

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

+ **W.P.(C.) No. 21004/2005**

Judgment Reserved on: 01.09.2009

% **Judgment Delivered on: 10.09.2009**

I.S. TOOR Petitioner

! Through: Mr. Praveen Chaturvedi, Advocate.

Versus

\$ M/S. P.M. STONE CLINIC LIMITED Respondent

^ Through: Ms. Smieetaa Inna, Advocate.

+ **W.P.(C.) Nos. 11930-31/2006**

THE MANAGEMENT OF M/S. P.M. STONE CLINIC LIMITED & ANR. Petitioners

! Through: Ms. Smieetaa Inna, Advocate

Versus

\$ MR. I.S. TOOR Respondent

^ Through: Mr. Praveen Chaturvedi, Advocate

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J

Both these petitions are directed against the same industrial award in ID No. 249/1998. The first petition being W.P.(C.) No. 21004/2005 has been filed by Mr. I.S. Toor (hereinafter to be referred to as the 'workman') and the second petition being W.P.(C.) Nos. 11930-31/2006 has been

filed by the management of M/s P.M. Stone Clinic Limited (hereinafter to be referred to as the 'management').

2 Vide award impugned in these petitions, the management has been directed to pay compensation of Rs.50,000/- to the workman in lieu of his claim for reinstatement with back wages. The workman in his petition is aggrieved by not granting him the relief of reinstatement whereas the management in its petition is aggrieved by the compensation awarded to the workman. According to the management, the workman does not come within the purview of definition of 'workman' given in Section 2(s) of the Industrial Disputes Act, 1947 and for that reason, according to the management, the Labour Court was not competent to award any compensation to the workman.

3 The workman was appointed with the management of M/s P.M. Stone Clinic Limited w.e.f. 28.08.1996 and he was dismissed from the service vide management's letter dated 05.01.1998. The workman had raised an industrial dispute with regard to his termination/dismissal from the service of the respondent which was referred by the appropriate Government in the Government of NCT of Delhi for adjudication to the Labour Court. The terms of reference were as under:-

“Whether the services of Sh. I.S. Toor have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect”.

4 The workman in his statement of claim filed before the Labour Court had alleged that he was appointed by the management of M/s P.M. Stone Clinic Limited as a Clerk-cum-Cashier w.e.f. 28.08.1996 and that his last drawn wages were Rs.5,500/- per month. He had alleged that the management wanted to get rid of him and therefore he was called by the

management in the cabin of Dr. S.K. Pal on 24.12.1997 around 05:00 PM and was asked to resign but as he did not oblige the management, he was threatened with dire consequences. On 27.12.1997, the workman reported for duty as usual and at about 10:00 AM, he was forcibly taken by the Police to Police Station Kalkaji. The SHO of Police Station Kalkaji had allegedly told the workman that he would get the matter settled in case he resign from the services of the management. The workman did not succumb to the pressure of the SHO. He was produced before the concerned Court and was remanded to the judicial custody from where he was released on bail on 29.12.1997. On 30.12.1997 when the workman went for duty, he was not allowed to join duty by the management of M/s P.M. Stone Clinic Limited. The same thing happened again on 31.12.1997 and also on 01.01.1998. On 05.01.1998, the workman received a dismissal/termination letter from the management. He then sent a demand notice dated 18.02.1998 to the management to which he did not receive any reply. The workman had alleged that he was illegally terminated by the management without holding any inquiry against him and his termination was in violation of mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.

