

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

Reserved on : 15.01.2009

% Date of decision : 23.01.2009

+ LPA No. 2376 OF 2006

MRS. PRAVIN BAHL APPELLANT

Through : Mr. B.K. Pal, Advocate.

- V E R S U S -

OFFICE OF SECRETARY LABOUR & ORS. ... RESPONDENTS

Through : Mr. Swea Ram and
Mr. R.K. Bachchan,
Advocates for UOI / R – 1.
Mr. D.R. Thadani,
Advocate for R – 2.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 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 |

SANJAY KISHAN KAUL, J.

1. The appellant was appointed as a Junior Stenographer by respondent No. 2 Management with effect from 21.10.1980 initially on probation for a period of one year. The appellant claims that the appointment letter itself indicated that the probation period could be extended

only if her work was not found to be satisfactory. The appellant had to be paid a consolidated salary of Rs.700/- per month and on confirmation, the salary was to be enhanced to Rs.1,000/- per month. The probation period was extended for the appellant on expiry of one year up to 30.04.1982 whereafter her services were terminated.

2. The appellant was aggrieved by the termination of her services as it is her case that she was active in Union activity and the Marketing Manager under whom she was working had misbehaved with her since she refused to yield to his wishes. The dispute between the workman and the Management was referred by the Secretary, Delhi Administration under Section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred to as, 'the said Act') to the Industrial Tribunal on 10.03.1983 as to whether the termination of the services of the appellant were unjustified and / or illegal and if so, what directions were necessary in that regard.
3. The stand of the Management, on the other hand, was that in terms of the letter of appointment, the appellant was on probation for a period of one year or such further extended period as the Management might decide in its sole discretion and that she was to remain on probation until a letter of confirmation was issued to her. Since the work of the appellant had been found to be unsatisfactory by the Management, her probation was initially extended and thereafter her services terminated.

4. The Presiding Officer of the Labour Court made and published the Award dated 31.01.1990 in favour of the workman. The findings returned by the Tribunal show that as per the letter of appointment, the appellant was initially to be kept on probation for a period of one year, which could be extended at the sole discretion of the Management and she was to remain on probation until the letter of confirmation was issued to her. The record also showed that till completion of her initial probation period, the appellant had never been issued any warning regarding unsatisfactory work. The probation period was, however, extended on the basis of her performance and appraisal report of the same Officer against whom the appellant had made allegations. The Labour Court also found that the extension of probation was on account of the appellant workman not yielding to the pressure of the superior to sit after office hours, who proposed to her that in case she was not confirmed, he would pay the difference of pay from his own pocket. The appellant had refused to oblige and it is the same Officer, who had given the adverse appraisal report dated 15.11.1981 to the effect that the appellant had been advised to improve her work, but did not show any improvement. This was held to be clearly an afterthought since at the relevant stage of time, no caution had been extended to the appellant. The Labour Court found that the termination of services of the appellant was illegal and

unjustified. However, since the appellant was working with another organization in the meantime, she was held entitled to difference of wages which she had earned uptill the date of the Award. The appellant was also held to be deemed to be in continuous service from the date of termination of her services and she was directed to be re-instated from the date of termination of her services.

5. Respondent No. 2 Management aggrieved by the said Award filed a civil writ petition before this Court being CWP No. 1416/1990, which was also dismissed on 08.05.1990. Respondent No. 2 Management thereafter filed a Special Leave Petition being SLP (Civil) No. 7198-99/1990, but that also met the same fate on 20.11.1995. It was further directed that the appellant would join the duty during 1st to 15th December, 1995 and that she would be permitted to join in terms of the Award and would be entitled to all the benefits given under the Award. The appellant joined the duty on 11.12.1995.
6. It may be noticed that there is some controversy about the position prevalent after filing of the SLP by respondent No. 2 Management as it is the case of respondent No. 2 that it asked the appellant to join and the appellant failed to join. The appellant, on the other hand, had moved an application under Section 36A of the said Act for sending the Award for certain clarification, which had been dismissed on 26.11.1990 and that order was upheld by this Court in writ proceedings being CWP

No. 178/1991. The appellant is stated to have filed another application on 20.03.1995 for implementation of the Award. The writ petition filed by the appellant was ultimately disposed off on 25.07.1995 in view of the fact that the application filed by the appellant for enforcement of the Award was pending before the competent authority. Respondent No. 2 disputed the correctness of the amount and the jurisdiction of the forum to decide the matter regarding the amount to be paid to the appellant.

