

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

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WP(C)7600/2000

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Date of decision: 10th March, 2010

SWAMINATH MAHATO

..... Petitioner

Through: Mr. B.B. Sawhney, Sr. Advocate with Mr.
Amit Kumar Singh, Advocate.

Versus

THE MANAGEMENT OF HOTEL KANISHKA & ANR Respondents

Through: Mr. Harvinder Singh, Advocate for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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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? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner seeks a writ setting aside the award dated 16th May, 2000 of the Labour Court and a further writ/direction directing the respondent to reinstate the petitioner/workman in employment/service with full back wages, continuity of service and all benefits.

2. The respondent No.1 hotel charged the petitioner that during the year 1985 he remained absent without obtaining prior permission /leave for 76 and a half day and had, on earlier occasions, been warned for various acts of misconduct. An inquiry was held and the inquiry officer found the charges to have been proved against the petitioner. The hotel, after issuing

a show cause notice to the petitioner as to why in view of the findings of the inquiry the punishment of termination of services be not imposed on the petitioner, vide letter dated 18th November, 1986 imposed the punishment of termination of services on the petitioner. Upon the petitioner raising an industrial dispute, the following reference was made to the Labour Court:

“Whether the termination of the services of Shri Swaminath Mahto is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this regard?”

During the course of evidence before the Labour Court it was revealed that the standing orders of the hotel provided that inquiry was to be conducted by the employee officer of the management; however the inquiry against the petitioner had been conducted not by the employee of the management but by the then Presiding Officer of the Industrial Tribunal-I. The Labour Court, vide order dated 18th February, 2000, set aside the inquiry. The hotel thereafter wanted to prove the charges before the Labour Court. The petitioner opposed the said request. However, the said request was allowed by the Labour Court vide order dated 9th May, 2000.

3. However, the hotel instead of proving the charges before the Labour Court, proposed that since by then the termination of services of the petitioner was already 14 years old and it would not be in the interest of either party to prolong the matter by adducing evidence or proving the charges before the Labour Court, the Labour Court may award a lumpsum compensation to the petitioner. The petitioner opposed the said request also and insisted that the matter should be decided on merits after recording evidence. However, the Labour Court held that the situation would worsen if further time elapses in giving opportunity to lead evidence; it was further observed that by that time there would be no chance of reinstatement. The

Labour Court noticing that the trend of the recent judicial pronouncements had been towards compensation rather than towards reinstatement, held that recording of evidence would not serve any purpose. The Labour Court thus proceeded to assess the compensation payable to the petitioner.

4. The Labour Court considering (i) that the possibility of charges being proved against the petitioner cannot be ruled out and in which case the petitioner would not be entitled to any compensation; (ii) that the petitioner / workman had served the hotel for four years; (iii) that the petitioner/workman had not made any allegation in the statement of claim that he remained unemployed after termination or that he made any effort to find alternative job; (iv) that the petitioner was a Hotel Attendant; (v) that the inquiry had been set aside on technical ground of having been conducted by an outsider in contravention of standing orders which required inquiry to be held by an employee or officer of the Management, granted compensation equivalent to four years salary quantified at Rs.50,000/- only to the petitioner. In computing the said amount, the Labour Court noted that the last drawn salary of the petitioner was Rs.1050/- per month. Aggrieved from the aforesaid award, the present petition was preferred.

5. Rule was issued on 13th September, 2004. During the pendency of this petition, it was informed that the hotel which was earlier being run by M/s ITDC Ltd had been taken over by M/s Hotel Excelsior Pvt. Ltd and had been renamed as Shangri La Hotel. Accordingly, the said entity was impleaded as the respondent No.2 and it is now the respondent No.2 alone which is interested in and contesting the present petition.

6. Though the senior counsel for the petitioner has contended that the petitioner is still about 50 years only of age and entitled to and willing to be

reinstated in Hotel Shangri La but this court is of the opinion that the Hotel Kanishka in which the petitioner was employed and which was run by ITDC Ltd, a Government company having closed and the hotel now having been privatized, it is not appropriate to consider reinstatement. The arguments thus were confined to the compensation to which the petitioner should be entitled to.

