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

+ **W.P.(C) 3711/2000**

Decided on 10<sup>th</sup> October, 2013

**SCOOTERS INDIA LTD.**

..... Petitioner

Through : Mr. Jagat Arora, Adv.

versus

**GOVT. OF N.C.T. OF DELHI & ANR.**

..... Respondents

Through : Mr. Bankey Bihari, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**A.K.PATHAK, J.(ORAL)**

1. Aggrieved by the award dated 22<sup>nd</sup> November, 1999 passed by the Labour Court No. II, Delhi petitioner has preferred this writ petition under Article 226 of the Constitution of India. Respondent no. 2 raised an industrial dispute which was referred to Labour Court for adjudication in the following terms:-

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

2. Respondent no. 2 alleged that he worked with the petitioner for about 12 years. He worked with the petitioner from 1975 onwards till 27<sup>th</sup> August, 1991, when his services were illegally terminated, without any notice. As per the respondent no. 2, he remained sick from 17<sup>th</sup> August, 1991 to 4<sup>th</sup> September, 1991. He intimated about this to petitioner, vide letter dated 19<sup>th</sup> August, 1991, which was sent through one Shri Om Prakash. He also sent two medical certificates through Shri Phool Chand. First was for the period 17<sup>th</sup> August, 1991 to 24<sup>th</sup> August, 1991 and the second one was for the period 25<sup>th</sup> August, 1991 to 30<sup>th</sup> August, 1991. He again sent medical certificate for the period 1<sup>st</sup> September, 1991 to 4<sup>th</sup> September, 1991 through one Shri Radhey Shyam. However, the medical certificates were not accepted by the petitioner. On 5<sup>th</sup> September, 1991 respondent no. 2 reported for duty but was not allowed to join. A complaint was made to Labour Department on 5<sup>th</sup> September, 1991 through the union, however, petitioner refused to take him back in service. Respondent no. 2 alleged that his services were terminated by the petitioner without conducting a domestic

enquiry, inasmuch as he was neither paid retrenchment compensation nor one month's pay in lieu of notice, Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ("the Act", for short).

3. In written statement the petitioner did not deny that respondent no. 2 was its employee. It was alleged that respondent no. 2 was engaged as 'Artisan' with effect from 5<sup>th</sup> June, 1981. His last drawn wages were ₹1273/- per month besides usual allowances. Respondent no. 2 did not perform his duties to the satisfaction of his superiors. He misbehaved with the suppliers and was warned by the Plant Manager, namely, Shri S.K. Krishnan not to repeat such act. On 26<sup>th</sup> April, 1986 he demanded dinner from the canteen employees, namely, Ramesh and Surender after the dinner time was over. When he was told that he cannot be provided dinner since dinner time was over, he lost his temper and gave beatings to Shri Ramesh. Respondent no. 2 was charge sheeted on 26<sup>th</sup> April, 1986. He apologized and assured that he will not misbehave in future. On 17<sup>th</sup> June, 1990 respondent no. 2 entered in the testing department without permission and when he was asked by the inspecting officer not to disrupt the work, he lost his temper and abused him. He was charge sheeted on 21<sup>st</sup> June, 1990. Again he apologized and with the intervention of union's representatives he

was let off with a written warning. On 22<sup>nd</sup> February, 1991 respondent no. 2 left his duty without permission and when he was asked by his superior official not to leave duty without permission he misbehaved with him. Respondent no. 2 was charge sheeted for this misconduct and by way of punishment he was suspended for three days. On 9<sup>th</sup> May, 1991 respondent no. 2 again left his duty without permission and entered in the office of 'Work Manager' and asked him to sign certain medical bills. When the 'Work Manager' declined he abused him. He was charge sheeted on 10<sup>th</sup> May, 1991. However, no strict action was taken against him, since he again apologized on 12<sup>th</sup> September, 1989. Respondent no. 2 also threatened one Mr. C.M. Mehta and this incident was reported to Labour Commissioner vide letter dated 12<sup>th</sup> August, 1989. As regards termination of respondent no. 2 is concerned, it was stated that respondent no. 2 had remained absent without any leave during the aforesaid period. Respondent no. 2 did not inform the petitioner about his sickness. Letter dated 19<sup>th</sup> August, 1991 was not received by the petitioner. On 24<sup>th</sup> August, 1991 petitioner sent a telegram to respondent no. 2 intimating him that he had been absconding from duty and shall report for duty mandatorily but he failed to join the duty.

