

\$~R-3

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

Date of Decision :28th September, 2015

+ W.P. (C). 2328/2004

SAROJ GUPTA

.... Petitioner

Through: Mr. Anjum Kumar, Advocate.

versus

M/s GAUTAM ENTERPRISES AND ANR.

.... Respondents

Through: Mr. S. P. Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

R.K.GAUBA, J. (ORAL)

1. Feeling aggrieved by the award dated 03.03.2003 passed in I. D. no.264/1992 by the presiding officer of Labour Court no.1, Karkardooma Courts, Delhi in the matter arising out of reference made by Secretary (Labour) of the erstwhile Delhi Administration (predecessor-in-interest of Government of NCT, Delhi) vide notification no.F.24(1499)/92-Lab./166-62 dated 26.06.1992 under Sections 10(1) and 12 (5) of the Industrial Disputes Act 1947, the workman brought this writ petition invoking the jurisdiction of this court under Articles 226/227 of Constitution of India, praying, *inter-alia*, for the said award dated 03.03.2003 to be quashed, the operation of the order awarding compensation in the same of Rs.20,000/- to be stayed and for a direction to be issued to the first respondent (management) to reinstate her in its

service with full back wages from the date of termination of her service (01.06.1991).

2. The pleadings, documents on the file and the record of proceedings before the Labour Court reveal that the petitioner was employed as a clerk in the employment of the first respondent, last wages drawn being in the sum of Rs.1385/- per month. The petitioner claimed that she had been initially inducted in service with wages payable in the sum of Rs.400/- per month from May 1985 to December 1990. The management, on the other hand, pleaded that she had been engaged as a clerk, initially under training only w.e.f. 09.05.1988. The dispute as to the date from which the employment had commenced was never pressed as an issue of fact at any stage. Be that as it may, in the award, the labour court accepted the case of the management that the petitioner was employed only w.e.f. 09.05.1988. This, even otherwise, is in *sync* with what was her assertion in the affidavit submitted in the course of enquiry before the labour court, wherein she referred to her employment for the preceding three years. Thus, at the hearing, learned counsel for the petitioner fairly conceded that he is not in a position to claim employment to be from any date anterior to 09.05.1988.

3. In the pleadings before the labour court, the management had claimed that the petitioner, having been engaged to attend to the calls of the consumers for booking for refilling of cylinders, there were complaints as to her conduct vis-a-vis the consumers/callers. But, during the inquiry, no evidence was led in this regard nor any issue pressed for adjudication. Even otherwise, the said conduct (or misconduct) was not

an issue arising between the parties since that was not the reason why the services of the petitioner were terminated.

4. It was claimed by the petitioner in the industrial dispute that she had proceeded on leave for the period 08.05.1991 to 31.05.1991, since she was to get married on 16.05.1991. It was conceded during the hearing before the labour court that there was no formal application made by the petitioner for being allowed to be absent from duty, her claim being that she had been given oral permission and there was no insistence on any formal application to be moved. The management, on the other hand, claimed that the petitioner was in the habit of coming late for, or remaining absent from, duty and that she had remained absent from duty w.e.f. 07.05.1991 onwards. It brought evidence before the labour court showing a letter having been addressed to her on 21.05.1991 calling her upon to resume duty forthwith accusing her to be absent without prior permission or sanction of leave. The labour court, in the award, did not accept the stand of the management. It found that the notice issued on 01.06.1991 terminating the services of the petitioner for such reasons to be unlawful and in the nature of illegal retrenchment.

5. Though returning a finding to the above effect, the labour court noted that, during the course of inquiry, the management had moved an application offering to take the petitioner back in the service. For such purpose, a direction had been sought against her to rejoin duties pending adjudication on the reference. The said application was resisted by petitioner, *inter-alia*, on the ground that it was belated, misconceived and vexatious. The petitioner, contesting the application, had argued before the labour court that the management had not indicated in the application

as to what was the nature of work which was to be taken from her in the event of she rejoining and also the amount of salary to be paid. The labour court decided the said application by order dated 07.03.1995 (which was also sent to the government for publication as an interim award) holding that the petitioner, upon resumption of duty in terms of the offer of the management, would be obliged to discharge the duties of a clerk, in which capacity she had been earlier engaged and would be entitled to draw wages as before, at the rate of Rs.1385/- per month. Thus, the application of the management was allowed and the petitioner was directed to rejoin duties, pending adjudication on the reference, within a fortnight of the order.

