

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WA.No. 1627 of 2015 () IN OP(LC).115/2010

AGAINST THE ORDER/JUDGMENT IN OP(LC) 115/2010 OF THIS COURT

APPELLANT/PETITIONER:

K.P.RAVEENDRAN AGED 57 YEARS
S/O GOVINDAN, CHANDHUKUTTU MANDIRAM, P.O.KARIVALLOOR
KANNUR DISTRICT.

BY ADVS.SRI.B.ASHOK SHENOY
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH
SRI.RIYAL DEVASSY
SRI.K.A.JOBY

RESPONDENT(S)/RESPONDENTS/RESPONDENTS

1. THE SENIOR GENERAL MANAGER, H.R.LUPIN LABS LTD.
C.S.T. ROAD, KALEENA SANTACRUZ (EAST), MUMBAI-400098.
2. LABOUR COURT, KANNUR.

R1 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1 BY ADV. SRI.P.GOPINATH
R1 BY ADV. SRI.P.BENNY THOMAS
R1 BY ADV. SRI.K.JOHN MATHAI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. SURENDRA MOHAN & SHAJI P. CHALY, JJ.

W.A.NO.1627 OF 2015

Dated this the 25th November, 2015.

JUDGMENT

Surendra Mohan, J.

This writ appeal is directed against the judgment of the learned Single Judge in OP(LC)115/2010. As per the judgment under appeal, the learned Single Judge has confirmed the award of the Labour Court, Kannur in ID 7/2004. As per the award of the Labour Court, the termination of the appellant had been found to be improper. However, instead of reinstating him with full back wages, the Labour Court found that compensation in lieu of reinstatement was appropriate. The appellant is aggrieved by the said award.

2. The short facts of the case are summarized as under. The appellant was working as a Medical Representative under

the first respondent from 7.4.1983. In 1984 he was transferred to Kozhikode. Thereafter he was transferred to Thalassery in 1989 and to Kasaragod in 1994. By this time he had been designated as sales promotion employee. According to him he had a good reputation. While so on 15.12.1999 he was transferred to Thiruvananthapuram. According to the petitioner, he had applied for leave for 15 days from 15.12.1999 for the reason that he was suffering from lumbago. He continued on medical leave till 3.5.2000. His leave application had been supported by a medical certificate. On 13.4.2000 he was issued with a letter by the management informing him that he was on leave without proper authorisation. Though the appellant had replied to the said letter, he received a reply dated 27.4.2000 from the Management informing him that he was removed from the rolls of the management's service. The appellant then requested for a reconsideration of his case by the management. Thereupon, the first respondent by letter dated

14.9.2000 offered him fresh appointment with effect from 1.10.2000. Such appointment would have denied to him the benefit of his past service. Therefore, he raised an industrial dispute. The same was referred to the Labour Court, Kannur by the appropriate Government.

3. Before the Labour Court, the claim of the workman was contested by the first respondent. According to the first respondent, the appellant had been transferred to Thiruvananthapuram on 15.12.1999, in the exigencies of service. However, he went on leave from the said date. As per letter dated 21.1.2000, the appellant had been directed to submit his medical reports, pathological reports, prescriptions etc in respect of his sickness so that the management could sanction medical leave. Since there was no response from the appellant by another letter dated 18.7.2000 the appellant was requested to submit himself for medical examination by a medical officer of the management in Mumbai. The appellant has responded to said letter with a telegram dated 13.11.2012

stating that he was completely bed ridden and that he was unable to travel. Thereafter by another letter dated 13.10.2000 the first respondent had required him to furnish the prescriptions and other reports within 48hours of receipt of the said letter. Since the said requirement was also not complied with the appellant was informed that he had abandoned his employment. On the side of the management Exts.M1 to M14 documents were marked. On the side of the workman Exts.W1 to W65 documents were marked. The appellant was examined as WW1 on the side of the management.

4. On a consideration of the evidence on record, the Labour Court found that since no domestic enquiry was conducted against the appellant his termination was unsustainable. However, the Labour Court found that reinstatement of the petitioner in service with full back wages was not called for in the case. Therefore, compensation in lieu of reinstatement was granted. Though the aggrieved

appellant had challenged the award of the Labour Court before this Court in O.P(LC) 115/2010 the learned Single Judge has by the judgment under appeal, dismissed the original petition finding that the award of the Labour Court was proper. The aggrieved workman has filed the appeal.