7. The counsel for the respondent No.2 had sought to urge that this court in the exercise of writ jurisdiction ought not to interfere in the compensation awarded by the Labour Court. However, in the present case it is found that the Labour Court adopted a novel procedure. In spite of the inquiry on the basis of the report whereon the services of the petitioner were terminated having been set aside and in spite of there being no consent of both the parties to the inquiry being confined to award of compensation only, the Labour Court instead of answering the reference, proceeded to determine the compensation. Upon the inquiry report being set aside by the Labour Court and the respondent/employer having failed to prove the misconduct before the Labour Court, the reference, insofar as the validity of the termination of services of the petitioner / workman, was bound to be decided in favour of the petitioner/workman. I may also notice that till date, depending upon the facts of the case, the courts have been granting the relief of reinstatement also. In fact, recently the Supreme Court in ***Harjinder Singh Vs. Punjab State Warehousing Corporation*** MANU/SC/0060/2010 by reference to the earlier judgment of three Judge Bench of the Supreme Court has held that the Courts are to ensure that a workman who has not been found guilty cannot be deprived of what he is entitled to get; that when a workman has been illegally deprived of his employment, then that is misconduct on the part of the employer and employer cannot possibly be permitted to deprive a person of what is due to

him. The Supreme Court taking notice of the large scale unemployment in the country held that an employee who is discharged from service might have to remain without means of subsistence for a considerably long time and damages in the shape of wages for a certain period may not be an adequate compensation to the employee for non-employment. It was thus held that damages would be a poor substitute for reinstatement. The Supreme Court also noticed that though of late there had been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations as the Industrial Disputes Act, held that the approach of the Courts must be compatible with the constitutional philosophy of which the Directive Principle of State Policy constitute an integral part. It was further held that justice due to the workman should not be denied by entertaining specious and untenable grounds put forward by the employer.

8. Thus, it is not as if the courts have always leaned in favour of the compensation only. Be that as it may, considerable water has flown since the award and for the reasons intervening pendency of this petition before this court and as discussed above, reinstatement is now not possible and the only question is whether the compensation awarded is sufficient or not and, if not, what should the compensation be. The senior counsel for the petitioner has rightly contended that the Labour Court without having held an inquiry into the charge of misconduct, inspite of insistence of the petitioner/workman erred in, while computing the computation, also considering that the possibility of the charge being proved cannot be ruled out and that the inquiry had been set aside on technical ground or that the petitioner/workman was a habitual absentee. It is contended that there is no basis for the same. It is further contended that the standing orders of the hotel made habitual absence without sanction or without sufficient cause a

ground for termination. It is contended on the basis of the documents filed before this court and also stated to have been filed before the Labour Court, there was sufficient medical ground for the absence of the petitioner and of which intimation had also been sent to the hotel. The counsel for the petitioner/workman has contended that the Labour Court even if granting compensation of four years wages erred in computing the same on the basis of the last drawn salary of the petitioner. It is urged that the petitioner was not a daily wager but a regular employee of the hotel and as a room attendant, at the time of the award would have been earning a minimum salary of Rs.7000/- per month and the four years wages ought to have been computed at the said rate and not at the rate of the wages being drawn 14 years ago at the time of termination. Reliance in this regard is placed on *Vikramditya Pandey Vs. Industrial Tribunal, Lucknow* (2001) 2 SCC 423 and *Shri Madan Lal Arora Vs. Management/Director, All India Institute of Medical Sciences* 81(1999) DLT 596. While in the former it was held that upon finding illegal termination of services reinstatement with a 50% back wages ought to have been ordered, in the latter the award of the Labour Court of compensation computed at 2 years wages was modified to five years wages calculated at the rate of minimum basic pay payable for an equivalent post. In the said case the workman had worked from 1962, was confirmed from 1968 and the services were terminated in 1976.

