

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

+ **L.P.A. No. 2067 OF 2006**

Date of Decision :February 3, 2009

BABU RAM SAGAR

.....Appellants

Through : Ms. Pragyan Rautray, Advocate

Versus

The Presiding Officer, Labour Court No. VII, Delhi & Anr.

.....Respondents

Through : Mr. Anil Kumar Sharma, Advocate for R2.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SANJAY KISHAN KAUL, J. (Oral)

1. This appeal under the Letters Patent has been filed by the workman, – Shri Babu Ram Sagar, impugning the decision of a Single Judge of this Court whereby that Court has declined to exercise jurisdiction under Article 226 of the Constitution of India and to interfere with the order of the labour court in I.D. No. 328 of 1992 decided on 29th August, 1995. By that order, the learned labour court had concluded that even though the Management had failed to prove the allegations against Shri Babu Ram Sagar, nevertheless, it was clear that the Management had lost confidence in him. Under the circumstances, the labour court felt that since Shri Babu Ram Sagar

was employed as a *chowkidar* of the office, it would not be conducive to the proper functioning of the Management to direct his reinstatement. Another reason for declining the request to direct reinstatement was that more than three years had elapsed since the termination of the appellant's services. Upto the time his services were terminated the appellant had admittedly put in a little less than four years of his service. At that time, his salary was Rs. 762/- plus other allowances. In other words, apart from allowances, his annual salary was Rs. 9,144/- and over the period he remained in employment, he had earned salary of approximately Rs. 37,000/-. Under these circumstances, the labour court had directed payment of Rs. 40,000/- as compensation to the appellant/workman.

2. Dissatisfied with the award, the appellant challenged the same before Single Judge of this Court under Article 226 of the Constitution praying that the impugned award be quashed and he be granted reinstatement with full back wages. Learned Single Judge of this Court has gone through the record and has noted the surrounding circumstances under which the services of the petitioner came to be terminated as also the allegation of the Management that they suspected that the appellant had not been doing his duty as a *chowkidar* faithfully. After going into the matter, the learned Single Judge was of the view that since the labour court has concluded that no satisfactory evidence was produced to support the plea of the Management that the petitioner was disrespectful and disobedient, therefore, the conclusion of the labour court that there is a clear case of loss of confidence by the Management in their employee is erroneous and cannot be sustained. However, despite that conclusion,

the learned Single Judge declined to interfere with the final decision of the labour court for the following reasons:

“a) the services of the petitioner were terminated on 6.11.1991 i.e. more than 14 years ago, though dispute raised by him was adjudicated upon and award was passed on 29.8.1995 i.e. about four years after his termination.

a) relief of reinstatement was not granted by the labour court and more than 10 years have been passed since then; and

b) it is unbelievable that the petitioner was remained unemployed during all this period.”

In that view of the matter, and relying upon the decision of the Supreme Court in **Allahabad Jal Sansthan Vs. Daya Shankar Rai and another** (2005) 5 SCC 124, learned Single Judge has also concluded that onus is on the appellant/workman to prove that he remained unemployed. Since he is working as a *chowkidar* i.e. a class-IV employee, it was highly improbable that he would not have got an alternative job in the last fourteen years. In the **Allahabad Jal Sansthan case** (*supra*), it was held that for appropriate relief to be granted in cases where the termination of services of a workman is held to be illegal, it was necessary to develop a pragmatic approach to this issue and grant him appropriate relief whether by way of reinstatement or back wages as also with regard to the question of quantification of the back wages. In such cases, the interests of both labour and Management should be balanced and that no law in absolute terms can be laid down. In that case, the observations of the Supreme Court in paragraph 6 thereof are noteworthy:

“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.”

3. In the instant case, the appellant was working in the office of the Delhi Khadi and Village Industries Board against a temporary post. It is noteworthy that in his statement of claim although appellant alleged that he is a poor employee belonging to a Scheduled Caste who is being harassed by the officers of the Delhi Khadi and Village Industries Board i.e. the Management, there is no plea to the effect that he has remained unemployed since the date of his termination. The Supreme Court in the case of **Allahabad Jal Sansthan** (*supra*) noted its own decision in **Hindustan Motors Ltd.** vs. **Tapan Kumar Bhattacharya** (2002) 6 SCC 41 where, “there was no pleading or evidence as to whether the respondent therein was employed elsewhere during the long interregnum, and in the fact situation obtaining therein, the appellant was directed to pay 50% of the back wages till the date of reinstatement”. In that case, the Supreme Court also noted its earlier decisions in **M.P.SEB** v. **Jarina Bee** (2003) 6 SCC 141 and also in **Chief Conservator of Forests** v. **Rahmat Ullah** (2003) 10 SCC 92. With regard to the latter decision, the Court observed that, “as the respondent therein was out of service since 1990 as an ordinary worker, he must have been working elsewhere to earn his livelihood; and there was no material to show that he was not gainfully employed whereupon, a direction to pay 50% of the back wages was made.” Other decisions on the subject have also been noted by the Supreme Court in that case. Ultimately in paragraph 16 thereof, the Supreme Court observed as follows:-

“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.”

