

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

+ **W.P.(C) NO.16580/2006**

% **Reserved on : 27.01.2009**
Date of Decision: 11.02.2009

SH.MAHAVIR SINGH Petitioner

Through Ms.Amita Gupta, Advocate.

Versus

M/S NARANG INTERNATIONAL HOTEL (P) LTD. Respondent

Through Mr.Anil Kumar, Advocate.

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 |

J U D G M E N T

V.K.SHALI, J.

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1. The petitioner in the instant writ petition has challenged the part of the award dated 18th August, 2006 passed by the learned Labour Court No.IX, Karkardooma Courts, Delhi in ID No.1865/1994 titled as Workman Sh.Mahavir Singh Vs. M/s Narang International Hotel (P) Ltd.

2. By virtue of the aforesaid award, though the learned Labour Court has arrived at a finding to the effect that the workman had rendered more than three years of service with the respondent/Management and that the service contract Ex.WW1/M1 to MW1/3 are sham documents and his termination of service with effect

from 24th August, 1993 was illegal and unjustified and therefore, he was entitled to protection under Section 25 (F) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') yet the learned Labour Court did not grant him the benefit of either Section 25(F) or the reinstatement back into the service on the ground that the petitioner had of his own saying admitted that after termination of his services by the respondent/Management, he had taken up the employment with M/s Shanti Sports Club and the same did not entitle him to any relief.

3. The petitioner in the writ petition has averred that though there was a clear cut finding in his favour to the effect that he was employed with the respondent/Management on 2nd April, 1990 as a Security Guard on a monthly salary of Rs.1,350/- but on account of unfair labour practice, he was made to sign agreements, which are Ex.WW1/M1 and WW1/M3, which were in the nature of service contract to give an impression as if the petitioner was not an employee of the respondent/Management and there existed a contract of service qua the petitioner. It was alleged by the petitioner that his services were illegally and unjustifiably terminated w.e.f. 24th August, 1993. This resulted in espousal of his cause of illegal termination by the Hotel Mazdoor Union which resulted in a reference being made by the State Government in the following terms:

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

Thereafter, the petitioner filed his statement of claim giving the facts which have been already stated hereinabove.

4. So far as the Management is concerned, it filed its written statement contesting the claim and taking the plea that he was a contractual employee. This stand has been reiterated even in the counter affidavit before this Court also that the petitioner is not entitled to benefit of Section 25 (F) of the Act as the petitioner of his own independent volition after the alleged illegal termination had taken up the employment with M/s Shanti Sports Club which was established by the respondents through their witness MW-2. The respondents also disputed the finding of the learned Labour Court to the effect that service agreements WW1/M1 and WW1/M3 were sham documents but the said question cannot be gone into now in the writ petition filed by the present petitioner, as there is no cross challenge to the said finding by the respondent/Management by way of an independent writ. Therefore, only a short question which survives for consideration of this Court is whether the learned Labour Court was justified in denying the benefit of reinstatement despite the fact that the learned Labour Court came to a finding that the services of the petitioner were illegally and unjustifiably terminated or alternatively give him the benefit of Section 25(F) of the Act which entitled him to the retrenchment compensation which is equivalent to 15 days salary for each completed year of service.

5. I have heard the learned counsel for the parties and perused the record. So far as the finding of the learned Labour Court to the effect that the petitioner had joined the service on 2nd April, 1990 and his

termination on 24.8.1993 which was held to be illegal and unjustified is concerned, there is no dispute. Same is the case with regard to the finding of the learned labour Court with regard to the three service agreements Ex.WW1/M1 to WW1/M3 which are couched in such a manner so as to give an impression as if the petitioner was an independent contractor and the contract was of service which was in the nature of investigation and reporting to the respondent/Management.

6. The learned Labour Court has come to a definite finding that these agreements were actually sham documents which the petitioner was being made to execute on account of unfair trade practice being indulged in by the respondent/Management. So far as these issues which have been adjudicated between the parties are concerned, they have attained finality because neither the petitioner is challenging the same in the instant writ petition nor there is any counter challenge by way of an independent writ petition by the respondent/Management to the same. Therefore, the only question which survives is whether the learned Labour Court was right in denying the petitioner the consequential benefits which would have accrued to him on account of holding of the learned Labour Court regarding his termination being illegal and unjustified.

7. It has come in evidence that the petitioner after termination of his services in the month of August, 1993 had taken up employment with M/s Shanti Sports Club which is also stated by him to have been given up. This factum was admitted by the petitioner in the cross

examination of MW2, a witness adduced by the respondent/Management. It is also admitted by the petitioner before the learned Labour Court that at the time when his statement was being recorded, he is purported to have said that he does not intend to work anywhere. These were the two main reasons for the learned Labour Court not to order the reinstatement of the petitioner with or without back wages.

8. Merely on account of the fact that the petitioner after his services were terminated had taken employment with M/s Shanti Sports Club, though the exact date of taking such employment has not been established, in my view would not disentitle the petitioner of the relief of reinstatement or such other relief which the Ld. Labour Court deems fit because the learned Labour Court has come to a definite finding that the termination of services of the petitioner was illegal and unjustified. Therefore, this consequential relief ought to have come naturally in routine course. The factum of the petitioner having taken up an employment with M/s Shanti Sports Club, even though we assume it to be from 25th August, 1993 and till 2000 that would at best disentitle the petitioner to claim the entire back wages or the percentage thereof which the learned Labour Court in its wisdom and discretion could have thought fit to grant for the said period. But merely to assume that the petitioner had taken employment with M/s Shanti Sports Club would not disentitle the petitioner from claiming of reinstatement or the other consequential relief was not a valid reason to deny him the said benefit. It is a common knowledge that even if the services of a

workman which are illegally terminated, he will find for his ways and try to look for some employment howsoever under-employed it may be because not only he has to survive himself but if he is married, he has to ensure that his family also survives. Therefore, because of the instinct of self preservation, the petitioner seems to have taken the employment. But that would though disentitle him to the benefit of reinstatement or back wages but under Section 11(A) the Labour Court was not prepared to give him the benefit of reinstatement. The petitioner as a matter of right was entitled to the retrenchment compensation in terms of Section 25 (F) of the Act which has also not been granted to him or alternatively a lump sum compensation could have been granted because he had expressed his desire not to work any further before the Labour Court.

9. I am of the considered opinion that the learned Labour Court has fallen into a grave error by denying the petitioner the benefit of holding of the termination order to be illegal and unjustifiable.

10. It is too late in the day now to grant him reinstatement after a lapse of almost 15 years from the date of his illegal termination and especially in the light of the fact that he has also stated before the learned Labour Court that after 2000, he is not inclined to work, therefore, this is a fit case where he ought to be granted compensation under Section 11(A) of the Act. The retrenchment compensation under Section 25(F) of the Act is not being considered and as an alternate possible benefit to the petitioner on account of the fact that admittedly the petitioner has stated that his salary at the time of his work was

Rs.1,350/- and if calculated the retrenchment compensation that would be 15 days salary for each completed year of service and as the petitioner had put in just 3 years of service it would come only a pittance.

11. For the forgoing reasons, I feel that a compensation of Rs.30,000/- under Section 11(A) of the Act would be just and fair to the petitioner on account of his illegal and unjustifiable termination, which will meet the ends of justice in the instant case. In addition to this, the petitioner shall also be entitled to costs of Rs.10,000/-.

12. With these observations, the present writ petition is allowed.

February 11, 2009
RN/RS

V.K.SHALI, J.