9. Per contra, the counsel for the respondent No.2 has relied on –

a). *R. Thiruvirkolam Vs. Presiding Officer* (1997) 1 SCC 9 laying down that an order of dismissal does not operate from the date of award of the Labour Court. However, in view of the discussion hereinabove, this judgment is not apposite.

b). ***Rolston John Vs. Central Government Industrial Tribunal –cum- Labour Court*** 1995 Supp (4) SCC 549 where compensation of Rs. 50,000/- in lieu of the reinstatement was granted. In this case the workman was employed as mechanic-cum- operator and was last drawing a salary of Rs.475/- per month.

c). ***Sain Steel Products Vs. Naipal Singh*** AIR 2001 SC 2401 wherealso compensation of Rs.50,000/- was awarded. This was a case of a probationer employed at wages of Rs.137/- per month for a period of one years only.

d). ***Borman Vs Presiding Officer, Labour Court*** 2003 (10) Factories Journal Reports 304. In this case the services were terminated on the ground of unauthorized leave; the Labour Court found the punishment of dismissal to be too harsh and ordered reinstatement with full back wages. The Single Judge of this court set aside the award. The Division Bench though dismissed the appeal directed payment of interest at 18% per annum for wages under Section 17-B which had not been paid.

e). ***Paras Vs. Lovely Ticket Wala*** 2009(4) LLN 569 where the Labour Court had awarded compensation equal to two years last drawn salary considering that the workman had put in service of two years only. This court held that in the exercise of discretionary powers, the award could not be interfered with and accordingly the compensation of Rs.45,000/- was upheld.

10. I had inquired whether the compensation of Rs.50,000/- awarded by the Labour Court has been paid to the petitioner. The answer is in the negative. The counsel for the respondent No.2 states that even though there was no stay of the award but the petitioner neither in these proceedings

sought any direction for payment of the amount without prejudice to his rights and contentions nor sought to enforce the award or file any petition under Section 33(C) (1) or (2) of the Act. It is stated that the respondent was always ready to pay the said compensation. I have however inquired whether the respondent has tendered the said compensation to the petitioner or made any offer in these proceedings to pay the same. The answer is again in the negative. In my opinion, it was for the respondent who was in the know that the petitioner in this petition is seeking a higher relief than awarded to him by the Labour Court, to have tendered the compensation to the petitioner. The respondent, by retaining the monies which it was liable to pay to the petitioner/workman under the award and by which it was bound to comply having not challenged the same, is found to have reaped benefit therefrom. The counsel for the respondent faced with the same pleaded that interest at 7% per annum as in the judgment cited by him can be awarded on the said sum of Rs.50,000/-. However, that would be inadequate. The respondent which is a commercial entity working for profit has benefited from the monies and which even if invested in government securities would have doubled in a little over six years. There is no reason as to why the respondent should be made liable for interest only at 7% per annum. The compensation awarded by the Labour Court also, was in law payable at the time of wrongful termination of employment in 1986. More than twenty four years have passed since then. Rupees fifty thousand invested in government securities in 1986 would also be about rupees four lacs today.

11. From the judgment in *Madan Lal Arora* supra it is not clear as to whether wages at rates prevalent at the time of termination or rates prevailing five years after termination was the compensation ordered to be computed. In my opinion, since compensation in lieu of reinstatement is primarily to give sufficient time to the workman to seek alternative

employment, the wages should be at rate which would have been earned for four years immediately after termination. There is no basis for awarding such compensation at the rate of wages prevailing at the time of award or the decision by this court. However, since the said compensation was payable immediately on termination, the employer is required to compensate for the delay in payment thereof.

12. Seen in this light, the compensation of four years wages as found by the Labour Court is found to be sufficient. However, the wages instead of being at the rate of the last drawn wages, have to be the wages which the petitioner would have earned for these four years i.e. from 1986-1990 if had remained in the employment of the hotel. The measure of the said wages is not immediately available. Need is not felt to leave computation thereof as the same is also likely to pose problems in view of the change in management. On the amount, so computed, the petitioner would be entitled to compensation for the delay in payment from 1999 till date. In the said circumstances, in my view, the compensation in the sum of Rs.4 lacs as of today would be appropriate.

13. The writ petition thus succeeds to the aforesaid extent. The award dated 16th May, 2000 impugned in the writ petition is modified by substituting compensation of Rs.4 lacs in place of compensation of Rs.50,000/-. The said compensation be paid within a period of four weeks from today failing which it shall incur simple interest at 9% per annum. The petitioner is also awarded costs of these proceedings of Rs.20,000/-

**RAJIV SAHAI ENDLAW
(JUDGE)**

10th March, 2010