

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

Decided on February 19, 2014

+ **W.P.(C) 6935/2011 & CM No. 15921/2011**

M/S. NARANG TRADERS (FASHION WEAR) THROUGH ITS
PARTNER

..... Petitioner

Represented by: Mr.Karunesh Tandon, Advocate.

versus

ANIL KUMAR AND ANR.

..... Respondents

Represented by: Mr.Atul T.N., Advocate for R1
and R2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The writ petition has been filed by the petitioner challenging the award of the Labour Court No. XII, Karkardooma Courts, Delhi dated January 29, 2011 passed in Industrial Dispute No. 291/08.

2. The dispute was raised by the two respondents herein, which was referred by the Govt. of NCT of Delhi for the adjudication of the Labour Court on the following term:

“Whether the services of Sh. Anil Kumar S/o Sh. Bhola Prasad and Sh. Mithlesh Kumar S/o Sh. Bhola Prasad have been terminated illegally and/or unjustifiably by the management and if so, to what relief are they entitled and what directions are necessary in this respect?”

3. The case of the respondent Nos. 1 and 2 before the Labour Court

was that they were engaged as 'General Worker' and 'Machine Man' on June 21, 1993 and August 11, 1995 and their last drawn salary was ₹ 3200/- and ₹ 2200/- per month respectively. It was their case that when they went to the village for two months and came back for their duties, the petitioner refused to take them on duty.

4. The case of the petitioner before the Labour Court was that they have never terminated the services of the respondents. According to the petitioner, the respondents were employed with it since December 1999 upto November 07, 2002, and the last drawn salary was ₹ 2750/- per month. The petitioner would also state that the respondents have taken all dues from the petitioner on November 07, 2002 including the salary of the month of October 2002 on the same day i.e. November 07, 2002.

5. Two issues were framed by the Labour Court, the first one being, as per the terms of reference and the second being, the relief which the respondents would be entitled to.

6. The controversy before the Labour Court primarily revolved round an alleged settlement arrived at between the parties herein. The parties have produced Handwriting Expert to prove the settlement. The Labour Court did not accept the settlement on the basis of the deposition of the Handwriting Expert produced by the respondents, who had raised some doubt regarding the authenticity of the signatures on the settlement. Meaningfully read, the Labour Court held that the termination of the respondent was illegal. Based on such a finding, the Labour Court granted a compensation of ₹ 90,000/- to the respondent No. 1 and ₹ 70,000/- to the respondent No. 2.

7. Mr. Karunesh Tandon, learned counsel appearing for the petitioner would vehemently argue that the Labour Court could not have relied upon the testimony of the Expert Witness produced by the respondents-workmen. He would also state, MW2 Sachin Kumar Jain, who was the attesting witness has proved the settlement. The settlement having been entered between the parties, it is a case where the respondents have left the services of the petitioner on their own accord.

8. On the other hand, learned counsel for the respondents would justify the award of the Labour Court. According to him, the Labour Court had rightly accepted the version given by the Handwriting Expert produced by the respondents as the said Handwriting Expert has raised certain doubts with regard to the authenticity of the signatures on the settlement.

9. Having considered the rival submissions of the learned counsel for the parties, insofar as the signatures on the settlement are concerned, on a comparison of the signatures in the claim petition and on the settlement, they appear to be at variance. In any case, when the Labour Court has taken a particular view on a particular factual aspect, this Court would not like to unsettle the same unless and until it is apparently erroneous.

10. The only aspect which needs to be considered is whether the compensation granted by the Labour Court is justified. After some arguments, the counsel for the parties were directed to take instructions from their respective clients on the aspect of compensation. The learned counsel for the respondents states that his clients are ready if the compensation amount is reduced to an amount of ₹ 60,000/- each. As

the learned counsel for the petitioner could not get instructions on this, I deem it fit to decide the matter on the strength of the Judgments given by the Supreme Court on the aspect of compensation. The Supreme Court in the case of Senior Superintendent Traffic, Bhopal vs. Santosh Kumar Seal & Ors. inter-alia held that the relief by way of reinstatement with full back wages is not automatic even if termination of an employee is found to be illegal or any contravention of the prescribed procedure and with monetary compensation in lieu of reinstatement and back wages in cases of such nature may be proper. The Court in the said case had granted compensation of ₹ 40,000/- to each of the workman.

11. In its latest opinion reported as (2013) 5 SCC 136 Assistant Engineer, Rajasthan State Agriculture Marketing Board Sub Division Quota vs. Mohan Lal, the Supreme Court after considering its earlier judgment had granted compensation of ₹ 1,00,000/- to the workman where the workman had worked for a period between November 01, 1984 and February 17, 1986 and who had raised industrial dispute after 6 years. The relevant portion of the judgment is reproduced hereunder:

9. In L. Robert D'Souza [L. Robert D'Souza v. Southern Railway, (1982) 1 SCC 645 : 1982 SCC (L&S) 124] this Court in para 27 held as under: (SCC p. 664)

“27. ... Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule

2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with preconditions to valid retrenchment, the order of termination would be illegal and invalid.”

What has been held by this Court in L. Robert D'Souza [L. Robert D'Souza v. Southern Railway, (1982) 1 SCC 645 : 1982 SCC (L&S) 124] is that Section 25-F of the ID Act is applicable to a daily-rated worker. We do not think that there is any dispute on this proposition.