7. The appropriate authority passed an order on 13.09.1995 informing the appellant that for purposes of reinstatement, she may approach the District Labour Officer while for purposes of enforcing her dues, she may approach the appropriate Labour Court for getting the amount computed. As noticed above, all this transpired prior to the SLP being dismissed.
8. The appellant after having joined duty addressed a letter to respondent No. 2 Management on 16.12.1995 requiring the Management to pay certain amounts due to her in terms of the Award. Since the amount was not paid, a contempt petition was filed by the appellant before the Supreme Court being Contempt Petition No. 101-102/1996 in SLP (C) No. 7198-99/1990, but the same was dismissed with the clarification that the appellant was not precluded from taking recourse to other legal remedies for recovery of the amount. It is at this stage

that the appellant filed another application under Section 36A of the said Act on 16.05.1996. Soon thereafter on 01.06.1996, respondent No. 2 confirmed the appellant in service which, in turn, implied that she was till that date paid only the minimum wages applicable. The application filed by the appellant under Section 36A of the said Act was contested by respondent No. 2 Management. The appellant addressed a letter dated 10.01.1997 to the appropriate authority seeking to withdraw the application under Section 36A of the said Act and sought action under Section 33-C (1) of the said Act. Respondent No. 2 once again challenged the amount claimed and jurisdiction of the appropriate authority alleging that no amount was due. However, the appropriate Government issued a letter dated 24.07.1997 to the Recovery Officer for appropriate action to recover the amount resulting in a notice of recovery dated 11.08.1997 being issued by the said Recovery Officer for Rs.2,43,376.60. It is this recovery, which was challenged by respondent No. 2 by filing a civil writ petition being WP (C) No. 3410/1997, which has been allowed in terms of the impugned order dated 23.08.2006.

9. We heard learned counsel for the parties at length.
10. It is not disputed by learned counsel for the parties that the crux of the dispute is as to whether the order of reinstatement passed by the Labour Court and upheld right

till the Supreme Court amounted to a direction to respondent No. 2 Management to put the appellant back in the position of a person on probation, thus, entitling her only to those emoluments or whether she was to be treated as having been confirmed on the date, her probation ended in view of the finding of the Labour Court that the action of termination by respondent No. 2 Management was unsustainable in law.

11. Learned Single Judge has taken note of the fact that the appellant was confirmed by an order dated 01.06.1996 and did not raise any objection about the same and the same was superfluous in case her plea was that she already stood confirmed or that she was entitled to be treated as confirmed and, thus, entitled to the consequential emoluments. The second limb of the reasoning rests on the appellant having invoked the provision of Section 36A of the said Act, which amounted to an admission that the amount claimed by her needed to be adjudicated upon and, thus, a recovery certificate could not have been issued.

12. Learned Single Judge framed the following three questions to be examined :-

- (i) Whether the direction to reinstate into service a workman would ipso facto amount to a direction by the industrial adjudicator to reinstate the workman as a confirmed employee in the post she/he was holding as a probationer wherefrom he was terminated from service;
- (ii) Whether the appropriate government had any authority to pass an order for issuance of

a recovery certificate for recovery of dues claimed by the respondent No. 4 without an adjudication by the Labour Court on the same as directed by the order dated 13th September, 1995; and

- (iii) Whether the appropriate government by its order dated 13th September, 1995 having held that the respondent No. 4 was required to go to the appropriate court for getting the amount of her dues computed, had authority or jurisdiction to review the same.”