5. We have heard Adv. Ashok B.Shenoy who appears for the appellant as well as Adv.Gopikrishnan Nambiar who appears for the first respondent. We have considered the rival contentions, anxiously.

6. According to Adv.Ashok B.Shenoy who appears for the appellant, this is a case where the workman who was aged only 38 years at the time of his termination had been denied employment. In such cases where the workman is found to have a substantial length of service remaining, it is the usual practise to order reinstatement with back wages, upon finding that the termination was illegal. In the present case the Labour Court has found the termination to be illegal. Therefore, it was only appropriate that the appellant was

reinstated in service with full backwages. The Labour Court erred in not granting the said relief to the petitioner. The counsel placed reliance on the decisions of the Supreme Court in Tapash Kumar Paul v. BSNL and others [(2014)4 SCR 875, Bhuvnesh Kumar Dwivedi v. M/s.Hindalco Industries Ltd. [2014KHC 4328; 2014(11)SCC 85] as well as the decision in Jasmer Singh v. State of Haryana [2015 KHC 4025]; 2015(4) SCC 458. Placing reliance on the above decisions it is contended by the learned counsel that this is a fit case in which reinstatement with full back wages ought to have been granted. The learned Single Judge, according to the counsel has not considered the issue in any detail.

7. It is worth noticing that, the appellant while working as a sales promotion employee was transferred to Thiruvananthapuram on 15.4.1999. It is on the very same date that, the appellant is seen to have submitted his application for leave supported by a medical certificate. His case is that, he was suffering from lumbago. He extended the

leave up to 3/5/2000. Though the first respondent wanted the appellant to produce the reports of his pathological tests as well as other details of his treatment for the purpose of sanctioning medical leave, the appellant did not make any such documents available to the first respondent. The management had also directed the appellant to submit himself to a medical examination by a medical officer of the management. The appellant had not acceded to such medical examination also. Since the appellant did not join duty, he was terminated from service. Since no domestic enquiry was conducted against him, the Labour Court has found his termination to be unsustainable. However, on the question of reinstating him in service, the Labour Court has exercised its discretion and has found that compensation in lieu of the reinstatement would be appropriate. It is worth noticing that the said discretion was exercised considering the attendant facts and circumstances leading to the termination of the petitioner. The Labour Court has also

taken note of the fact that, according to the management they have lost confidence in the appellant. It is the contention of the counsel for the appellant that the management ought to have proved by evidence that the post held by him was one of confidence and that such confidence had been lost. It is worth observing in the above context that an element of confidence is a sine qua non in any employment. An employee who does not have the confidence of the employer is always a disadvantage to any employer. In the case of a pharmaceutical company like the first respondent the confidence that it has to repose in its sales promotion employee cannot be said to be illusory or non-existent. A sales promotion employee who acts against the interests of the employee could wreak havoc to the business prospects of the establishment. Therefore, in the face of the contention of the management that it had lost confidence in the employee the Labour Court has ordered payment of compensation in lieu of reinstatement. The said order cannot be said to be

illegal, in any manner. The learned Single Judge has in addition taken note of the fact that though there was an offer for re-employment by the first respondent, the appellant had not accepted the offer. It is true that the appellant could have pursued his other remedies for continuity in service, even after accepting the fresh employment. We notice from the facts of the decisions on which reliance has been placed by the counsel for the appellant that, they were all cases in which the Labour Court had ordered reinstatement but the High Court had interfered and converted the same to payment of compensation. In stark contrast, in the present case the Labour Court itself in the first instance has declined the relief of reinstatement and has awarded compensation. We are not satisfied that the same requires interference by this Court. We also notice that in *Tapash Kumar Paul v. BSNL & Another* (supra) the Apex Court has laid down the principles on which award compensation in lieu of reinstatement could be granted. The Apex Court has laid down the principles in the

following words:–

“It is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz.(1)where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii)where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and/or(iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.”

Applying the above principles, where the management has lost confidence in an employee, award of compensation in lieu of

reinstatement is permissible. The above being one such case we confirm the award of the Labour Court.

Accordingly this writ appeal is dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

jj

/True copy/