4. In the view that we are taking in this matter, we are supported by a decision of Division Bench of this Court in the case of ***Delhi Transport Corporation v. Presiding Officer and Anr.*** 2000 LLR 136 wherein the Court after relying upon a number of judgments of the Supreme Court had decided to grant compensation in lieu of reinstatement and back wages. In that matter, this Court inter alia held;

“We find from the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since we are bound to follow the decision of the Constitution Bench, we, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.”

5. Similarly, the Supreme Court in the case of **M.L.Binjolkar** vs. **State of Madhya Pradesh** (2005) 6 SCC 224 concluded that

“The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural

corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.....”

6. Another decision to the same effect has been rendered by the Supreme Court in **U.P.State Brasware Corporation Ltd. v. Uday Narain Pandey** (2006) 1 SCC 479. We might also refer to the decision of Division Bench of this Court in **Pramod Kumar and Anr. vs. The Presiding Officer and Anr.** 123 (2005) DLT 509. In the latter case also, the workman’s plea that the learned Single Judge ought to have directed reinstatement instead of awarding compensation in the exercise of its jurisdiction under Article 226 of the Constitution of India, was rejected. We might also note that the Supreme Court in the case of **O.P.Bhandari vs. Indian Tourism Development Corporation Ltd.** (1986) 4 SCC 337 held that compensation equivalent to 3.33 years’ salary (including allowances) admissible on the basis of last pay and allowances would be a reasonable amount to award in lieu of reinstatement. Significantly, whilst looking at the question whether reinstatement ought to be ordered, the Supreme Court examined the circumstances of that case and observed thus, “reinstatement would perhaps be not even in the interest of the appellant as he cannot give his best in the less-than-cordial atmosphere. Thus both sides will be unhappy and miserable. These are valid reasons for concluding that compensation in lieu of reinstatement and not reinstatement, is warranted in the circumstances of the present case.” Similarly, in this case also, looking to the fact that the appellant was engaged as a *chowkidar* of the premises and the Management had begun to entertain serious

doubt about the proper discharge of his duties to safeguard the premises and the fact that whilst on the one hand the appellant/workman has complained that officials of the Management were drinking wine on duty, on the other hand, the Management is alleging that he was disrespectful and disobedient and that the appellant had unauthorisedly brought a lady to the office premises and that, on another occasion, he had locked the main gate and failed to open the same when the office was to be opened next morning as a result of which the lock had to be broken. In such circumstances, in our view, here also it can be safely concluded that reinstatement may not be the proper relief. It is more than obvious that the appellant cannot be expected to give his best in the less than cordial atmosphere and both sides would be unhappy and miserable in case reinstatement were to be ordered. Such a situation has been held to be sufficient to conclude that compensation in lieu of reinstatement is warranted in **O.P.Bhandari's case** (*supra*).

7. One of us (Sudershan Kumar Misra, J.) in **Prem Chand Vs. The Management of M/s The Joint Director, Information & Public Relations**, writ petition (C) No. 950 of 2008 decided on 6th February, 2008, whilst examining the powers vested with industrial adjudicators under Section 11A of the Industrial Disputes Act, has held that,

“.....where for some valid reason it considers that reinstatement, with or without conditions, will not be fair or proper. Compensation in such a case is the solatium for unjustified and premature termination of employment.....”

and that it is;

“.....unquestionable that even after finding that termination is illegal, the Labour Court has the

power to decline reinstatement if it is of the view that compensation will suffice.....”

It was also held that Industrial Disputes Act,

“provides for the investigation & settlement of industrial disputes and provides, inter-alia, a degree of protection against exploitation and oppression of labour. It must however be kept in mind that even this protection is subject to the rule of law, which is equally applicable to all, whether management or labour. It is within the province of the Labour Court to decide whether on an overall conspectus of the surrounding circumstances an award of compensation will suffice and if it does arrive at that conclusion on a rational and sustainable basis, the workman cannot insist that he be put back in his job.”

8. In this context, the observations of another Division Bench of this Court in ***Pramod Kumar & Anr. v. Presiding Officer & Anr.*** **123 (2005) DLT 509** are noteworthy. They are as follows:

“11. In a number of matters, this Court has also examined the same issue and it has been repeatedly held that where a long period has lapsed since the date of termination, compensation should be paid in lieu of reinstatement and back wages. Reference in this regard may be made to the judgments in the cases of Murari Lal Sharma v. Nehru Yuva Kendra Sangathan, 96 (2002) DLT 412 (DB) and K.H. Pandhi v. The Presiding Officer, Addl. Labour Court & Anr., 110 (2004) DLT 101 and Pal Singh v. NTPC Ltd., 96 (2002) DLT 877.”

9. We might only add that there has been sufficient application of mind to the appropriate relief that should be granted to the appellant and the reasons given by the Learned Single Judge in declining to exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India to direct reinstatement in lieu of compensation do not suffer from any infirmity that would warrant interference by this Court in the exercise of our appellate

jurisdiction under Letters Patent keeping in mind the observations of a Division Bench of this Court in **Nehru Yuva Kendra Sangathan** (*supra*) that, “compensation in lieu of reinstatement and back wages is now the norm ” and that “reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.”

10. Under the circumstances, we do not find any infirmity with the impugned order of the learned Single Judge. The appeal is dismissed.

SANJAY KISHAN KAUL, J.

FEBRUARY 03, 2009
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SUDERSHAN KUMAR MISRA, J.