Accordingly, name of respondent no. 2 was struck off from the muster roll under Clause 9(3) of the Model Standing Orders.

4. Following issues were framed by the Industrial Adjudicator on 1<sup>st</sup> May, 1997:-

“1. Whether there is no termination of services of the workman and the dispute is not covered by Section 2(k) of the I.D. Act as alleged in preliminary issue nos. 2 and 5?

2. To what relief, if any, is the workman entitled from the management as per terms of reference?”

5. Respondent no. 2 examined himself as WW1. He also filed affidavits of Shri Radhey Shyam and Shri Phool Chand. It appears that petitioner did not appear on 14<sup>th</sup> September, 1999 and was proceeded against ex-parte. No application for setting aside the ex-parte order was filed. No evidence was led by the petitioner, however, it continued to appear in the matter through its Authorized Representative.

6. Upon scrutiny of evidence adduced by respondent no. 2 and other material available on record, Industrial Adjudicator has held that service of respondent no. 2 could not have been dispensed with by the petitioner

without holding an enquiry irrespective of Clause 9(3) of the Model Standing Orders. Reliance was placed on D.K. Yadav vs. J.M.A. Industries Ltd. (1993) 3 Supreme Court Cases 259. It was held that respondent had succeeded in proving from the un-rebutted evidence adduced by him that he remained ill from 17<sup>th</sup> August, 1991 till 4<sup>th</sup> September, 1991, thus, his absence during the said period was on medical grounds. As regards past conduct it was observed that same remained unproved. It was further held that since provisions of Section 25-F of the Act were not complied with, the retrenchment/termination of respondent no. 2 was illegal and unjustified. Consequently, Industrial Adjudicator ordered for reinstatement of respondent no. 2 with continuity of service.

7. There is no gainsaying that findings of fact returned by the Industrial Adjudicator upon scrutiny of evidence adduced by the parties cannot be interfered with by this Court in exercise of power of judicial review under Article 226 of the Constitution of India by re-appreciating the evidence. This Court can interfere only in case it is shown that the Award is based on no evidence or suffers from any manifest error of law or jurisdiction or is perverse. During the course of hearing learned counsel for the petitioner has failed to point out any perversity in the impugned Award, inasmuch as same

is based on critical scrutiny of evidence adduced by the respondent no. 2. As regards petitioner, it did not even cross-examine the respondent no. 2, inasmuch as had failed to lead any evidence to prove the averments made in the written statement. As regards employment of respondent no. 2 with petitioner is concerned, same is not in dispute. It is an admitted fact that respondent no. 2 had worked with the petitioner for about 12 years. He succeeded in proving that he remained absent from duty on account of illness. Even otherwise, the plea of petitioner that since respondent no. 2 remained absent for more than eight days, he lost lien to the post which he was occupying, in terms of Section 9(1) of Model Standing Orders, is untenable in view of the judgment rendered by the Supreme Court in D.K. Yadav's case (supra) wherein it is held that principles of natural justice have to be followed, even though the management had power under Clause 13 of the Certified Standing Order to terminate the service of workman. Principles of natural justice demands that a domestic enquiry should be conducted by affording opportunities to the workman to put forth his case. Admittedly, no domestic enquiry was conducted by the petitioner.

8. The next question which arises for consideration is as to whether reinstatement with back wages is an automatic relief in cases where the

termination is held illegal on account of violation of provisions under Section 25-F of the Act or otherwise. This point is also no more res integra. In Senior Superintendent Telegraph (Traffic), Bhopal vs. Santosh Kumar Seal and Others, (2010) 6 Supreme Court Cases 773, Apex Court held thus, “In the last few years it has been consistently held by the Supreme Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.” In Jagbir Singh vs. Haryana State Agriculture Marketing Board and Anr. AIR 2009 SC 3004, Supreme Court held thus, “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 may be set aside but an award of reinstatement should not, however, be automatically passed.” Similar is the view taken by the Supreme Court in Assistant Engineer, Rajasthan Dev. Corporation and Anr. Vs. Gitam Singh, (2013) II LLJ 141 SC, M.P. State Electricity Board vs. Smt. Jarina Bee 2003 LLR 848, Talwara Co-operative Credit and Service Society Limited vs. Sushil Kumar (2008) 9 SCC 486. Thus it is clear that reinstatement with full back wages is not an automatic

consequence where termination is held illegal. In appropriate cases compensation can be awarded and it depends on facts of each case.

