

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

Judgment Reserved on January 22, 2014
Judgment Delivered on January 31, 2014

+ **W.P.(C) 3987/2011**

M/S HARYANA ROADWAYS, DELHI

..... Petitioner

Represented by: Mr.Yashpal Rangi, Advocate with
Mr.S.Singh , Advocate.

versus

KIRPAL SINGH

..... Respondent

Represented by: Mr.G.S.Charya, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present petition is filed challenging the order dated August 23, 2010 of the Labour Court deciding the preliminary issue holding that the inquiry proceedings held against the respondent were not fair and proper and award dated December 24, 2010 passed by the Labour Court IX, Karkardooma, Delhi, whereby the Labour Court held the termination as illegal with a direction for reinstatement and full back wages to be paid @ last drawn wages or as per the provisions of Minimum Wages Act, 1948, prevalent from time to time within one month, failing which the back wages shall incur interest @ 9% per annum.

2. The respondent who was Chowkidar was charge-sheeted for unauthorized absence vide charge-sheet dated December 24, 1987. Disciplinary proceedings were held and pursuant thereto the disciplinary authority passed an order of removal of petitioner from service on July 18, 1989.

3. The respondent raised a industrial dispute for the first time in the year 2005, which was subsequently referred for adjudication of the Labour Court vide reference dated August 08, 2007, which is reproduced as under:

“Whether removal of Sh. Kirpal Singh, S/o Sh. Uday Singh from service by the management is illegal and/or unjustified and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

4. The petitioner herein filed a reply to the claim filed by the respondent wherein it had averred that the action taken against the respondent was just and proper as he remained absent from duties without making any leave applications; without prior intimation and without submission of any medical certificates regarding his illness.

5. 3 issues were framed for adjudication, which are reproduced as under:

1. Whether the domestic enquiry conducted by the management was not fair and proper? OPW

2. Whether the claimant was illegally and/or unjustifiably terminated by the management? OPW

3. Relief.

6. Insofar as the issue No.1 is concerned, it was held by the Labour Court in its order dated August 23, 2010 that the inquiry proceedings have not been held in a fair and proper manner for the reason, neither the copy of the charge-sheet nor record pertaining to the inquiry proceedings were filed by the petitioner to satisfy the Labour Court that the charge-sheet was really issued to the respondent and further to satisfy the Court

that the inquiry proceedings were really held in accordance with the principles of natural justice.

7. It is a fact that record of the inquiry proceedings were not filed for the reasons best known to the petitioner. The fact that the dispute was raised after almost 15 years and the record was weeded out can also be a possible reason. Be that as it may, the liberty given by the Labour Court vide order dated August 23, 2010 was availed by the petitioner, who had produced one witness namely Prakash Chand to prove the charges against the respondent on merit before the Labour Court. In the absence of record pertaining to the disciplinary proceedings, no cogent evidence either oral or documentary like the charge-sheet, correspondence with respondent, attendance register, if any, could be produced or proved by the petitioner against the respondent justifying the unauthorized absence.

8. It is noted from the claim petition that the respondent himself has admitted the receipt of the charge-sheet dated December 24, 1987 by him, even though admitted, if the charge-sheet itself was not filed how will it be established. Further the record relied upon by the petitioner management during inquiry proceedings would become relevant, while proving the charges before the Labour Court. Even though it can be debated that additional evidence could not be relied upon by the management before the Labour Court, but it is a case where even the original material could not be produced. The Labour Court was not unjustified to come to a conclusion that the action taken against the respondent was illegal and unjustifiable.

9. Learned counsel for the petitioner would urge that the claim petition itself was highly belated as the same was filed in the year 2007. He would state that the directions of the Labour Court giving

reinstatement and entire back wages are untenable in the facts of this case.

10. Learned counsel for the respondent would urge that the petitioner has not taken the point with regard to the delay in filing the claim petition/raising the industrial dispute in its reply and no issue was framed by the Labour Court in this regard. He would further state that delay cannot be a ground to reject the claim. The relief can be moulded by the Labour Court if the claim was filed after a long time. He would rely upon the judgment of the Supreme Court in the case reported as AIR 1999 SC 1351 Ajaib Singh vs. Sirhind Co-operative Marketing cum Processing Service Society Limited wherein the Supreme Court has held that no reference to the Labour Court can really be questioned on the ground of delay. The Court may also in appropriate cases direct payment of part of the back wages instead of full back wages. He would also rely upon the judgment reported as 2010 (14) SCC 176 Kuldeep Singh vs. General Manager, Instrument Design Development & Facilities Centre & Anr. wherein the Supreme Court has held that there is no prescribed time limit for the appropriate Government to exercise its power under Section 10 of the Act. Further the workman in the case cited having offered the explanation, the Supreme Court held that the delay in the case in hand was not so culpable as to disentitle the petitioner any relief.

11. Having considered the submissions made on behalf of the parties and perusal of the claim petition, it is noted that there is no explanation given by the respondent for raising an industrial dispute/filing of the claim petition after more than 15 years from the date when he was removed from service. In the absence of explanation, the Labour Court

could not have granted entire back wages on the basis of the last wages drawn or the minimum wages, whichever is higher. Further when a fact is apparent on record even it is not pleaded, the Labour Court was not precluded to modify the relief considering the aspect of delay. In the present case, even though the setting aside of termination by the Labour Court is justified but surely not the grant of back wages. This Court is of the view that the relief granted by the Labour Court need to be modified to the extent, that the petitioner would be entitled to the back wages as per the last wages drawn or the minimum wages whichever is higher, only from the date of the award of the Labour Court i.e. December 24, 2010. The period of service between the date of removal i.e. July 18, 1989 till the date of the award would not be counted for any purposes. The payment as directed to be made in this order shall be effected within a period of two months from the date of receipt of copy of this order.

12. The writ petition is disposed of in terms of the above.

13. No costs.

(V.KAMESWAR RAO)
JUDGE

JANUARY 31, 2014/km