

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

+ **Writ Petition (Civil) No.8461/2009**

Date of Decision : 01.05.2009

Suresh Babu

.....Petitioner

Through : Appearance not
given.

Versus

M/s Indraprastha Gas Limited

..... Respondent

Through : Nemo.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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

V.K. SHALI, J. (Oral)

1. The petitioner by virtue of the present writ petition has challenged the award dated 29th February, 2008 passed by the learned Labour Court No.XVIII in ID No. 567/06/03 in case titled **Shri Suresh Babu Vs. M/s Indraprasha Gas Limited**. By virtue of the aforesaid award the learned Labour Court has decided the issue framed by it that the petitioner had not remained unauthorisedly absent from the service as claimed by the management. On the contrary he was not permitted to resume his duties w.e.f. 9th January, 2003, and therefore, it was held that the termination of his services was in violation of provisions of 25F of the Industrial Disputes Act, 1947. However, instead of ordering the reinstatement and payment of full back wages, the

learned Labour Court directed the payment of Rs.75,000/- towards the full and final settlement in lieu of reinstatement and payment of back wages.

2. Briefly stated the facts of the case are that the petitioner claimed himself to be employed by the respondent/management on 28th June, 2000 as a temporary driver requiring him to drive vehicle under the City Gas Control Room. It is alleged by him though he worked till 8th January, 2003, however, the respondent without any rhyme or reasons did not permit him to join the duties from 9th January, 2003 and treated him to be absent.

3. The plea of the respondent that the petitioner had abandoned his job was not believed and the learned Labour Court held that though the petitioner was working as a temporary driver but the law did not make any distinction between the temporary, contractual or permanent so far as the dispensing of his services is concerned. Since the provisions of Section 25F of the Industrial Disputes Act, 1947 were not complied with, therefore, his termination was held to be illegal and unjustified and in violation of 25F of the Industrial Disputes Act, 1947.

4. As stated hereinabove instead of payment of full back wages and reinstatement, the petitioner was given a lump sum compensation of Rs.75,000/-.

5. The petitioner feeling aggrieved by the aforesaid award and has challenged the same before this Court by way of present writ.

It was contended by the learned counsel for the petitioner that once the learned Labour Court came to a conclusion that the termination of the petitioner was illegal and unjustified as a necessary consequence the learned Labour Court should have directed reinstatement and payment of full back wages rather than granting him a compensation of Rs.75,000/-. In support of his contention the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in case titled **Vikramaditya pandey Vs. Industrial Tribunal, Lucknow & Anr.** 2001 (I) LLJ page 701. I have gone through the said authority. I do not agree with the contention of the learned counsel for the petitioner that this was a case where on account of holding of the termination of the petitioner as illegal and unjustified the learned Labour Court ought to have granted the benefit of reinstatement and payment of full back wages ipso facto. In the judgment which has been relied upon by the petitioner, the learned Labour Court has been observed that it is difficult to order reinstatement as the employee in the said case was not a regular employee and he was granted back wages only to the extent of 50% apart from reinstatement.

6. From 2001 there have been catena of authorities when the Apex Court has not only held that a temporary employee who is not recruited according to the normal selection procedure has no right of regularization but also the fact that merely on account of the fact that the termination is held to be illegal and unjustified does not ipso facto result in grant of benefit of reinstatement.

Notable among these authorities are of State of Karnataka Vs. Uma Devi 2006 (4) SCC 7 which has been quoted copiously by the learned Labour Court in observing since the petitioner was a temporary employee, therefore, in view of Uma Devi judgment (Supra) he was not entitled to claim of regularization. With regard to the power of the learned Labour Court under Section 11A of the Industrial Disputes Act, 1947 reliance can be placed on the following authorities wherein the Court has been given ample discretion to grant one time lump sum compensation in lieu of reinstatement as the Apex Court has observed that merely on account of holding that the termination to be illegal does not result in grant of benefit of reinstatement and the payment of full back wages.

Employers, Management of Central P &D Inst. Ltd. Vs. Union of India 2005 (9) SCC 171

Mahboob Deepak Vs. Nagar Panchayat Gajraula 2008 (11) SCC 575

Branch Manager, M.P. State Agro Industries Development Corpn. Ltd & Anr. Vs. Shri S. C. Pandey 2006 (2) SCALE 619

Rajasthan Lalit Kala Academy Vs. Radhey Shyam JT 2008 (8) SC 311

Madhya Pradesh Administration Vs. Tribhuban 2007 (9) SCR 748

Haryana Tourism Corporation Ltd. Vs. Fakir Chand etc. 2003 (8) SCC 248

Rolston John Vs. Central Government Industrial Tribunal cum Labour Court and Ors. 2007 (9) SCC 39

State of Punjab & Ors. Vs. Des Bandhu 2007 (9) SCC 39

7. Coming back to the facts of the present case since in the instant case the discretion has already been exercised by the learned Labour Court in not granting the benefit of reinstatement of payment of full back wages on account of the fact that the petitioner was working as a temporary driver therefore, these vital facts cannot be ignored and merely because the writ Court is a superior Court it cannot sit as a court of appeal and set aside the discretion which is primarily to be exercised by the learned Labour Court and substitute its own views in place of the views of the learned Labour Court. I do not find that there is any infirmity or perversity or violation of any rule or regulation in not granting the benefit of reinstatement and payment of full back wages or otherwise to the petitioner.

8. So far as the quantum of compensation is concerned, the petitioner has been awarded the compensation of Rs.75,000/- though no submission has been made with regard to the quantum of compensation by the petitioner, however, if we see the quantum of compensation in the light of the fact that the total number of years of service which has been rendered by the petitioner with the respondent/management is only just little above three years. It has also come on record that he was drawing a salary of approximately Rs.3980/- per month. If the services of the petitioner would have been terminated in compliance of Section 25F of the Industrial Disputes Act, 1947, the respondents would have paid much lesser compensation as retrenchment compensation to the petitioner. The quantum of

money which has been granted to the petitioner as compensation tantamount to wages for a period of one year and seven months which is almost one of the total length of service rendered by the petitioner with the respondent/management. Further the petitioner was working as a driver and a person with the skill of driving can hardly remain idle in a city like Delhi. These facts also in my view persuades this Court holding that the quantum of compensation fixed by the learned Labour Court in the instant case was just, fair and reasonable, and accordingly, that also does not warrant any interference.

9. For the foregoing reasons mentioned above, this Court does not find any infirmity in the award dated 29th February, 2008 in ID No. 567/06/03, and accordingly, the writ petition is dismissed.

V.K. SHALI, J.

May 1st, 2009

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