13. Learned Single Judge found on the first question that there was neither any claim nor issue raised that the appellant was to be considered as a confirmed employee or was entitled to the same wages as those of a confirmed employee and that there was no grievance with regard to the extension of probation nor adjudication on that aspect. The Award had directed only payment of the amount, which would have been drawn by the appellant had she continued in service. In this behalf, as noticed above, the factum of the appellant having sought reference under Section 36A of the said Act has also been taken note of. Learned Single Judge also finds that the Labour Court did not find that the order holding extension of probation was an act of victimization nor was any order passed for confirmation. Learned Single Judge had noticed that the appointment letter itself provided for continuation of probation till the confirmation letter was issued, which letter had not been issued earlier. A reference has been made to a large number of judgments to appreciate the meaning of ‘*re-instatement*’ to imply that the person was put in the

original position in which he/she was before he/she was dismissed.

14. Learned Single Judge has referred to various judgments cited at the bar by learned counsel for the appellant to advance the plea that there cannot be an indefinite continuation of probation. In that behalf, learned Single Judge has distinguished the judgments by stating that in those cases, specific periods were provided for confirmation or a maximum period for probation. Learned Single Judge has also referred to numerous judgments on the scope of the proceedings under Section 33-C (1) of the said Act that the same is only to enforce a liability, which is not in dispute.
15. We are unable to persuade ourselves to agree with the conclusion of learned Single Judge. The legal proposition is not in dispute that in proceedings under Section 33-C (1) of the said Act, the amount in question should have been quantified and not a disputed amount. However, in the present case, the dispute really is not of quantification, but as to the effect of the Award of the Labour Court since it is a stand of respondent No. 2 Management that the appellant is to be treated as if on probation till she was confirmed in 1996. Thus, though numerous judgments have been referred to by the learned Single Judge in the impugned order for the said proposition, it amounts to only stating settled law while

what has to be analysed is as to whether it applies to the given facts of the case.

16. The order of reference itself was quite clear, which envisaged the determination of the question whether the termination was unjustified and/or illegal and if so, what directions were necessary. The Labour Court found that though in terms of the letter of appointment, the probation period could be extended and the confirmation was subject to issuance of such a letter, the termination itself was illegal, as it was without any basis. The termination was motivated by a subsequent confidential report of the superior Officer of the appellant, who was trying to put pressure on her to sit after office hours to which she did not yield. No warning had been issued to the appellant. In such a situation, while a confirmation letter was in order, a letter of extension of probation was issued solely on the subsequent confidential report of the superior Officer and thereafter the appellant was terminated from her services on the extended period of probation being completed. Once this action was held to be motivated by extraneous considerations and without a factual basis, we fail to appreciate how there can be an extension of probation for an indefinite period of time. It must necessarily be implied that the appellant was entitled to a confirmation if she was found to be performing her job satisfactorily though that would require a formal confirmation letter being issued. The

formal confirmation letter was not issued in view of the mala fide confidential report of the superior Officer of the appellant which was without any factual basis resulting in the extension of the probation of the appellant and subsequently her termination. The meaning as to what has to be understood by issuance of a confirmation letter cannot be extended to imply that a person can be kept on probation for an indefinite period of time by a Management for ulterior considerations. In our considered view, learned Single Judge failed to appreciate the gist of the legal thought which permeates the various judgments cited by her that there cannot be an indefinite period of probation. To accept the conclusion of learned Single Judge would amount to the appellant being treated as if she is on probation since 1980 for a period of sixteen years till her confirmation in 1996! This would be contrary to the direction of the Award which has been upheld right till the Supreme Court. Not only that, the view taken by learned Single Judge would defeat the very object for which the said Act was promulgated, i.e., to resolve industrial disputes and create industrial peace and harmony and not to deny the legitimate dues of the workman on technical considerations.

17. There are really no disputed facts in the present case as the dispute is not of quantification of the amount, but of the principle. Once the appellant was entitled to

confirmation, as a natural sequitor to the findings of the Labour Court, the appellant would be entitled to all such benefits as were available to other personnel of respondent No. 2 Management, who were serving under similar circumstances. That is what the appellant has claimed and is not disputed by the Management. The dispute raised by the Management is only that the appellant is required to be paid only salary as if she was on probation.

