

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

Reserved on: 16.09.2013
Pronounced on: 23.09.2013

+ **LPA 529/2013, C.M. APPL.11399/2013 & 11401/2013**
+ **LPA 530/2013, C.M. APPL.11410/2013 & 11412/2013**
+ **LPA 531/2013, C.M. APPL.11414/2013 & 11416/2013**
+ **LPA 533/2013, C.M. APPL.11419/2013 & 11421/2013**
+ **LPA 534/2013, C.M. APPL.11426/2013 & 11428/2013**
+ **LPA 535/2013, C.M. APPL.11430/2013 & 11432/2013**
+ **LPA 536/2013, C.M. APPL.11437/2013 & 11439/2013**
+ **LPA 537/2013, C.M. APPL.11443/2013 & 11445/2013**
+ **LPA 538/2013, C.M. APPL.11449/2013 & 11451/2013**
+ **LPA 539/2013, C.M. APPL.11453/2013 & 11455/2013**
+ **LPA 540/2013, C.M. APPL.11457/2013 & 11459/2013**
+ **LPA 541/2013, C.M. APPL.11463/2013 & 11465/2013**
+ **LPA 542/2013, C.M. APPL.11467/2013 & 11469/2013**

AIR FORCE SENIOR SECONDARY SCHOOL

..... Appellant

Through : Sh. K.K. Sharma, Sr. Advocate
with Ms. Bhanita Patowary, Advocate.

versus

GOVT OF NCT OF DELHI & ANR Respondents

Through : Sh. Ramashankar with Sh.
Shivam Garg, Smt. Kamlesh and Ms.
Renu, Advocates, for Resp. No.2. (Item
Nos. 21 to 33).

Sh. Mirza Amir Baig, for Sh. Anjum Javed,
Advocate, for GNCTD (in Item Nos. 22 and
25).

Ms. Khyati Sharma, proxy counsel for Ms.
Sonia Sharma, Advocates, for GNCTD.

Sh. Arjun Pant, Advocate, for Resp. No.1

(Item No.32).

Sh. Sanjeev Sabharwal, Advocate, for Resp. No.1 in Item No.21.

Sh. S.Q. Kazim, Advocate, for Resp. No.1 in Item No.26.

Sh. L.K. Garg, Advocate, for Resp. No.1 in Item No.31.

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

%

1. This judgment will dispose off 13 common appeals directed against a judgment and order of the Learned Single Judge in the batch of Writ Petitions. The appellant (hereafter referred to as “the school”) had claimed itself to be aggrieved by the award of a Labour Court dated 26.02.2010. The award had directed reinstatement of the respondents – workmen and payment of 50% backwages.

2. The facts are that the workmen had been engaged by the school on various dates between 01.06.1997 and 23.02.2006. The dates of their initial engagement have been detailed in a tabular form by the learned Single Judge in his judgment. The workmen claimed to have been illegally retrenched from the services of the school with effect from 15.03.2008. They sought reinstatement but to no avail; consequently they approached the Labour Court, claiming relief. The school, in its response before the Labour Court, stated that the workmen had been engaged as part-time daily wagers; it was contended that they were drawing a monthly salary. They were

working for the purpose of school transport at 1412 Air Force Station and in terms of their engagement, worked only for two hours in the morning and two hours in the evening. Their job was to pick-up children in buses from different places, take them to the school. For this purpose, they had to report for duties at 06.00 AM since classes were to begin from 08.00 AM; after transporting the children, workmen were free and were required to perform duties after the classes were over when they had to transport children back home. It was alleged that the workmen had absented themselves from duties without informing the management, as a result the latter had no option but to engage others.

3. The workmen, besides their pleadings, filed affidavits of evidence in examination-in-chief, where they claimed to have been working continuously from the respective dates of engagement and also that they were exclusively engaged by the school for its work in transporting children. The management led its evidence through affidavit. MW-1 admitted that the school kept the workmen without any appointment letters. He also admitted that the management did not keep any record of attendance of the workmen and that it also did not maintain any register in this regard. He merely stated that workmen were paid out of fund collection from the parents under a separate head for keeping a conductor for the safety of children. After an overall consideration of the matter, the Labour Court held that the termination of the respondents was illegal and directed reinstatement with 50% backwages.

4. It was contended before the learned Single Judge by the school

that the workmen were engaged on part-time basis and could not claim any rights under the Industrial Disputes Act, 1947 (hereafter referred to as “the Act”) and that in any event they were not appointed against sanctioned vacancies by following the stipulations under the recruitment rules. The learned Single Judge concluded that to be entitled to the protection of Section 25F of the Industrial Disputes Act, 1947, the workmen had to establish that he had worked continuously for not less than one year; it meant not less than 240 days in the given year. The Court also relied upon certain rulings to say that for application of industrial law, the question of appointment on regular basis or otherwise would not arise. As a result, learned Single Judge dismissed the school’s writ petition and upheld the award and quantified costs payable at ₹7,500/- in each case.

5. During the course of hearing, Sh. K.K. Sharma, learned senior counsel argued that the school would reinstate the workmen but the burden of backwages cannot be borne. To this limited extent, learned senior counsel reiterated the submissions before the learned Single Judge and stated that even though the workers had been engaged to assist in the transport as conductors, (pursuant to Supreme Court directions which had been corroborated in the bus permits), the fact remained that they were required to discharge functions only in part of the time. In these circumstances, directions to pay full wages would act onerously. Learned counsel sought to rely upon the rulings reported as *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.* AIR 2009 SC 3004 and *Incharge Officer and Anr. v. Shankar Shetty* 2010 (9) SCC 126 and *U.P. State Electricity Board v.*

Laxmi Kant Gupta 2009 (16) SCC 562.