6. The petitioner came up with an application alleging contempt of court on the ground that the management had failed to take her on duty in spite of the aforesaid direction and she having been reported for duty on 30.03.1995. The management, on the other hand, showed to the satisfaction of the labour court that it was the petitioner who had failed to rejoin duties, in spite of direction as also communicated to her by the Assistant Labour Officer pursuant to the interim award. The application of the petitioner was dismissed by order dated 23.07.1996. The record of the labour court, thus, shows that the direction in the interim award was not complied with by the petitioner.

7. The labour court noted the above conduct of the petitioner and held that she was not entitled to reinstatement and, thus, closed the proceedings by awarding compensation (in the sum of Rs. 20,000/-) for the wrongful termination of service following the view taken in similar

fact situation by Bombay High Court in *Sonal Garments vs. Trimbak Shankar Karve*, 2003 LLR 5.

8. Having heard the learned counsel on both sides, this court agrees with the conclusion that in the face of the reluctance shown by the petitioner to accept the offer of the management to take her back in service, it would not be just or proper to issue direction for her reinstatement. Given such conduct, it is plain that she had lost interest in such employment and had abandoned the claim for reinstatement.

9. Faced with the above fact situation, the learned counsel for petitioner submitted that he presses the writ petition at hand only for the award of suitable compensation. He argued that the compensation awarded by the labour court is meagre and not based on any intelligible parameter. He pointed out that the labour court has not given any indication as to what was the basis of calculation leading to the figure of Rs.20,000/-. He submitted that for the compensation to be appropriate, it ought to be worked out by following the method of calculating the amount payable to the workman upon retrenchment in terms of Section 25-F of Industrial Disputes Act, wherein the management is obliged to give one month's notice in writing (and in case of default pay wages for the notice period in lieu thereof) along with compensation equivalent to 15 days of average pay for every completed year of service, or any part thereof. On being asked, the learned counsel for management would not dispute this position of law.

10. As noted above, the petitioner was being paid Rs.1385/- per month as the wages at the time of cessation of her employment. She served the management from 09.05.1988 to 31.05.1991 or, to put it simply, for a

period of 36 months. Taking Rs.1385/- as the average monthly wages, compensation in terms of Section 25-F (b) of the Industrial Disputes Act, works out to Rs.24930/- to which one month's wages (Rs.1385/-) may be added as the amount payable in lieu of the notice of retrenchment. This takes one to the approximate figure of Rs.26,000/-.

11. During the course of hearing, question arose as to the non-payment of the amount of compensation of Rs. 20,000/- as directed by the labour court in the impugned award. The counsel for management submitted that there was no direction from any quarter and that it was for the petitioner (workman) to press for its execution in terms of Section 17-A read with Section 19 of the Industrial Disputes Act. The counsel for the petitioner, on the other hand, submitted that since the petitioner was not satisfied with the award and had come with the writ petition at hand, the execution application was not filed as the workman intended to await the final adjudication.

12. In above circumstances, the element of loss of real value of the compensation awarded will have to be factored in. Having regard to the fact that both sides are to blame, to an extent, for the default in compliance/enforcement of award, it will be just and proper if the erosion in the value of money is compensated by adding the value of interest calculated @ 6 % per annum on the amount finally determined by this court, calculated with effect from the date of the impugned award. By this reckoning, the counsel on both sides agree, a further sum of Rs.19,500/- deserves to be added. This takes one to the figure of Rs.45,500/-. Adding the cost of litigation, the amount finally determined as compensation is rounded off to Rs.50,000/- (Rupees fifty thousand).

13. Thus, the petition is partly allowed. The impugned award is modified to the effect that the management (first respondent) shall be obliged to pay an amount of Rs.50,000/- (Fifty thousand only) to the petitioner as compensation. The management (first respondent) is directed to comply with this direction by depositing the amount in the court within a month of this order. Upon such deposit being made, the amount shall be released to the petitioner in accordance with law.

14. The petition stands disposed of in above terms.

(R.K.GAUBA)
Judge

SEPTEMBER 28, 2015

ss