

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

% W.P. (C) 5921/2007

+ Date of Decision: 21st August, 2012

Satish Kumar Sharma Petitioner
! Through: Mr. Anuj Aggarwal, Advocate

Versus

\$ M/s Horticulture/Forest Department ...Respondent
Through: Ms. Sana Ansari, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

By way of this writ petition the petitioner-workman has sought to challenge the award dated 11th October, 2006 passed by the Labour Court whereby only a lump sum compensation of Rs. 50,000/- was ordered to be given to her by the respondent – management in lieu of the reliefs of reinstatement and back wages after holding the termination of his service to be illegal. The petitioner-workman is aggrieved by the denial of the reliefs of reinstatement with all consequential benefits to him by the Labour Court.

2. Brief facts which are relevant to decide this petition are that the petitioner-workman claimed to have been employed with the respondent management as Garden Supervisor since 29th, September, 1987 and his services were allegedly terminated illegally w.e.f. 31.12.199-. That gave rise to an industrial dispute and the same was referred for adjudication to the Labour Court. This was the term of reference:

“Whether Sh. Satish Kumar S/o Sh. Mool Chand, has left his job on his own or his services have been terminated by the management illegally and/or unjustifiably, and if so, to what relief is he entitled, and what directions are necessary in this respect?”

3. The management controverted the claim of the petitioner workman and claimed that the petitioner-workman himself had left and abandoned his job and denied the allegation of termination of his services by it with effect from 31.12.1990. The Learned Labour Court framed the following issues for trial:

1. Whether the claimant is not a workman as alleged in the written statement?
2. Whether the claimant/workman left and abandoned the job himself as alleged in preliminary objection no. 3 in the written statement?
3. Whether notice or inquiry is not required as the claimant was not a regular employee and was casual worker as alleged in para 2(v) to (ix) in the written statement?

4. Whether the services of claimant /workman have been terminated illegally and /or unjustifiably?
5. To what relief, if any, is the claimant/workman entitled from the management in terms of reference?

4. Learned Labour Court decided issue nos. 1-4 in favour of the petitioner-workman and held that termination of his services was illegal since the provisions of Section 25 F of the Act were not complied with. After holding the termination of the services of the respondent to be illegal the Labour Court after noting that the petitioner-workman was not employed as a regular employee with the management and more than 15 years had passed since the termination of his services granted a lump sum compensation of Rs. 50,000/- to him in lieu of reinstatement and back wages.

5. Learned counsel for the petitioner-workman had contended that the award of the Labour Court is not sustainable to the extent the relief of reinstatement in service with back wages had been denied to the successful workman.

6. On the other hand, learned counsel for the respondent-management argued that the impugned award does not suffer from any perversity as the legal position regarding grant of re-instatement with back wages has changed now and according to the recent trend of judicial pronouncements of the Apex Court daily wagers are being awarded monetary compensation only in lieu of the reliefs of re-instatement and back wages where their services are found by the industrial adjudicators to have been terminated illegally because of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. Learned counsel for the respondent further submitted that since the tribunal has awarded reasonable compensation to the workman, who was also a daily wager, taking into consideration all the relevant facts there is no reason for this Court to interfere with its Award in exercise of writ jurisdiction which is quite limited in such like situations.

7. In **“Jagbir Singh vs. Haryana State Agriculture Marketing Board and Anr.”**; (2009) 15 Supreme Court Cases 327 the Supreme Court has held as follows:-

“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. In *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey* (2006) 1 LLJ 496 SC , the question for consideration before this Court was whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of the Section 6N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section [25F](#) of the Act, 1947') as a rule was proper exercise of discretion. This Court considered a large number of cases and observed thus:

41. The Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.”

9. This Court in the case of *Uttaranchal Forest Development Corporation v. M.C. Joshi* (2007)2LLJ390SC held that relief of reinstatement with full back wages were not being granted automatically only because it would be lawful to do so and several factors have to be considered, few of them being as to whether appointment of the workman had been made in terms of statute/rules and the delay in raising the industrial dispute. This Court granted compensation instead of reinstatement although there was violation of Section 6N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section [25F](#)) of the Act, 1947. This is what this Court said:

9. Although according to the learned Counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

10. In the case of *State of M.P. and Ors. v. Lalit Kumar Verma* AIR 2007 SC 528 , this Court substituted the award of reinstatement by compensation.

11. In yet another decision in the case of *M.P. Administration v. Tribhuwan* : (2007) 9 SCC 748, this Court reversed the High Court's order directing reinstatement with full back wages and instead awarded compensation. It was opined:

12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section [11A](#) of the Industrial Disputes Act. It merely directed the amount of compensation to which the

respondent was entitled had the provisions of Section [25F](#) been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.”

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefore 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.....”

13. In Ghaziabad Development Authority and Anr. v Ashok Kumar and Anr. (2008) 1 LLJ 1013 SC , this Court again considered the question whether the Labour Court was justified in awarding the relief of reinstatement with full back wages in favour of the workman and held:

18. The first respondent was admittedly appointed on a daily wage of Rs. 17 per day. He worked for a bit more than two years..... If there did not exist any post, in our opinion, the Labour Court should not have directed reinstatement of the first respondent in service.

19. A statutory authority is obligated to make recruitments only upon compliance with the equality clause contained in Articles [14](#) and [16](#) of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void. These facts were required to be kept in mind by the Labour Court before passing an award of reinstatement.

21. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent in stead and in place of the relief of reinstatement in service.”

14. In Mahboob Deepak v.Nagar Panchayat, Gajraula (2008)ILLJ855SC , 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.

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..... ”

15. It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section [25F](#) although may be set aside but an award of reinstatement should not, however, be automatically passed..... This Court has distinguished between a daily wager who does not hold a post and a permanent employee. ” (emphasis laid)

8. The Supreme Court has thus held that the reliefs of reinstatement and back wages should not be granted by the Courts mechanically after holding the termination of services of the concerned workmen to be illegal.

9. In the present case the petitioner-workman was a daily wager and had worked only for about a year with the respondent. Thus, the Labour Court was fully justified in granting only a lump sum compensation of ₹ 50,000/- to him

and that much compensation is considered to be quite reasonable.

10. In view of the foregoing, I do not see any good reason to interfere with the Award passed by the Labour Court. This writ petition is, therefore, dismissed but without any order as to costs.

P.K. BHASIN, J

August 21, 2012