

* IN THE HIGH COURT OF DELHI AT NEW DELHI

#18

+ LPA 356/2009

% **Date of decision: 17th September, 2009**

CHAND RAM Appellant
Through Mr. Bankey Bihari, Adv.

versus

MANAGEMENT OF MCD & ANR. Respondents
Through Mr. Gaurang Kanth with Ms. Liza
Barvah, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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

AJIT PRAKASH SHAH, CHIEF JUSTICE (ORAL)

Admit.

2. Mr. Gaurang Kanth, learned counsel appearing for the respondent, waives service of notice. By consent of both the parties, the appeal is taken up for hearing.
3. The appellant – workman was appointed as Beldar with the respondent no. 1 at C.P.O. Store, Engineering Department, Karol Bagh Zone on 15.9.1996. On 8.11.1997 his services were terminated without assigning any reason. Upon the workman's raising an industrial dispute, the appropriate Government vide order dated 11.8.1998 made a reference to the Labour Court No. VI, Delhi for adjudication the following terms of

reference :

“Whether the services of Sh. Chand Ram 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 Labour Court framed the following issues on the pleadings of the parties :

“1. Whether this court has no jurisdiction as per preliminary objection No. 6? OPD

2. As in terms of reference.”

In support of his case, the workman led evidence by way of affidavit and also appeared in the witness box. The management did not lead any evidence in spite of taking as many as 12 adjournments from March 2002 to January 2003. On two occasions the Labour Court specifically granted permission to the management to lead evidence subject to payment of cost but ultimately no evidence was led by the management.

5. By order dated 8.4.2004 the Labour Court decided both the issues in favour of the workman and against the management. While deciding issue No. 2 the Labour Court inter alia held in paragraph 10 of the Award :

“...Admittedly, the workman worked for a period of more than 240 days in a last 12 months and so his removal from service without complying with provisions contained under Section 24-F of I.D. Act is illegal and unjustified. The order of retrenchment is bad as no notice has been issued to the workman nor any retrenchment compensation has been paid.”

In para 11 of the Award, learned Labour Court held as follows :

“11. In view of my above discussion, I hold that the services of the workman have been terminated illegally and unjustifiably by the management. The services of the workman were retrenched in the year 1997 i.e. seven years ago. Someone else

must have been appointed by the management so it will not be proper for me to reinstate him with full back wages. However, the workman can be compensated by paying compensation to the workman concerned. It is ordered accordingly.”

(emphasis supplied)

6. In the light of the above findings, the Labour Court awarded the compensation of Rs.50,000/- to the workman. Being aggrieved by the Award, the appellant workman filed Writ Petition (Civil) No. 12320/2005, which came to be dismissed by the learned single Judge by order under appeal. The learned single Judge after referring to the decisions of the Supreme Court in Central P&D Inst. Ltd. v. Union of India & Anr. (2005) 9 SCC 171, Rolston John v. Central Government Industrial Tribunal-cum-Labour Court & Ors. 1995 Supp (4) SCC 549, State of Punjab & Ors. v. Des Bandhu (2007) 9 SCC 39, Haryana Tourism Corporation Ltd. v. Fakir Chand & Ors. (2003) 8 SCC 248, Madhya Pradesh Administration v. Tribuban (2007) 9 SCC 748 and Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr. (2008) 1 SCC 575 held that the Award of the Labour Court granting compensation in lieu of reinstatement is consistent with the law laid down by the Supreme Court.

7. Mr. Bankey Bihari, learned counsel appearing for the appellant, submitted that it has been a settled position of law that a workman, whose services have been illegally terminated either by dismissal, discharge or retrenchment, shall be entitled to reinstatement and full back wages. This is the normal rule and the compensation in lieu of the reinstatement is awarded only when the circumstances of a particular case are unusual or exceptional. He submitted that in the present case there was no delay in approaching the Court. The workman led evidence but the management in spite of taking the

several adjournments failed to lead any evidence. He submitted that the proceedings were delayed solely on account of the management and the relief of reinstatement cannot be denied only on the ground of delay in disposal of the matter before the Labour Court.

