts of the present case more particularly when the petitioner has already granted reinstatement to the respondent.

9 . In the light of the above position, I do not find that there is any merit in the petition. The same is hereby dismissed.

April 01, 2009
pkv

KAILASH GAMBHIR, J.