

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 17521/2006 & CM No. 14501/2006

Reserved on: August 9, 2011

Decision on: August 25, 2011

RAKESH KUMAR Petitioner
Through: Ms. Deepali Gupta, Advocate.
versus

MANGEMENT OF BHAGINI
NIVEDITA COLLEGE Respondent
Through: Mr. Amit Bansal with
Ms. Manisha Singh, Advocates.

**W.P. (C) 456/2008 & CMs 903/08, 6530/2011 (for stay)
and 6531/2011 (for recall of order)**

BHAGINI NIVEDITA COLLEGE Petitioner
Through: Mr. Amit Bansal with
Ms. Manisha Singh, Advocates.
versus

RAKESH KUMAR Respondent
Through: Ms. Deepali Gupta, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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 Digest? Yes

**JUDGMENT
25.08.2011**

1. Both the writ petitions are directed against an Award dated 7th October, 2005 passed with the Labour Court in ID No. 1104 of 1997. By the said Award the Labour Court disposed of the claim filed by the workman by holding the termination of his services by the management to be illegal and gave the management an option of either reinstating the workman without back wages but with litigation costs of Rs. 10,000/- or to pay the workman Rs. 60,000/- as lump sum compensation along with Rs. 10,000/- as costs of litigation in lieu of the reinstatement.

2. The workman is aggrieved by the Award to the extent that it denies the workman reinstatement with full back wages. Moreover, it is the case of the workman that the management is refusing to let him join services. The case of the management on the other hand is that the workman is refusing to receive the lump sum compensation of Rs. 60,000 and Rs. 10,000 towards litigation expenses.

3. At one stage during the pendency of Writ Petition (Civil) No. 456 of 2008, since there was a stay granted of the Award by this Court, the workman filed an application under Section 17B of the Industrial Disputes Act, 1947 ('ID Act'). The said application was allowed by this Court by an order dated 15th March 2011. The management challenged the said Award by filing LPA No. 403 of 2011. The Division Bench disposed of the said appeal by an order dated 2nd May 2011. While it did not interfere with the order dated 15th March, 2011, the Division Bench granted liberty to the management to apply to the Single Judge for modification of the said order by filing an application. The management has since filed the said application seeking modification of the order dated 15th March, 2011.

4. It was submitted by Ms Deepali Gupta learned counsel appearing for the workman that the Labour Court erred in not directing reinstatement of the workman with full back wages after holding his retrenchment to be illegal. She placed reliance on the judgement of the Supreme Court in *Harjinder Singh v. Punjab State Warehousing Corporation (2010) 1 SCALE 613*. She pointed out that the management never challenged the finding of the Labour Court that the workmen had completed 240 days of service in one calendar year and that Section 25F of the ID Act therefore straightaway applied. She further submitted that with the management having challenged the Award it was plain that it was not interested in taking the workman back in service. The compensation amount Awarded by the Labour Court was too meagre. Having obtained a stay of the impugned Award the management was bound to comply with the order dated 15th March, 2011 passed by this Court asking it to pay wages in terms of Section 17B ID Act.

5. Mr Amit Bansal learned counsel appearing for the management relied on Section 2 (oo) (bb) of the ID Act to contend that the engagement of the workman was initially on a daily waged basis. Later the workman was engaged on an ad hoc basis for short periods

of time. At the end of the period of engagement the workman was discontinued. Since it was an ad hoc appointment it did not amount to retrenchment within the meaning of Section 2 (oo) of the ID Act. He submitted that Section 17B ID Act would not apply since the relief granted by the Labour Court was in the alternative. The Award could not be said to have ordered only reinstatement but gave an option to the management to pay lump sum compensation which in any event the management was always willing to pay. In fact, the management had deposited in this Court the lump sum compensation amount to demonstrate its *bona fides*. It was in that context that this Court had granted a stay of the impugned Award. He submitted that the management should be still given the option of paying lump sum compensation in lieu of reinstatement even though it did not accept the verdict of the Labour Court that the termination of the services of the workman in the present case amounted to illegal retrenchment.

