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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.16670/2006

6th January, 2011

SHRI RAMESH SINGH RAJPUT

Through:

..... Petitioner.
Mr.VinaySabharwal,
Advocate.

VERSUS

M/S CASTROL INDIA LTD. & ANR

Through:

..... Respondents
Mr. Lalit Bhasin, Ms.
Ratna Dhingra and
Ms. Shreya Sharma
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this petition under Article 226 of the Constitution of India is to the Award dated 6.1.2005 of the Labour Court whereby the workman/petitioner was denied reinstatement but was granted 50% of the back wages from the date of his termination till the passing of the Award i.e., from 1.1.1993 to 6.1.2005, a period of about 12 years.

2. The facts of the case are that the petitioner was employed by the

respondent no.1 and was posted as Incharge of the Godown of the respondent and where different goods of the respondent no.1 was stocked. The case of the petitioner/workman was that on 1.1.1993 he was not allowed to enter into the office and therefore in effect he was retrenched without complying with the provision of Section 25-F of the Industrial Disputes Act, 1947. The defence of the management was that there were shortages in the warehouses and the management did not immediately terminate the services of the workman on his first default. On the first default, he was advised to be careful in future and which was after the workman expressed his regret for the lapse on 8.11.1992. The management further stated in its defence that in November,1992, the petitioner was found to have acted with gross negligence in sending goods to a party without due authorization and which resulted in loss to the respondent no.1 company. It is then that the management terminated the services of the employee because as per the management, the position of Incharge of receipt and dispatch of material /goods was a position of care and responsibility and the irregularities committed by the petitioner were such so as to affect the confidence of the management.

3. On disputes arising between the petitioner and the respondent no.1 reference was made to the Labour Court as to whether the termination of services of the petitioner were illegal/unjustified and if

so, to what relief was the petitioner entitled to. After evidence was led before the Labour Court, the Labour Court held that the workman was illegally retrenched. By the impugned award, however, instead of granting reinstatement, the petitioner was granted 50% of the back wages from 1.1.1993 to 6.1.2005. The counsel for the respondent no.1 states that accordingly pursuant to the impugned Award, a sum of Rs.3,51,046/- stands paid to the workman/petitioner. Therefore, effectively, what the Labour Court ordered was compensation instead of reinstatement and which compensation is quantified at Rs.3,51,046/-. This quantum should be taken in the context that the last drawn salary of the petitioner which was Rs.4,870/- per month and since the workman had worked for about 12 years, if there was valid retrenchment, the workman would have got about a sum of Rs.33,000/-.

4. Before this court, the learned counsel for the petitioner urged that after the Labour Court found the respondent no.1 guilty of illegal termination of services of the petitioner in violation of Section 25-F, the Labour Court has committed an illegality in not granting reinstatement to the workman on the alleged ground that the management was hostile to the petitioner. For this argument, the attention of this court was invited to para 24 of the impugned Award. It has also been argued that in fact 100% of the back wages should have been paid for

termination of services in addition to reinstatement.

5. Learned counsel for the respondent no.1, on the other hand, has argued that even if, termination of a workman is in violation of Section 25-F, there is no automatic reinstatement and that compensation is an adequate relief which is very much factored into the language of Section 11-A of the Industrial Disputes Act, 1947 and also so held in the recent catena of the judgments of the Supreme Court last of the same being ***Incharge Officer Vs. Shankar Shetty (2010) 9 SCC 126***. In this judgment of ***Incharge Officer (supra)***, the Supreme Court has referred to its chain of earlier judgments in which, it has been held that reinstatement is not automatic and the wide language of Section 11-A justifies compensation subject to the facts of each particular case.