5 The management in its written statement filed before the Labour Court contested the claim of the workman on the ground that he was not a workman within the meaning of Section 2(s) as he was appointed with the management as Office Manager. It was denied that the workman was appointed as a Clerk-cum-Cashier as alleged by the workman in his statement of claim. The management also alleged bias against the Conciliation Officer and non-compliance of provisions of Section 12(2) of the Industrial Disputes Act, 1947. On merits, the management alleged against the workman that there were complaints against him of

misbehaviour and cheating of customers. It was stated that the workman Mr. Toor was continuously cheating the management in the different purchases from the market but the management had no material or constructive proof against the workman. It is also stated in the written statement of the management that it had received a complaint from patient Sh. Ram Swaroop that the workman had charged Rs.1,000/- extra from him. As per the management, a criminal case vide FIR No. 936/97 under Section 420/408/506 IPC was pending against the workman in the Patiala House Court. For these reasons, the management had prayed for dismissal of claim of the workman that was filed before the Labour Court.

6 Following issues were framed by the Labour Court on 01.02.2000:-

- (i) Whether the claimant is not covered within the definition of 'Workman' as defined under Section 2(s) of the I.D. Act?*
- (ii) As per terms of reference.*

7 The workman in his evidence had filed only his own affidavit reiterating the facts stated by him in the statement of claim. The affidavit in evidence filed by the workman remained unchallenged as he was not cross-examined by the management despite opportunity given. The management had not produced any evidence before the Labour Court to prove its defence against the claim of the workman.

8 Since the workman was not cross-examined by the management despite opportunity given to it, there was no option before the Labour Court but to act upon his uncontroverted testimony. The court below on the basis of material placed before it has arrived at a conclusion that the services of the workman were illegally terminated by the management of M/s P.M. Stone Clinic Limited and in its wisdom, has awarded compensation of Rs.50,000/- in favour of the workman in lieu of his claim

for reinstatement and back wages.

9 Mr. Praveen Chaturvedi, learned counsel appearing on behalf of the workman, has referred and relied upon a judgment of the Hon'ble Supreme Court in ***Kanhaiyalal Aggarwal & Others Vs. Factory Manager, Gwalior Sugar Company Ltd. reported as (2001) 9 SCC 609***. On the strength of this judgment, he had argued that the impugned award denying him the benefit of reinstatement on the ground of loss of confidence by the management suffers from perversity as loss of confidence was neither pleaded nor proved by the management. The submission of Mr. Chaturvedi was that the workman is entitled for reinstatement with back wages because in terms of the impugned award, his services were illegally terminated by the management.

10 Per contra, Ms. Smieetaa Inna, learned counsel appearing on behalf of the management, had argued that Mr. I.S. Toor was appointed by the management of M/s P.M. Stone Clinic Limited as Office Manager and therefore, according to her, he does not answer the description of 'workman' given in Section 2(s) of the Industrial Disputes Act, 1947. The submission of learned counsel appearing on behalf of the management was that since Mr. I.S. Toor was not a workman within the meaning of Section 2(s), the Labour Court had no jurisdiction to entertain the reference and award compensation in his favour. Ms. Inna appearing on behalf of the management had also heavily relied upon the conduct of the workman. She had submitted that there were several complaints from the patients against the workman and he was even involved in a criminal case pending against him in the Patiala House Court. Relying on the alleged conduct of the workman, she had argued that he was not entitled to either reinstatement or any compensation because he was rightly terminated by the management.

11 I have given my thoughtful consideration to the above rival arguments advanced by the learned counsel for the parties but I could not persuade myself to agree with the submissions made on behalf of the management. I also could not persuade myself to agree with the submissions made by counsel for the workman in support of his claim for reinstatement.

12 I will first deal with the question as to whether Mr. I.S. Toor employed with the management of M/s P.M. Stone Clinic Limited was a workman or not withing the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

13 Mr. I.S. Toor is an Ex-serviceman. He was employed by the management of M/s P.M. Stone Clinic Limited w.e.f. 28.08.1996. The designation given to him was 'Office Manager. He had worked with the management of M/s P.M. Stone Clinic Limited hardly for about 16 months when he was served with the order of termination of his services by the management vide letter dated 05.01.1998. Mr. I.S. Toor in para 8 of his evidence affidavit filed before the Labour Court has testified as under:-

“8. That the deponent was doing the job of clerk-cum-cashier. The money received by the deponent from the patients was always handed over to Dr. S.K. Pal who used to sometimes give signatures on the receipt and sometimes not. The deponent was not working as manager. The overall incharge of the clinic was Dr. S.K. Pal. The deponent used to prepare cash vouchers for payment, used to prepare records of patients, bank deposits, cash dealing, accounts for cloth washing, Telephone Bill and Electricity Bill to be deposited.”