8. In reply Mr. Gaurang Kanth, learned counsel appearing for the respondent, submitted that the Labour Court has the discretion to award compensation instead of reinstatement. He submitted that even if the termination is held to be illegal it is not always mandatory to order reinstatement and instead compensation can be granted. He submitted that the rule that in case of illegal termination a workman shall be entitled to reinstatement and back wages is considerably diluted in recent judgments of the Supreme Court. He submitted that the workman served only for a period of one year. According to him the Labour Court being the final court of fact, the High Court should not normally interfere with such finding of fact unless the said finding of fact is perverse or erroneous or not in accordance with law.

9. The question that falls for our consideration is whether where the termination of services is found to be invalid, reinstatement as a matter of course should be awarded or compensation would be an adequate relief. It is no more open to debate in the field of industrial jurisprudence that the relief of reinstatement can be granted where termination of services is found to be invalid. Ordinarily, a workman, whose services have been illegally terminated, would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. (See. Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and ors. (1977) 1 SCR 586 and Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherjee

AIR 1978 SC 8.)

10. The later decision in M/s Hindustan Tin Works Pvt. Ltd. v. Its Employees AIR 1979 SC 75 at pp.77-78 (delivered by a three Judge Bench)

set out the rule on reinstatement and back wages when the order of termination is demolished:

“It is no mere open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The specter of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be held that though he will be reinstated, he will be denied the back wages which would be due to him the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect.... In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a

motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances.

11. In *Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha* AIR 1980 SC 1986, another three Judge Bench held as follows:

“If the discharge of worker from service is bad, reinstatement is the rule. But most rules have exceptions wrought by the pressure of life. Dealing with the complex of considerations bearing on payment of back wages the new perspective emerging from Art.43A Constitution of India cannot be missed. Labour is no more a mere factor in Production but a partner in Industry, conceptually speaking, and less than full back wages is a sacrifice by those who can least afford and cannot be demanded by those, who least sacrifice their large “wages” though can best afford, if financial constraint is the ground urged by the Management as inability to pay full back pay to the worker. The morality of law and constitutional mutation implied in Art.43A bring about a new equation in industrial relations. The discretion to deny reinstatement or pare down the quantum of back wages is absent save for exceptional reasons. However particular circumstances of each case may induce the court to modify the direction in regard to the quantum of back wages payable. Though the normal rule, on reinstatement, is full back wages since the order of termination is non est, even so the industrial court may well slice off a part if the workmen are not wholly blameless or the strike is illegal and unjustified. To what extent wages for the long interregnum should be paid is, therefore, a variable dependent on a complex of circumstances.”

12. In *Mohan Lal v. The Management of M/s Bharat Electronics Ltd.* AIR 1981 SC 1253, a two Judge Bench held that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of services and a declaration follows that the workman concerned continues to be in service with all consequential benefits, namely, back wages in full and other benefits. Same was the view expressed in *Surendra Kumar Verma etc. v. The Central Government*

Industrial Tribunal-cum-Labour Court, New Delhi & Anr. (1981) 1 SCR 789, L. Roberts D'Souza v. Executive Engineer, Southern Railway and another (1982) 1 SCC 645, Hari Mohan Rastogi v. Labour Court and another 1984 (Supp) SCC 428, The Management of Karnataka State Road Transport Corporation, Bangalore etc. v. M.Boraiah and another etc. 1984 (1) All India Services Law Journal 142, H.D. Singh v. Reserve Bank of India and others AIR 1986 SC 132.

13. In U.P.State Brassware Corpn. Ltd. and another v. Uday Narain Pandey (2006) 1 SCC 479, a direction to pay full back wages consequent upon a declaration that workman has been retrenched in violation of the provision of Section 6 of UP Industrial Disputes Act, 1947 (Equivalent to Section 25F of Industrial Disputes Act, 1947) as a rule was in question before a two Judge Bench of the Supreme Court. Allowing the appeal partly, the Court observed:

“No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P.Industrial Disputes Act. While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages cannot be the natural consequence.”

14. We may also refer to the judgments relied upon by the learned single Judge. In the case of Rolston John v. Central Government Industrial Tribunal-cum-Labour Court & Ors. (supra), the Supreme Court refused the reinstatement in view of the long lapse of time (18 years in that case) and awarded compensation of Rs.50,000/- in lieu thereof.

