

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 2297/2003

Judgment delivered on: February 06,2009

University of Delhi

..... Petitioner

Through: Mr.S.K. Luthra, Advocate with
Mr. Pankaj Agarwal, Advocate

versus

Sh. Tilak Ram

..... Respondents

Through: Mr. Rani Chhabra, Advocate
with Ms. Madhuri Gupta, Advocate.

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)

1 . By way of this writ petition filed under Article 226 of
the Constitution of India, the petitioner seeks to challenge the

impugned award dated 01.08.2002 passed by Sh. T.R. Naval, Presiding Officer, Labour Court No.III, Karkardooma Courts, Delhi.

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

The respondent workman was working with the petitioner Management as a Peon w.e.f. 18.04.1995 as daily wager. He joined Faculty of Law, University of Delhi. His counterparts who were regular employees were being paid in the pay scale of Rs.750-940 with usual allowance. The management terminated his services w.e.f. 11.09.1997 without assigning any valid reason illegally and unjustifiably. He was employed against regular nature of job and against vacant post of Peon and was treated as casual daily rated workman. His juniors were retained in service and he was thrown out of the job. The management did not display the seniority list at the time of termination of his services. Neither notice was given to him nor any notice pay was offered or paid to him. Like wise, neither service compensation was offered nor paid to him. He had acquired the status of permanent employee after completing

90 days continuous service with the management. Even after his completing 240 days continuous service with the management, he was not regularized in the employment. He has been without employment since termination of his services. A demand notice dated 3.8.1999 was sent to the Dean & Head of Deptt. of Faculty of Law and he did not receive any reply. Thereafter the respondent/workman approached the Labour Court for passing an award for his reinstatement in service with full back wages. Accordingly, a reference was made to the Labour Court & Labour Court made an award dated 1.8.2002, impugned herein.

3 . Mr. S.K. Luthra, Counsel appearing for the petitioner submits that the services of respondent/workman were engaged for the work of Peon as a daily wager @ Rs. 62.80 per day particularly for a fixed period of term. Thereafter, the respondent/workman was engaged on daily wages basis occasionally from time to time for fixed periods depending upon the exigency of work. Counsel further states that the services of the respondent/workman were never continuous in nature and even otherwise they were never satisfactory as per the required standard. Counsel further submits that the question of

termination of respondent never arose as he was appointed for a fixed period. Counsel thus states that the respondent is not entitled to reinstatement and at the most he can be suitably compensated. Counsel for the petitioner has placed reliance on the judgment of this court in **LPA No. 179/2007 dated 09.09.2008 Sushil kumar Vs. University of Delhi** wherein the Division Bench had decided that the reinstatement need not invariably be the relief to be granted and that in lieu thereof compensation can be awarded and in the given facts of the case the petitioner can suitably compensate the workman. Counsel for the petitioner has placed reliance on the letter of appointment dated 8.11.1996 to support his argument that the appointment of the respondent/workman along with two other such employees was for a period of six months i.e. till 2.4.1996.

4 . Opposing the present writ petition , Ms. Rani Chhabra, the counsel for the respondent states that the respondent was in continuous employment with the petitioner university after having completed 240 days of continuous work preceding the date of his termination. Counsel further submits that for no fault of the respondent his services were terminated

without adhering to the provision of Section 25 FFF of the Industrial Disputes Act. Counsel thus states that the award passed by the Tribunal is neither illegal nor perverse warranting any interference by this court.

5 . I have heard counsel for the parties and perused the record.

6 . Indisputably, the respondent remained in employment with the petitioner till August, 1997 whereafter he was not assigned any duties. It is also not in dispute that the provisions of Section 25 FFF of the I.D. Act were not adhered to by the petitioner before dispensing with the services of the respondent. Order under Section 17-B of the Industrial Disputes Act has already been passed by this court taking a prima facie view of the matter that the respondent could not secure any gainful employment during the pendency of the present petition. It is not a case set up by the petitioner that the respondent had worked merely for some short period i.e. below 240 days and his job came to an end before the expiry of such mandatory period of 240 days. The Tribunal after taking into consideration the evidence adduced by the parties came to the conclusion that

the petitioner management failed to prove the issue No.1 to prove that the respondent/workman was appointed only for a fixed period due to exigencies of the work. With regard to Issue No.2 also the Tribunal affirmed that the petitioner did not comply with the mandatory requirement of Section 25 FFF of the Industrial Disputes Act and accordingly the termination of the respondent was held to be illegal. It was not the case of the petitioner that there was any allegation of mis-conduct of the respondent on record which alone could have disentitled the respondent for reinstatement.

7 . In the light of the above position, I do not find any illegality or perversity in the impugned award directing reinstatement of the respondent/workman with 50% back wages. The judgment of the Division Bench relied upon by the petitioner is not applicable in the facts of the present case.

8 . It is a settled legal position that in given facts of the case the tribunal can always direct grant of compensation alone but there is no such settled or strait jacket principle that in all cases only reinstatement is to be directed with back wages or it is only back wages or only compensation.

9. The decision of Federal Court in the case of **Western India Automobiles Association v. Industrial Tribunal reported in AIR 1949 FC 111** settled the legal position which still hold good that an Industrial Tribunal has jurisdiction to direct reinstatement and in a case of wrongful dismissal reinstatement is the normal rule. However, there are exceptions to this rule and these exceptions have been recognized in various judgments. Re-instatements has not been considered desirable in cases where there have been strained relationships between employer and employee or there is lack of trust or loss of confidence. Reinstatement is also denied when an employee had been found to be guilty of subversive activity or acting prejudicial to the interest of the Industry. Courts have also denied reinstatement with back wages in cases where long time has lapsed. Reference in this regard may be made to the judgment of the Supreme Court in cases of **Rattan Singh v.. Union of India, (1997) 11 SCC 396; Rolston John v. Central Government Industrial Tribunal-cum-Labour Court, 1995 (Supp) 4 SCC 549: (1994 Lab IC 973); Gujarat State Road Transport Corporation v. Mulu Amra, 1995 Supp (4) SCC**

548: AIR 1994 SC 112 and MP Shikshak Sangh v. State of MP, 1995 Supp (1) SCC 556. Since none of the exceptions are attracted herein, thus, the normal rule of reinstatement should not be disturbed.

10 . In any event of the matter I do not find that the order of the Labour Court directing reinstatement in the present case is arbitrary or perverse.

Dismissed.

February 06, 2009
pkv

KAILASH GAMBHIR, J.