14 The above evidence produced by the workman before the Labour Court regarding the nature of his duties performed by him while he was in the employment of M/s P.M. Stone Clinic Limited has remained

uncontroverted. In fact the management of M/s P.M. Stone Clinic Limited itself has admitted in para 10 of its petition being W.P.(C) Nos.11930-31/2006 that Mr. I.S. Toor in his capacity as Office Manager was overall Administrative-in-Charge of attendance and salary distribution of other staff members, collection of bills from the patients and all other activities of the Clinic. For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations. An undue importance need not be given for the designation of an employee. What is required to be looked into is the primary duties performed by the employee.

15 In view of the nature of duties performed by the workman in the course of his employment with the management of M/s P.M. Stone Clinic Limited, his designation as 'Office Manager' loses its significance. It is true that the workman in his leave applications submitted by him to the management from time to time and in the other correspondence has described himself as 'Office Manager' but that does not make any difference to his actual status. He was performing duties of clerical nature and the same by no means can be described as supervisory in nature so as to exclude him from the purview of definition of 'workman' given in Section 2(s). I do not find any perversity or illegality in the findings of the court below holding Mr. I.S. Toor to be a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

16 Coming to the second contention of the management that the workman was rightly terminated and was not entitled to any compensation, it may be noted that no inquiry was admittedly held against the workman into the alleged charges against him before termination of his services by the management. No opportunity was

given by the management to the workman to explain his alleged misconduct. Hence the action of the management in terminating the services of the workman by no means can be said to be legal or just. In this backdrop, I also do not find any perversity in the findings of the court below that the termination of the workman was illegal and unjustified.

17 I do not find any merit in the argument of Mr. Chaturvedi, learned counsel appearing on behalf of the workman, that denial of relief of reinstatement is contrary to the judgment of Hon'ble Supreme Court in *Kanhaiyalal Aggarwal's case* (Supra). In *Kanhaiyalal Aggarwal's case*, it was held by the Hon'ble Supreme Court as under:-

“9. Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the labour court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.”

18 The above judgment of the Supreme Court in *Kanhaiyalal Aggarwal* is not applicable to the facts and circumstances of the present case. In the present case, the management in its written statement has made out a case of loss of confidence against the workman. It is a different matter

that the management did not prove its accusations against the workman either in domestic inquiry or even before the Labour Court. This necessarily does not mean that the workman was entitled to reinstatement. His services were terminated by the management of M/s P.M. Stone Clinic Limited vide letter dated 05.01.1998. The award which directs payment of compensation to him in lieu of his claim for reinstatement is of 16.07.2004. In a recent judgment in **Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Anr, Civil Appeal No.4334/2009 (arising out of SLP(C) No. 987/2009)** decided on 14.07.2009, it was held by the Hon'ble Supreme Court as under:-

“7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

19 It is apparent from the above judgment of the Supreme Court that there is a shift in the trend for dealing with the cases of illegal termination in the matter of modulating the relief that can be reasonably granted to a workman. In the facts and circumstances of the present case, this Court is of the considered opinion that compensation of Rs.50,000/- awarded by the Industrial Adjudicator in favour of the workman in lieu of his claim for reinstatement and back wages is quite adequate and meets the ends of justice.

20 For the foregoing reasons, I do not wish to interfere in the industrial

award which is subject matter of challenge by the parties in the present petitions. These petitions therefore fail and are hereby dismissed leaving the parties to bear their own costs.

September 10, 2009
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S.N.AGGARWAL
[JUDGE]