6. I am unable to agree with the contentions as raised by the learned counsel for the petitioner because there was no fixed contractual employment period of the petitioner and it is not that he was terminated before any fixed contract of employment. It is also not that the respondent no.1 is a state and therefore there had to be an element of reasonableness in the action of the respondent no.1. Once in accordance with the letter of employment the services of an employee are terminated, of course, subject to compliance of Section 25-F, the management would be justified in terminating the services of

the petitioner, however, it is only because Section 25-F was not complied with that the issue arose of illegal termination. Further, it is not the case that termination is in violation of any standing orders of the respondent no.1. It has been held in the decisions reported as ***Ashok Kumar Sharma Vs. Oberoi Flight Services (2010) 1 SCC 142; Senior Superintendant Telegraph (Traffic), Bhopal Vs. Santosh Kumar Seal and others (2010) 6 SCC 773; Metropolitan Transport Corporation Vs. V. Venkatesan (2009) 9 SCC 601; P.V.K. Distillery Limited Vs. Mahendra Ram (2009) 5 SCC 705*** and a host of other judgments by Supreme Court that the powers under Section 11-A of the Industrial Disputes Act are very wide powers, the object of which is to do ultimate justice and that there is no golden rule of automatic reinstatement with 100% back wages or only compensation or reinstatement with 50% of back wages or 25% of the back wages and so on. Facts of each case have to be seen in order to determine whether compensation would be an adequate relief or reinstatement ought to be granted. This legal position is of course not disputed by the learned counsel for the petitioner. What was argued was that the Tribunal has failed to discuss the reasons for grant of 50% of the back wages instead of granting reinstatement with 100% of the back wages. I note that the argument of the learned counsel for the petitioner that the only reason given for declining reinstatement by the

labour court is alleged hostile attitude of management is clearly unfounded because para 24 of the impugned award is a conclusion at the end of the judgment and in the earlier part of the judgment the facts and stands of either parties is referred to extensively. A finding/conclusion in para 24 was arrived at after detailed facts of the case were discussed while dealing with the issue no.1 and which pertained to whether the petitioner/workman was or was not a workman within the meaning of the definition of expression 'workman' in the Industrial Disputes Act or was the petitioner acting in a supervisory capacity so as not to fall in the category of 'workman'. Para-24 of the impugned award clearly states that award has been passed keeping in view the facts and circumstances of this case.

7. The facts and circumstances of this case are obviously those facts and circumstances which have been narrated in detail in the early part of the award.

8. In my opinion, the contention of the counsel for the petitioner that no reasons have been provided for non-grant of reinstatement and 100% of the back wages is thus without basis in lieu of what I have stated above. Further, merely because the wording of the award is that the petitioner/workman will get 50% of the back wages instead of using the terminology that this would be the amount of compensation would not make much difference because in sum and substance

basically what was granted by the impugned Award was compensation in lieu of reinstatement and compensation amount, as I have already noted above, is a substantial amount of Rs.3,51,046/-. I have also to keep in mind, though not with much weight, that the petitioner/workman has not worked with the respondent no.1 since 1.1.1993 and this payment which has been received is for a period where the workman has not worked with the respondent no.1.

9. Keeping in view the entire conspectus of the case and the fact that the Labour Court has exercised its discretion, which I do not find to be in any manner wholly or illegal or perverse, I do not find that the present is a fit case where I should exercise my jurisdiction under Article 226 of the Constitution of India. Though I find that the compensation in the present case is reasonably adequate, however, keeping in view the fact that the termination was found to be illegal I direct that the petitioner should be paid by the respondent no.1 a further sum of Rs.75,000/- in full and final settlement of all his claims with respect to the dispute in question pertaining to his termination of services. The counsel for respondent no.1 has agreed to this figure which is suggested by the court of additional compensation of Rs.75,000/-.

10. The writ petition is accordingly dismissed by confirming the impugned award with the variation that the respondent no.1 shall pay

to the petitioner a further sum of Rs.75,000/- within a period of four weeks from today in full and final settlement of all his claims with respect to the disputes of his termination. The cheque of the said amount can be tendered either to the petitioner/workman or to the counsel appearing for the petitioner in this court.

The writ petition is accordingly disposed of.

CM No.13717/2006 (Stay)

No orders are required to be passed in this application and the application stands disposed off.

JANUARY 06, 2011
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VALMIKI J. MEHTA,J