

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

+ WPC No. 5288/2007

Judgment delivered on: April 22, 2009

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Mohan Lal

..... Petitioner

Through: Mr. Varun Bansal, Advocate

versus

MCD

..... Respondents

Through: Ms. Smita Shankar, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. (ORAL)

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1. By way of this petition filed under Articles 226 & 227 of the Constitution of India, the petitioner seeks appropriate writ, order or direction to quash award dated 07/8/2006 and to direct the

respondent/MCD to reinstate the petitioner with continuity of service with full backwages.

2. The brief conspectus of the facts as set out in the petition are as under:

The petitioner worked with the respondent as Beldar on muster roll w.e.f 17.6.91 till his services were terminated on 21.10.2006. The case of the petitioner is that his services were terminated in complete violation of Section 25-F and Section 25 G as well. The petitioner made several representations dated 22.10.96, 3.2.97 and 12.3.97, to the respondent for his reinstatement and appointment on regular basis. On 31.10.98, the petitioner served demand notice to the respondent against his termination. On 8.11.98 the petitioner filed statement of claim before the Labour Department. The matter was thereafter referred to the Labour Court on 20.2.2000. The petitioner filed statement of claim before the Labour Court on 1.9.2000. The respondent before the labour Court took a stand that the petitioner had himself abandoned his service. The labour Court passed the impugned award holding that the petitioner had worked for more than 240 days, but instead of directing reinstatement with full back wages with continuity of service awarded compensation in

the sum of Rs. 15,000/-. Thus the present petition has been filed by the petitioner challenging the award dated 7.8.2009 passed by the labour Court.

3. During the course of the arguments, the counsel for the petitioner only impressed upon the issue of grant of full backwages.

4. Mr. Varun Bansal, counsel for the petitioner submits that the tribunal erred in awarding a lump sum compensation of Rs. 15000/- in lieu of reinstatement and full backwages even after holding that the termination of the petitioner was illegal in violation of S. 25-F of the ID Act. He maintained that the petitioner worked for more than five years and his case is fully covered by the decision of the Division Bench in **PWD through Dy. Dir. Horticulture vs. Satya Pal – 2006 VIII AD (Del) 810**. To support his arguments with regard to the grant of full backwages the counsel relied upon **Mohan Lal vs. Management of Bharat Electronics Ltd. – 1981 Lab I.C. 806 (SC); Hindustan Tin's case – 1978 LLJ 474 (SC)**.

5. Per contra, Ms. Smita Shankar, counsel for the respondent, submits that the tribunal erred in awarding the compensation without disclosing any reasons for awarding the same.

6. I have learned counsel for the parties and perused the record.

7. It is no more *res integra* that the Industrial Court exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. The Apex Court has, in a large number of decisions, opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in the facts of given cases would subserve the ends of justice. Relevant factors therefor were required to be taken into consideration; *inter alia* the nature of job, the period of service, the availability of the job, etc. which should weigh with the court for determination of such an issue.

8. In a recent judgment the Division Bench of this Court in the case reported to as a **Pramod Kumar & Anr. VS The Presiding Officer & Anr. 2006 LLR Delhi 302 (DB)** has examined the legal position in the following words:

" 9. Since the decision of Federal Court in the case of *Western India Automobiles Association v. Industrial Tribunal* reported in AIR 1949 FC 111 is a settled law that an Industrial Tribunal has jurisdiction to direct reinstatement and in a case of wrongful dismissal re-instatement is the normal rule. However, there are exceptions to this rule and these exceptions have been recognized in various judgments. Re-instatements has not been considered desirable in cases where there have been strained relationships between employer and employee or there is lack of trust or loss of confidence. Reinstatement is also denied when an employee had been found to be guilty of subversive activity or acting prejudicial to the interest of the Industry. Courts have also denied reinstatement with back wages in cases where long time has lapsed. Reference in this regard may be made to the judgment of the Supreme Court in cases of *Rattan Singh v.. Union of India*,

(1997) 11 SCC 396; *Rolston John v. Central Government Industrial Tribunal-cum-Labour Court*, 1995 (Supp) 4 SCC 549: (1994 Lab IC 973); *Gujarat State Road Transport Corporation v. Mulu Amra*, 1995 Supp (4) SCC 548: AIR 1994 SC 112 and *MP Shikshak Sangh v. State of MP*, 1995 Supp (1) SCC 556.

10. In the case of *Haryana Tourism Corp. Ltd. v. Fakir Chand*, (2003) 8 SCC 248: 2003 Lab IC 3678. Supreme Court directed payment of compensation of Rs. 70,000, instead of reinstatement with 7.5% back wages taking into consideration factors like (a) workers were daily wagers (b) workers were not recruited through employment exchange or regular mode of selection (c) services of the workers were terminated long back and (d) consideration nature of work, the workers must have done similar work at least intermittently.

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 re-instatement 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*, (2002) 96 DLT 412 (DB) and *K.H. Pandhi v. The Presiding Officer. Addl. Labour Court*, (2004) 110 DLT 101: 2004 Lab IC 1401 and *Pal Singh v. NTPC Ltd.*, (2002) 96 DLT 877: 2002 Lab IC 1923."

9. Furthermore, in several cases, the Apex Court has held that payment of back wages is a discretionary power which has to be exercised keeping in view the facts and circumstances of each case and neither straitjacket formula can be evolved, nor a rule of universal application can be adopted. In this regard, in **U.P. SRTC Ltd. v. Sarada Prasad Misra**, (2006) 4 SCC 733, the Hon'ble Apex Court observed as under:

16. From the above cases, it is clear that no precise formula can be adopted nor "cast-iron rule" can be laid down as to when payment of full back wages should be allowed by the court or tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be rigid or

mechanical but flexible and realistic. The court or tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order.

10. In the instant case, the petitioner worked from 17/06/1991 to 21/10/1996 with the respondent as Beldar on muster roll. The tribunal observed in para 16 of the award that the workman was not appointed against any post and nothing had come on record to show that he was appointed as a regular employee. Rather it has come on record that the petitioner was a Beldar drawing his minimum wages as muster-roll employee for a period of about five years with the management. Further, it has come on record that the workman has not been without any job and gets employment as a daily wager sometimes. It has also come on record that the services of the petitioner were terminated long back in the year 1996. Taking the totality of circumstances into consideration, I feel that the interest of justice would be best served if the compensation is enhanced from Rs. 15,000/- to Rs. 50,000/-.

11. In view of the above discussion, the petition is allowed to the extent as discussed above.

April 22, 2009

KAILASH GAMBHIR, J