

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

+ W.P. (C) 4262 OF 2008.

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Reserved on: 20th July, 2012

Decided on: 31st July, 2012

DELHI PUBLIC SCHOOL

..... Petitioner

Through: Mr. Pramod Gupta and Mr. Udit
Gupta, Advocates.

versus

MANJU

..... Respondent

Through: Mr. Rama Shankar and Mr. Shivam
Garg, Advocates.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner impugns the award dated 23rd November, 2007 whereby the termination of the Respondent was held to be illegal, unjustified and in gross violation of principles of natural justice and provisions of Industrial Disputes Act, 1947 (in short 'ID Act). The relief granted to the Respondent was reinstatement with 75% back wages and all consequential benefits accruing to her during the intervening period.

2. Briefly the facts giving rise to the present petition are that the Respondent was appointed as Aya on the basis of a request letter dated 5th July, 1999 with the Petitioner wherein she stated that she came to know that the Petitioner required a lady to work in the school, she was poor and her

husband was unwell who could not go for work and in case she was given a job she would do it willing and happily. It is the case of both the parties that the Respondent worked as Aya with the Petitioner for nearly two years. The Petitioner contends that there is no actual post of Aya in the Petitioner School and the Respondent was employed only on compassionate ground. In January, 2000 the Respondent stopped coming for her duties and thereafter raised an industrial dispute on 12th December, 2000. A reference was sent to the learned Industrial Adjudicator in the following terms:

“Whether the services of Smt. Manju have been terminated illegally and/or unjustifiably by the management and if so, to what relief is she entitled and what directions are necessary in this respect?”

3. After both the parties adduced their evidence, the learned Tribunal passed the impugned award. The Respondent in support of her employment for the period 1st March, 1998 till 2nd February, 2000 has produced the photocopy of the provident fund account for the period 1998-99.

4. During the course of arguments learned counsel for the Petitioner did not challenge the validity of the impugned award to the extent it declares the termination as illegal and unjustified as the Respondent had completed 240 days in the preceding 12 calendar months. However, he seriously contended that no other person was retained as Aya by the Petitioner after the

termination of the Respondent as admitted by the Respondent and thus the relief granted in the award of reinstatement with 75% back wages and consequential relief was contrary to the law laid down by the Hon'ble Supreme Court. The Hon'ble Supreme Court in a catena of judgments has laid down that even if the termination is unjustified and illegal, reinstatement with back wages is not automatic. A number of factors are required to be considered judiciously before grant of relief of reinstatement such as whether the workman is a daily wager, not holding permanent post, the period of service rendered by the workman, the nature of appointment and availability of post etc. It is contended that during the pendency of the present petition, the Petitioner has already paid Rs. 2.5 lakhs to the Respondent and besides that the Petitioner has also deposited with this Court 50% of the award amount, which is kept in the form of FDR as per order dated 30th May, 2008.

5. Learned counsel for the Respondent does not refute the contention that there is no evidence on record that after terminating the services of the Respondent, the Petitioner employed any other person as Aya in the school. He however, states that there is no illegality in the order directing reinstatement with 75% back wages and in a writ petition under Article 226 of the Constitution of India, this Court will not interfere until and unless the

relief granted by the Industrial Tribunal is found contrary to the law or perverse.

6. I have heard learned counsel for the parties and perused the record.

7. The short issue for determination is whether in the facts of the present case the Industrial Tribunal after returning a finding that the termination was illegal, unjustified, contrary to the provisions of law and principles of natural justice was justified in directing reinstatement with 75% back wages. In paragraph 35 of the impugned award the learned Tribunal observed that since it has been stated that the husband of the workman was ill and was not working anywhere, it is only the workman who must be bearing expenses of the family till date, and it is but natural that throughout these 7 years the workman would not have been absolutely without any gainful employment of any kind. Having observed that the Respondent would not be without gainful employment all these years, the learned Trial Court erred in awarding relief of reinstatement with back wages to the tune of 75% with all consequential benefits. Further the learned Tribunal ought to have taken into consideration the criteria laid down by the Hon'ble Supreme Court before granting the relief that the workman was not employed as a regular employee through the proper selection procedure or that a regular post existed.