18. No doubt, an order of re-instatement would require the appellant to be placed in the same position as she was, as enunciated in various legal pronouncements. However, the position of the appellant was of an employee, who had completed the initial probation period and ought to have been confirmed in the absence of any unsatisfactory service, but was terminated. Since confirmation was the logical corollary and not termination in view of the findings of the Labour Court, the effect of re-instatement would be that from the date when the probation period of the appellant was over, she should be deemed to have been confirmed with all the consequential benefits.
19. We are of the view that if the appellant had been ill-advised to file certain applications under Section 36A of the said Act, that cannot defeat her rights. The appellant was under the misconception that she was obliged to proceed under the said provisions and the appropriate

authority also wanted the quantification of the amount, while the fact remained that the case was one of simple enforcement of the financial consequences of the Award which could be carried out by invoking the provisions of Section 33-C (1) of the said Act as was ultimately done.

20. We are unable to derive an adverse inference against the appellant merely because at the stage of confirmation, she did not plead that the same should not be issued. What was the appellant supposed to say – '*that she should not be confirmed*'. This would be very hyper-technical view of the factual matrix where the appellant has been made to run from pillar to post to get her legal dues. The appellant was sought to be deprived of the consequences of having succeeded in the legal proceedings by respondent No. 2 Management.
21. We are, thus, of the considered view that the appellant is entitled to the emoluments of a confirmed employee and not of a person on probation from the date her initial period of probation was over. Since we have found that there is no dispute about quantification of the amount, the recovery certificate was rightly issued in view of the amount having been quantified as the dispute was only one of principle, which stands settled in favour of the appellant workman.
22. Learned Single Judge has also found in respect of the third question that there was no power of review on the appropriate authority since the power of review was not

inherent and must be conferred by law. Once again, there is no dispute about this abstract proposition of law. However, the present case is not one of any review of the order, but of the appellant having taken recourse to a legal remedy, which was not required, i.e., Section 36A of the said Act, on which certain orders were passed by the appropriate authority. The appellant ultimately took recourse to the proceedings under Section 33-C (1) of the said Act and on the proceedings being filed under the relevant provision, the appropriate authority was not precluded from passing the correct orders for recovery of the amount.

23. Learned counsel for the appellant has also invited our attention to the judgment of the Constitution Bench of the Supreme Court in The Sawtram Ramprasad Mills Co. Ltd., Akola v. Baliram Ukandaji & Anr., AIR 1966 SC 616 where the scope and ambit of Section 33-C (1) has been clarified and it has been observed in para 5 as under :-

“5. The next contention is that the claim for lay off is not a claim for money due because calculations have to be made before the money due can be found. This argument has been considered on more than one occasion and it was rejected recently by this Court in *Kays Construction Co. (P) Ltd. v. State of U.P.* (C.As. 1108 and 1109 of 1963, D/-26-11-1964 : (AIR 1965 SC 1488). It is not essential that the claim which can be brought before the Government or its delegate under Section 33-C (1) must always be for a predetermined sum. The Government or the Labour Court may satisfy itself about the exact amount and then take action under that Section. In the present case, the dates of lay off are known and each workman will show to the Second Labour Court that he is qualified to receive compensation for lay off. That will be shown from the muster roll

which the employer is required to maintain and it will then be a simple arithmetical calculation which, in our judgment, S. 33-C permits to be made. If there is any question whether there was lay off or not the Labour Court will decide it. This argument, therefore, has no force.”

(emphasis supplied)

24. We, thus, find that respondent No. 1 has correctly computed the amount as per the aforesaid principles and issued the recovery certificate. The appellant has been deprived of her dues for a long period of time by the machinations of respondent No. 2 Management.
25. We allow the appeal and set aside the impugned order dated 23.08.2006. The Recovery Officer shall now proceed to recover the amounts in terms of the recovery certificate.
26. The appellant shall also be entitled to costs from respondent No. 2 Management quantified at Rs.10,000/-.

SANJAY KISHAN KAUL, J.

JANUARY 23, 2009
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SUDERSHAN KUMAR MISRA, J.