6. Learned counsel for the respondents/workmen argued that the record clearly shows that the management's claim that the workmen were not full-time wagers could not be proved. It was argued on behalf of the workers that once the management could not prove that the engagement was on part-time basis, there could be no fault with the direction to reinstate. Most of the workmen had been working for periods ranging between 5 to 10 years. Their work as conductors was clearly mandated by law as part of the directions made by the Supreme Court and incorporated in the conditions for issuance of transport license. The management witness could not produce any material to say that the workers were engaged on part-time basis; no documentary evidence was placed on the record even though he admitted to the engagement of the workers. In these circumstances, to say that either reinstatement should be denied or that complete backwages should be denied would be inequitable. Learned counsel relied upon the judgment *Harjinder Singh v. Punjab State Warehousing Corporation* AIR 2010 SC 1116.

7. This Court has carefully considered the submissions. The statement on behalf of the management during its submissions that the school would reinstate the workmen, in the opinion of this Court, ought to be dispositive of the appeals. Nevertheless, since at the same time, learned senior counsel has relied upon some rulings to say that the direction to reinstate ought not to be automatic, this Court is of the opinion that in the circumstances of the case, reliance on those rulings

would be inapposite. So far as the direction to pay 50% of the backwages is concerned, and the further submission that it would cast liability upon the school, this Court is of the opinion that when the workmen is not at fault, the management's deliberate refusal to comply with legal standards mandated under the labour laws, particularly Section 25F of the Act have to be taken in its proper perspective and appropriate reparation directed. In the case of individuals who discharge responsibilities and are in employment for considerable periods of service, it is only provisions like Section 25F as well as other laws, such as the Payment of Gratuity Act, 1972 and the Employees' Provident Funds and Miscellaneous Act, 1952 that come to their aid in the event of an unexpected cessation of employment. This is because of the reasoning that if an employee works for 5 or 10 years, in terms of Section 25F of the Act, she/he would be entitled to 15 days' wages for each year of service. Thus, in the case of an employee, who puts in 10 years' service continuously, employment is defined by Section 25B of the Act as "240 days", (excluding sick leave and after taking into account weekly holidays etc.). In the event of retrenchment, the employer would have to pay the notice pay plus five months' salary. The workmen would also be entitled to an equal amount, i.e. five months' salary, in terms of the Payment of Gratuity Act, 1972. In other words, in such event if the employer adheres to the provision of law, the measure of social security, excluding provident funds accumulations would be merely to the tune of year's wages. The unaccepted and untimely termination of employment, on the one hand, and withholding of these dues would

virtually drive such a workman to the streets. Therefore, in the event of the Courts recognising the illegality, both aspects would have to be balanced and given due weight. The illegality in depriving the workmen of his just and rightful dues at the time when it should have been paid would have to be balanced with the eventual liability which might fall upon the employer and having to pay the entire backwages for the period that the litigation kept pending. The Courts would be sensitive to this. In other branches of law, restitution is recognized and insisted upon vigorously by the Courts. Thus, for instance, a land owner whose land is expropriated would be entitled to the full market value as determined by law and in addition, interest at predetermined rates as well as 30% solatium in terms of the Land Acquisition Act, 1894. The new legislation in this regard has increased that compensation manifold, highlighting this restitutionary principle. Likewise, the excess amounts demanded and paid as tax are entitled to earn statutorily pre-determined interest. In civil law, if a tenant or unlicensed occupant is held liable to vacate the premises, damages and *mesne* profits are calculated in a routine manner and directed to be paid. In the event of an unlawful termination of contract, the aggrieved party would be entitled to damages, which include loss of profit. If the litigation protracts, he would also be entitled to interest on the amounts determined. In these circumstances, it would be indefensible for anyone to suggest that all workmen deprived of their just dues at the time of their illegal termination should be denied restitution. In this case, there is a double disadvantage because unlike in other branches of law, he cannot even claim damages since that

remedy is barred. At the same time, the management cannot also be entirely faulted if the litigation keeps pending following the period of time. As a consequence, the Courts should strike a balance and direct that some amount should be paid, if not the entire burden of backwages.

8. In the facts of the present case, the workmen were terminated in 2008. The Labour Court directed payment of 50% backwages. The workmen's applications for payment of minimum wages in terms of Section 17B of the Act have not yet been disposed off and are pending. There is no denial that such minimum wages have to be paid in terms of Section 17B of the Act. In these circumstances, what would transpire is that for the period the workmen were out of employment, i.e. 2008 till making of the award, the Labour Court has directed payment of 50% of the backwages. Having regard to the overall conspectus of the circumstances and the statement made that the school would in fact be reinstating the workmen, this Court is of the opinion that the management's liability to pay backwages should be $\frac{1}{3}^{\text{rd}}$ of the amounts, calculated with reference to notified Minimum Wages, applicable from time to time, from termination (of the workmen) till the actual payment. In these circumstances, the Court is of the opinion that the payment of the backwages should be calculated from the date of termination in 2008 till the date of this judgment. The appellant school is granted the liberty to pay the backwages so directed in equal monthly instalments with effect from 01.10.2013, and ensure that the entire arrears and backwages are paid to the workmen on or before 30.06.2014. The appeals are partly

allowed to the extent indicated in the preceding paragraphs. There shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

SEPTEMBER 23, 2013