6. A perusal of the Award of the Labour Court as well as the evidence placed on record shows that the workman was in indeed engaged on ad hoc basis for continuous periods of three to four months. The affidavits filed on behalf of the management show that he was initially engaged as a daily wager from 14th May 1994 to 12th September, 1994, then from 14th September, 1994 to 17th January, 1995, then from 25th January 1995 to 19th March, 1995. He was engaged on an ad hoc basis for a fixed period from 20th March 1995 and then again by letters dated 26th July 1995 and 9th December 1995. His employment in this pattern continued till 7th March 1996. His last engagement was for a period of three months from 18th March, 1996 to 17th June, 1996. Consequently, for a period of more than two years with artificial breaks the workman was continuously engaged by the management. The finding of the Labour Court that the workman completed 240 days of continuous service in one year appears to be correct and does not call for interference. In fact, the management does not appear to have disputed this assertion by the workman before the Labour Court. For the purposes of Section 2 (oo) (bb) termination of the services of the workman must be as a result of non-renewal of the contract of employment. However, where the employment was renewed repeatedly with artificial breaks and in effect the workman is employed for more than 240 continuous days in a year, his right not to be retrenched except in accordance with the procedure outlined in Section 25F ID Act cannot be defeated by having resort to the proviso to clause (bb) to Section 2 (oo) ID Act. In the instant case the management cannot therefore

possibly contend that in terms of the said provision the termination of the services of the workman does not amount to retrenchment.

7. This Court concurs with the Labour Court in holding that the termination of the services of the workman amounted to retrenchment and since there was no compliance with the requirements of Section 25F ID Act, the retrenchment was illegal.

8. However, the Labour Court was not justified in giving an Award in the alternative. Given the recent trend of judgements of the Supreme Court reinstatement was not a relief that invariably was required to be given where the termination of the services was found to be illegal. In the present case the workman was employed on an ad hoc basis for a period of about two years. A regular employee has been selected and is at present working. Despite the management offering the workman re-employment on ad hoc basis, the workman admittedly refused. The management did opt for the alternative relief and offered the workman the lump sum compensation which the workman refused. Yet, if indeed the management accepted the Award to that extent it need not have unnecessarily challenged the Award. To be fair to Mr. Bansal he did state that the Award need not have been challenged by the management but faced with a situation where the workman might proceed against it for enforcement of the Award it was advised to challenge the Award.

9. Having challenged the impugned Award and having obtained an interim relief from this Court in its writ petition, the management cannot be heard to say that Section 17B of the ID Act would not apply in the instant case. From the point of view of the workman he was unable to be reinstated because that relief was granted to him only in the alternative. Having obtained a stay of the impugned Award the management was under no compulsion to reinstate the workman in terms of the impugned Award. Section 17B of the ID Act would be attracted in such a situation. In the circumstances this Court is not persuaded to modify or recall the order dated 15th March, 2011 allowing the workmen's application under Section 17B of the ID Act. The application filed by the management seeking modification of the order dated 15th March 2011 is rejected.

10. The question now is of the relief to be granted to the workman. As already mentioned since reinstatement need not be the relief invariably to be granted to a workman illegally

terminated from service, a suitable lump sum compensation would satisfy the ends of justice. The Labour Court has already awarded the workman Rs. 60,000/- as lump sum compensation and Rs. 10,000 as litigation costs. If the workman is given the Section 17B wages, without any requirement by the workman to refund the same to the management, in addition to the above lump sum compensation it should be sufficient final relief to the workman. In the circumstances the impugned Award dated 7th October 2005 of the Labour Court is modified to the extent that in lieu of reinstatement the management will pay to the workman the entire Section 17B wages as directed by this Court by its order dated 15th March, 2011 i.e. the arrears of wages in terms of the order dated 15th March, 2011 and the wages payable till the date of this order in terms of Section 17B of the ID Act in addition to the lump sum compensation and litigation costs as awarded by the Labour Court. The sum of Rs. 70,000 deposited in this Court by the management will be paid to the workman by the Registry within a period of two weeks upon proper identification together with the interest accrued thereon.

11. The writ petitions are disposed of in the above terms with no order as to costs. All the pending applications stand disposed of.

S. MURALIDHAR, J

AUGUST 25, 2011