9. Learned counsel for the petitioner has vehemently contended that past conduct of the respondent no. 2 was not good and this by itself would be a valid ground to decline reinstatement. Besides this, petitioner is a Government Undertaking and in fact has closed down its business activities way back in the year 1996, thus, reinstatement with back wages in this case would not be an appropriate relief, more so when 21 years have gone by from the date when respondent no. 2 was terminated. Reliance has been placed on the Management of Monghyr Factory of I.T.C. Ltd., Monghyr, Bihar, vs. The Presiding Officer, Labour Court, Patna (Bihar) and Others, AIR 1978 SC 1428, wherein Supreme Court has held thus:-

“The High Court while affirming the order of the Labour Court in this regard did refer to some of the relevant decisions of this Court and correctly enunciated the principles. But it seems to us that it felt fettered in treating the facts referred to in those cases as if they were exhaustive examples of the circumstances under which reinstatement could be ordered. In that view of the matter the High Court, on comparison of the facts of the present case did not feel persuaded to travel outside the limits of those facts. But it should be remembered, as

observed in the Punjab National Bank case (supra), that every case has to be judged on its special facts. In the present case the service card of the employee shows that he had committed several faults in the past and was sometimes warned, sometimes suspended and sometimes reprimanded for all those omissions and commissions. In the incident in question, he was clearly guilty of neglect of duty in putting wrong slides, although they were wrongly supplied to him, while packing the cigarettes on the packing machine. Even shortly before the incident in question, as pointed out to the High Court on behalf of respondent No. 3 himself, he was once warned for absence from proper place of work without permission and was suspended for three days for an act subversive of discipline before he was dismissed in June, 1966. We were also informed by the management that respondent No. 3 has superannuated, according to them in December, 1972. The fact that he has superannuated was not disputed by Mr. Santokh Singh. What was, however, asserted on his behalf was that he had superannuated not in December, 1972, but about two years later. At the time of the hearing of the appeal, the management offered to pay a very reasonable amount of compensation and all sums of money due to the workman on account of gratuity and provident fund. We think on the facts and in the circumstances of this case it is not a fit case where the High Court ought to have sustained the order of reinstatement as passed by the Labour Court. We, accordingly, direct that in lieu of reinstatement, respondent No. 3 will be entitled to get a

compensation of Rs. 30,000/-which will, roughly speaking, include almost all sums of money payable to the workman such as basic pay, clearness allowance etc. etc. for a period of about five years.-  
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10. Per contra, learned counsel for the respondent no. 2 contends that no evidence regarding past conduct of the respondent no. 2 was led by the petitioner, inasmuch as same cannot be taken into account. There is no evidence on record that petitioner closed down its business after following the provisions of the Act. Thus, it is contended that reinstatement with back wages would be the proper relief. It is further contended that reinstatement is the rule where termination is found illegal. I have considered the rival contentions of the parties. I am of the view that reinstatement is not an automatic relief wherever termination is held illegal. A lump sum compensation is also an appropriate relief. Relief has to be moulded keeping in view facts of each case. As regards past conduct of respondent no. 2 is concerned, the same cannot be taken into account in this case for the simple reason that petitioner has not led any evidence to prove the allegations contained in the written statement on this point. However, keeping in mind that 21 years have gone by from the date of termination and respondent no. 2 has not worked with the petitioner all this while, inasmuch

as petitioner has closed down its business activities in the year 1996; reinstatement with back wages would not be equitable relief in this case and lump sum compensation would be appropriate relief to meet the ends of justice. Accordingly, impugned Award is modified and it is ordered that respondent no. 2 shall be entitled to a lump sum compensation of ₹2 lacs in lieu of reinstatement with full back wages.

11. Writ petition is disposed of in the above terms.

**A.K. PATHAK, J.**

**OCTOBER 10, 2013**

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