

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

+ **WRIT PETITION (CIVIL) NO.7924 OF 2010**

Reserved on: 26.11.2010
Date of Judgment: 17-01-2011

Bindan Singh Petitioner
Through : Mr. Anuj Aggarwal, Advocate

Versus

The Institute of Company Secretary of India ...Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J.

1. The writ jurisdiction of this Court has been invoked by a workman impugning an award passed by the Labour Court on 10th July, 2009, whereby he was granted compensation of Rs. 45,000/- on account of wrongful termination of service.

2. The only ground urged is that the compensation granted by the Tribunal is inadequate.

3. Admittedly, the petitioner was employed as a peon on 20th September, 1989 on a salary of Rs. 550 per month. According to him, his service was terminated by the management on 10th August, 1990,

for no justifiable reason. It was also alleged, inter alia, that the management had violated sections 25 F, G and H of the Industrial Disputes Act , and that the petitioner remained unemployed since 10th August, 1990. A notice of demand was first sent by the petitioner to the management on 22nd August, 1990 which was replied by the management on 29th October 1990. Thereafter the petitioner sent another notice on 23rd December, 1991, i.e., after more than 16 months of his removal, and has chosen to follow it up by the institution of proceedings before the Labour Court.

4. At the trial, Mrs. Alka Gupta, the sole proprietor of another concern, Unique Consultants, deposed that in fact, the petitioner was also employed as a peon with that concern from July 1989 to December 1990, and it was on the petitioner's request, and with a view to supplementing his income, that he was given part-time employment with the respondent through the good offices of her husband, who happened to be a member of the respondent institute. The petitioner has not bothered to file a copy of the cross examination, if any, of this witness.

5. At the same time, in his own cross examination, the petitioner has admitted the fact that in the biodata sent by him to the respondent Management on 27th September, 1989, seeking employment, he had clearly stated that he was working with Unique Consultants from 18th July 1989. In other words, during the entire period of his employment with the respondent, the petitioner remained employed elsewhere also.

6. According to the petitioner, from 1992 to 1994, he was at his village looking after farming. The petitioner also admitted in his cross examination that he was gainfully employed with a printing press on 1st May 1994 and worked there for three years. However, one Shri Subash Chander, accountant of Tarun Printers, has deposed that the petitioner was employed with his firm from 1st May, 1994 to 31st March, 1998. He also proved the employment letter as well as the petitioner's resignation letter pertaining to that employment. The fact of the petitioner having worked for four years in this manner was not disputed even in the cross examination of Mr Subash Chander by the petitioner.

7. Furthermore, the regulations of the respondent, Institute of Company Secretary of India, that have been framed in terms of the Company Secretaries Act 1980, which were tendered in evidence, show that the petitioner was clearly ineligible for permanent appointment. It has also come in evidence that no advertisement was published inviting applications, nor was any requisition sent to the employment exchange or any other organization asking for names of persons who might be offered employment. Furthermore, permanent employees of the respondent institution are not permitted to take up any other employment. For all these reasons, the respondent had contended that the petitioner was engaged in nothing more than part-time, casual, work. However, the respondent, Institute of Company Secretary of India has chosen not to take the matter any further by challenging the Award.

6. Consequently, what emerges is this; the petitioner was employed with the respondent organization from 20th September, 1989 to 10th August, 1990 i.e., for a little less than one year. At the same time, he was also employed with the aforesaid Unique Consultants. He was being paid Rs. 550 per month by the respondent. The total salary earned by the petitioner while in the service of the respondent comes to about Rs. 6000/-. The compensation awarded by the tribunal on the ground that the provisions of section 25 F of the Industrial Disputes Act had not been complied with by the respondent is Rs. 45,000, which amounts to approximately 7 years' salary. In other words, even though he worked for less than a year, the petitioner has been granted compensation equivalent to almost 7 years of salary. This amount, if invested at the prevailing rate of interest, could yield nearly 50% of his annual salary for the rest of his life. This would be available regardless of the age of superannuation, and even after his death, his heirs would keep getting it in perpetuity. In any event, the corpus of the lump sum investment would also remain intact. In his affidavit accompanying this writ petition, the petitioner states that he is about 38 years old, this means that he was only about 18 years old when services were terminated. He was free to obtain any other employment, which he did. Not only has the petitioner been gainfully employed after the termination of his employment by the respondent, he was gainfully employed even during the said employment. He also has about 20 years of effective working life available to him.

7. The Supreme Court in **OP Bhandari vs. Indian Tourism Development Corporation Ltd.** (1986) 4 SCC 337, where the compensation awarded by the tribunal was equivalent to 3.33 years salary, upheld the same for the same reasons. This was also reiterated by the Supreme Court in the case of **Workman** versus **Bharat Fritz Werner (P) Ltd** (1990) 3 SCC 565. Other decisions of this court on similar lines are **Prem Chand** vs. **The management,** WP[civil] 950/2008, decided on 6.2.2008 and **Mohd. Suleman** vs. **Northern Steel and General Mills (P) Ltd.,** decided on 17.3.2008.

8. I, therefore, do not find the decision taken by the Labour Court in this case in any way perverse or arbitrary nor do I feel that it has occasioned any failure of justice. If anything, looking to the aforesaid decisions from this point, the Labour Court appears to have adopted a somewhat liberal approach in its quantification. Be that as it may, in any case a writ court is not exercising appellate jurisdiction and the scope for interference is very limited. No case for the exercise of extraordinary jurisdiction of this Court is made out.

9. Dismissed.

SUDERSHAN KUMAR MISRA, J.

JANUARY 17, 2011.