10. In RBI v. S. Mani [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] , this Court in para 54 of the Report held as under: (SCC p. 120)

“54. Mr Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and back wages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The industrial adjudicator cannot be held to be bound to grant some relief only because it will be lawful to do so.”

11. In Nagar Mahapalika v. State of U.P. [(2006) 5 SCC 127 : 2006 SCC (L&S) 934] , this Court, while dealing

with the non-compliance with the provisions of Section 6-N (which is in pari materia with Section 25-F) of the U.P. Industrial Disputes Act held that the grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workmen would not automatically follow or as a matter of course. Instead, this Court modified the award of reinstatement with compensation of Rs 30,000 per workman. In Municipal Council, Sujapur v. Surinder Kumar [(2006) 5 SCC 173 : 2006 SCC (L&S) 967] this Court after having accepted the finding that there was violation of Section 25-F of the ID Act, set aside the award of reinstatement with back wages and directed the workman to be paid monetary compensation in the sum of Rs 50,000. In Mamni [Haryana State Electronics Development Corpn. Ltd. v. Mamni, (2006) 9 SCC 434 : 2006 SCC (L&S) 1830] this Court modified the award of reinstatement passed by the Labour Court, though the termination of the workman was in violation of Section 25-F of the ID Act, by directing that the workman should be compensated by payment of a sum of Rs 25,000.

12. In SBI v. Mahatma Mishra [(2006) 13 SCC 727 : (2008) 1 SCC (L&S) 988] this Court observed that: (SCC p. 734, para 12)

“12. ... It [was] one thing to say that services of a workman [were] terminated in violation of mandatory provisions of law but it [was] another thing to say that relief of reinstatement in service with full back wages would be granted automatically.”

13. In HUDA v. Om Pal [(2007) 5 SCC 742 : (2007) 2 SCC (L&S) 255] this Court in paras 7 and 8 of the Report held as under: (SCC p. 745)

“7. Moreover, it is also now well settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A of the

1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

8. The respondent worked for a very short period. He only worked, as noticed hereinbefore, in 1994-1995. The Industrial Tribunal-cum-Labour Court, therefore, in our opinion committed an illegality, while passing an award in the year 2003, directing the reinstatement of the respondent with full back wages. Although we are of the opinion that the respondent was not entitled to any relief, whatsoever, we direct the appellant to pay him a sum of Rs 25,000.”

14. In Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , this Court was concerned with a daily wager who had worked with Uttaranchal Forest Development Corpn. from 1-8-1989 to 24-11-1991 and whose services were held to be terminated in violation of Section 6-N of the U.P. Industrial Disputes Act. The Labour Court had directed the reinstatement of the workman with 50% back wages from the date the industrial dispute was raised. Setting aside the order of reinstatement and back wages, this Court awarded compensation in a sum of Rs 75,000 in favour of the workman keeping in view the nature and period of service rendered by the workman and the fact that industrial dispute was raised after six years.

15. In M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] this Court upheld the order of the Industrial Court passed in its jurisdiction under Section 11-A of the ID Act awarding compensation and set aside the judgment of the Single Judge and the Division

Bench that ordered the reinstatement of the workman with full back wages. This Court in para 12 of the Report held as under: (SCC p. 755)

“12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F 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.”

16. In Mahboob Deepak [Mahboob Deepak v. Nagar Panchayat, Gajraula, (2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] this Court stated that an order of retrenchment passed in violation of Section 6-N of the U.P. Industrial Disputes Act may be set aside but an order of reinstatement should not however be automatically passed. This Court observed in paras 11 and 12 of the Report as follows: (SCC p. 578)

“11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the

workmen should be granted adequate monetary compensation.

(See M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] .)”

12. I note, there is an issue with regard to the date of appointment. According to the respondents, their initial year of engagement was 1993, whereas according to the petitioner, it is 1999. I do not think that this aspect would be of any relevance, keeping in view the directions ultimately to be given by this Court in this Judgment. Even though, last drawn wages by the respondents is a disputed fact, for the purpose of deciding the compensation, I deem it fit to consider a figure of ₹ 3200/- and ₹ 2200/- per month as the last drawn wages. If the said amounts are taken into consideration for the purpose of grant of benefits under Section 25-F of the Industrial Disputes Act, 1947, the compensation would roughly come to be between Rs. ₹ 20,000/- to ₹ 32,000/-. As noted above, the respondents are agreeable for a reduced amount of compensation i.e. ₹ 60,000/- each. Keeping in view, the respondents have been litigating since 2004, coupled with the fact that the settlement between the parties has not been proved and the respondents have agreed for a lower compensation, I deem it appropriate to reduce the compensation to ₹ 50,000/-. In view of the above conclusion, the impugned award of the Labour Court is modified to the extent that the respondent Nos. 1 and 2 shall be entitled to a compensation of ₹ 50,000/- each in lieu of reinstatement and back wages. The aforesaid amount shall be paid to the respondents within a period of two months from the receipt of the copy of this order. On failure, the interest @ 9 % per annum shall accrue on the said amount.

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

14. No costs.

CM No. 15921/2011

Disposed of as infructuous.

(V.KAMESWAR RAO)
JUDGE

FEBRUARY 19, 2014
akb