15. In *Haryana Tourism Corporation Ltd. v. Fakir Chand & Ors.* (supra) the Labour Court granted reinstatement of the respondent workmen with 25% back wages. The Supreme Court, however, considering the following facts (i) respondents were appointed as daily-wagers, (ii) not recruited through the employment exchange or any other accepted mode of selection, (iii) not known whether there was any advertisement calling for applications for these appointments, (iv) none of the respondents was regularised in service, (v) all of them continued as daily-wagers and their services were terminated as early as 1991, and (vi) considering the nature of their work, they must have been doing similar work after termination, at least intermittently, held, interest of justice would be met if the appellant Corporation is directed to pay Rs.70,000/- as compensation in lieu of reinstatement.
16. In *Central P&D Inst. Ltd. v. Union of India & Anr.* (supra) the Supreme Court found from the material on record and the submission of the learned counsel for the appellant that the employee had not joined duty as directed by the Industrial Tribunal probably because she was otherwise settled in some other job. Consequently, order of reinstatement was set aside and was converted into the award for damages.
17. In *State of Punjab & Ors. v. Des Bandhu* (supra) the purported industrial dispute was raised after 9 years of alleged termination and a demand notice was issued only in December 1997 challenging the alleged termination of February 1989. The court held that it was not a fit case for grant of reinstatement and compensation of Rs.60,000/- was awarded in lieu of reinstatement.
18. In the last judgment of *Mahboob Deepak v. Nagar Panchayat,*

Gajraula & Anr. (supra) the respondent employee was appointed as a daily wager and his services came to be terminated on account of certain serious irregularities and misconduct. The High Court held that respondent employee was deployed as a daily wager in Class III category and he has no right to the post and deployment of daily wager is made purely on temporary basis, on day-to day basis and the respondent employee could not have been deployed against any Class III post *de hors* the rules and that daily wagers are not entitled to opportunity of hearing at the time of dispensation of service on the ground of misconduct and therefore workman had no right to the post after a limited period. Confirming the judgment of the High Court, a two Judge Bench of the Supreme Court held that an award of reinstatement should not be automatically passed. The facts which are relevant for determining the same, inter alia are:

- (i) whether in making the appointment, the statutory rules, if any, had been complied with;
- (ii) the period he had worked;
- (iii) whether there existed any vacancy; and
- (iv) whether he obtained some other employment on the date of termination or passing of the award.

The Bench held that due to some exigency of work, although recruitment on daily wages or on an *ad hoc* basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized.

19. On the other hand, learned counsel appearing for the appellant submitted that the law laid down in *M/s Hindustan Tin Works Pvt. Ltd. v. Its Employees* (supra) and *Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha* (supra) has not been superseded and still holds the field. Both the judgments are delivered by three Judge Bench and are binding on the High Court. He brought to our notice that in several recent cases the Supreme Court has confirmed the award of reinstatement in cases of violation of Section 25-F of the Industrial Disputes Act. (See *M/s Nicks (India) Tools v. Ram Sarat and another* 2004 LAB I.C. 3729, *Bank of Baroda v. Ghemarbhai Harjibhai Rabari* JT 2005 (3) SC 312, *R.M. Yellatti v. The Asstt. Executive Engineer* JT 2005 (9) SC 340, *Sonepat Cooperative Sugar Mills Ltd. v. Rakesh Kumar* JT 2005 (10) SC 629, *Allahabad Jal Sansthan v. Daya Shankar Rai & Anr.* JT 2005 (5) SC 112, *M/s Sriram Industrial Enterprises Ltd. v. Mahak Singh & Ors.* JT 2007 (4) SC 278).

20. There cannot be any dispute that the relief of reinstatement with full back wages is not to be given automatically and each case has to be considered on its own merits. The legal position that emerges is that ordinarily, where a workman, whose services were terminated illegally, will be entitled to reinstatement but the court may award compensation in lieu of reinstatement if the facts are unusual, exceptional or where grant of compensation would subserve the ends of justice. Each case will have to be considered on its own merit. However, in the absence of any cogent or valid reason it would not be proper for the Labour Court / Tribunal to deny the relief of reinstatement to a workman, whose services have been illegally terminated. In the instant case, the Labour Court refused the relief of reinstatement only on the ground that the period of 7 years had lapsed by the

time the case was disposed of. It is clearly seen from the record that the proceedings were delayed only on account of the management. The management, in spite of giving several opportunities, has not led any evidence in the matter. In these circumstances, the refusal to grant reinstatement was not proper. In the result, the appeal is allowed. The award of the Labour Court is modified to the extent that the appellant will be entitled to reinstatement in service with 50% back wages.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 17, 2009

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