8. In *Sita Ram v. Moti Lal Nehru Farmers Training Institute*, (2008) 5 SCC 75, the Hon'ble Supreme Court considered the question as to whether the Labour Court was justified in awarding reinstatement of the appellants therein:

“21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the respondent (*sic* appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See *Jaipur Development Authority v. Ramsahai* [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518], *M.P. Admn. v. Tribhuban* [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264 : (2007) 5 Scale 397] and *Uttaranchal Forest Development Corpn. v. M.C. Joshi* [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813 : (2007) 3 Scale 545].)

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs 1,00,000 to

each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.”

9. In *Mahboob Deepak v. Nagar Panchayat, Gajraula* (2008) ILLJ 855

SC, it was observed:

“6. Such termination of service, having regard to the fact that he had completed 240 days of work during a period of 12 months preceding the said date, required compliance with the provisions of Section 6N of the U.P. Industrial Disputes Act. An order of retrenchment passed in violation of the said provision although can be set aside but as has been noticed by this Court in a large number of decisions, an award of reinstatement should not, however, be automatically passed.

7. The factors 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.

8. The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. 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 regularised.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See *M.P. Admn. v. Tribhuban* (2007) 9 SCC 748.)

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs 50,000 (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum.

10. In *Madhya Pradesh Administration vs. Tribhuban*, 2007 LLR 785 their Lordships held:

“5. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed re-instatement of the Respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its umbrage all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application for constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in *Secretary, State of Karnataka and Ors. v. Umadevi* (3) and Ors., (2006) IILLJ 722 SC, and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

6. The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors. See *M.P. Housing Board and Anr. v. Manoj Shrivastava*, (2006) IILLJ 119 SC, *State of M.P. and Ors. v. Arjunlal Rajak*, (2006) IILLJ 104 SC and *M.P. State Agro Industries Development Corporation Ltd and Anr. v. S.C. Pandey*, (2006) IILLJ 215 SC. Our attention has been drawn to a recent decision of this Court in *Jasbir Singh v. Punjab & Sind Bank and Ors.* reported in (2007) 1 SCC566 by the learned Counsel appearing on behalf of the Respondent. We do not see as to how the said decision is applicable to the fact of the present case.

11. In *Jagbir Singh vs. Haryana State Agriculture Marketing Board and another*, 2009 (15) SCC 327 the workman was engaged as a daily wager. He was paid consolidated monthly wages. He worked with the Respondent upto 18th July, 1996. Thereafter his services came to an end. He raised an industrial dispute contending that his services were retrenched illegally in violation of Section 25-F of the ID Act. He claimed reinstatement with continuity of service with full back wages. The Industrial Tribunal-cum-Labour Court held that the workman had worked for more than 240 days and the Respondent violated Section 25-F by not giving him notice, pay in lieu of notice and retrenchment compensation before his termination. The Labour Court, accordingly, declared that the workman was entitled to reinstatement with continuity of service and full back wages from the date of demand notice i.e. 27th January, 1997. The Respondents challenged the award before the High Court which set aside the award holding that the workman was neither entitled to be reinstated nor could he be granted back wages. In this backdrop of the matter, the Hon'ble Supreme Court held that High Court erred in not awarding compensation to the workman while upsetting the award of reinstatement and back wages and granted compensation of

Rs.50,000/- to the workman. The relevant paras of the Report reads as under:-

7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

8-13.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.

16. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

17. While awarding compensation, a host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances.

18. In a case such as this where the total length of service rendered by the appellant was short and intermittent from 1-9-1995 to 18-7-1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs 50,000 to the appellant by Respondent 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum.”

12. In view of the aforesaid settled position and the fact that no post existed, the Respondent could not be directed to be reinstated with 75% back wages. The Respondent worked only for two years and was not appointed through a regular selection procedure against a vacancy. The relief granted to the Respondent is thus required to be modified. It is, therefore, directed that the Petitioner will pay to the Respondent a compensation of Rs. 1 lakh. The Petitioner has already deposited 50% of the award amount in this Court which is lying in the FDR in terms of order dated 30th May, 2008. The Registry is directed to release a sum of Rs. 1 lakh to the Respondent and return the balance amount with interest, if any, to the Petitioner.

13. Writ petition is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JULY 31, 2012/‘vn’