

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

+ **W.P.(C) 5547/2011**

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Reserved on: 13th August, 2012

Decided on: 13th September, 2012

MURLI SINGH RANA

..... Petitioner

Through: Ms. Pinky Behera, Advocate.

versus

BHARAT EXPLOSIVES LTD

..... Respondent

Through: None.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner seeks setting aside of the award dated 4th April, 2011 passed by the Labour Court whereby it was held that the punishment on the workman for his dismissal from service was excessive in nature and it was exceeding the allegations leveled against the workman. Thus, the learned Labour Court set aside the order of dismissal of the Petitioner and instead of directing reinstatement in view of the fact tht the workman was away from the service of management since 1994 awarded compensation of Rs.15000/- as the workman neither in his claim nor in his evidence affidavit had averred regarding his unemployment.

2. Learned counsel for the Petitioner contends that the finding of the learned Labour Court that since the workman remained an employee with the management for six years and his last drawn salary was Rs. 1735/- per month, thus a sum of Rs. 15,000/- was an appropriate compensation without directing reinstatement is arbitrary and without any justification. Once the dismissal is held to be excessive by the Labour Court then reinstatement

ought to have been ordered. The learned Labour Court while granting compensation further failed to appreciate the fact that the Petitioner had been litigating for the past fifteen years. Reliance is placed upon *J.K. Synthetic Ltd. vs. K.P. Agrawal and another*, 2007 (2) SCC 433 wherein it was held that there are two exceptions in granting compensation. First is when the court quashes the termination as a consequence of employee being exonerated or being found not guilty of misconduct and second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages etc. will be same as those applied in the cases of an illegal termination. Learned counsel contends that once the Labour Court has come to a conclusion that the punishment of dismissal from service was excessive and exceeds the allegation leveled against him, the Labour Court ought to have applied principles applicable in the case of illegal termination/retrenchment while compensating the workman in terms of back wages also.

3. In the present petition notice to the Respondent/management was issued on 4th August, 2011 for 28th November, 2011. On 28th November, 2011 despite service, the Respondent did not enter appearance and rule was issued in the matter. Thereafter on 1st August, 2012 an application for early hearing of the writ petition which was allowed on 1st August, 2012 and the writ petition was posted for hearing on 13th August, 2012. Finally when the matter came up for hearing on 13th August, 2012 again none was present for the Respondent/management. Hence the Respondent is proceeded ex-parte.

4. I have heard learned counsel for the Petitioner and perused the record.

5. Briefly the case of the workman/Petitioner is that the Petitioner was working as a driver with the Respondent since 1988 and his last drawn wages was Rs.1,735/-. The TA and DA allowances of the Petitioner/workman were not released by the management despite repeated requests made by him and he was also not paid three days earned wages for the month of December, 1993 and the workman protested for the non-payment of the three days earned wages vide a letter dated 6th January, 1994. On 7th January, 1994 the management instead of replying to the letter, issued him a charge sheet and suspended him. An inquiry was initiated against the workman and subsequently his services were terminated by the management vide letter dated 13th April, 1994. The workman/Petitioner challenged the action of the management vide his demand notice dated 21st April, 1994 and demanded his reinstatement with continuity of service and full back wages. However, the said demands were not acceded to by the management and he remained unemployed till date. On an industrial dispute being raised, the following reference was sent:

“whether the termination of services of Shri Murli Singh is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”

6. The workman filed his statement of claim dated 13th February, 1996 and the management filed their reply dated 6th June, 1997. The learned Labour Court framed issues vide order dated 3rd February, 1999. On 10th March, 2011 it was held that there was no ground to set aside or vitiate the departmental proceedings against the workman. Finally on 4th April 2011 an

award was passed by the learned Labour Court wherein the learned Labour Court set aside the order of dismissal from service of the workman as excessive in nature and directed the management to pay the Petitioner/workman a lump sum compensation of Rs. 15,000/- instead of reinstatement with back wages.

7. In *J.K. Synthetics Ltd.* (supra) the Hon'ble Supreme Court held:

“19. But the cases referred to above, where back-wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11A of the Industrial Disputes Act (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which

event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.”

8. In the present case, the learned Court has vide its order dated 10th March, 2011 come to a conclusion that the enquiry was fair and proper as the

workman failed to bring any allegation against the same. Further, the learned Labour Court in its award dated 4th April, 2011 has set aside the order of dismissal of workman from service as excessive in nature and exceeding the allegations leveled against him. Learned counsel for the workman placing reliance on *J.K. Synthetics Ltd.* (supra) contends that once the order of dismissal is set aside being found to arise out of a frivolous issues or petty misconduct and as a camouflage to get rid of the victim/workman the order of reinstatement with full back wages would follow. In my view this contention, so far as it deals with the aspect of automatic reinstatement on the order of dismissal passed by the Disciplinary Authority being set aside is misconceived. Although, in the present case, the learned Labour Court has in its award observed that charge sheet was served on the workman in undue hurry and further that prima facie it appears that a senior officer of the rank of General Manager (Marketing) wanted to teach him a lesson, the learned Labour Court has not set aside the award of dismissal from service on the count that the dismissal of workman was a result of mala fide intention or a camouflage to get rid of the workman rather the punishment of dismissal has been set aside as being disproportionate to the charges leveled against him. Further, their Lordships have held in the aforesaid judgment that when the punishment is reduced by a court as being excessive, there can either be a direction for reinstatement or a direction for a nominal lump sum compensation and also that where a finding on misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination.

Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. The Petitioner/workman has in his evidence by way of affidavit before the Labour Court and in this petition claimed that he was out of service for 15 years without any source of income to look after his dependents. This fact has not been rebutted except stating in the written statement that the Petitioner is gainfully employed. The workman remained an employee with the management for six years and his last drawn salary was Rs. 1,735/- p.m. Further, the job of a driver is one of the easily available jobs. However, the amount of compensation granted by the learned Labour Court to the tune of Rs. 15,000/- is too less considering the fact that the workman has spent 6 years as an employee with the Respondent and has been litigating the said case for the past 15 years. Thus, the amount of compensation is enhanced to Rs. 1 lakh which will be paid to the Petitioner by the Respondent within six weeks.

9. Petition is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2012

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