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

Date of Decision: 29.09.2015

\+ **W.P.(C) 1366/2013**

ANIL KUMAR & ORS.

... Petitioners

Through: Mr Rajat Sharma, Adv.

versus

THE MANAGEMENT OF M/S RICHA AND COMPANY

.... Respondent

Through: Mr Vinay Sabharwal, Adv.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. This is a petition under Articles 226 and 227 of the Constitution of India preferred by the petitioners against the common award dated 01.06.2012 passed by the Presiding Officer, Labour Court, Karkardooma Courts in DID Nos. 229/2011, 230/2011, 231/2011, 232/2011, 233/2011 and 234/2011 and for passing directions to reinstate the petitioners with full back-wages.

2. It is alleged that the petitioners – workmen had been working with the management on different capacities like tailors, etc. as skilled and semi-skilled workers for the last several years at the last drawn monthly salary of Rs. 3437/- except for the petitioner no. 4 whose last drawn monthly was Rs.3271/-. The services of the workmen were illegally terminated by the respondent. The Assistant Labour Commissioner had sent a notice under Section 33 of the Industrial Disputes Act, 1947 (hereafter referred to as 'the ID Act') for taking back the workers on duty but the management did not comply with the directions. A legal notice dated 19.07.2006 was sent through the union but the management did not reply the same. A written complaint was sent to Assistant Labour Commissioner on which the Labour Inspector visited the management to take back the employees on duty but the management refused to comply the directions of the Labour Inspector. As such, the petitioner filed their statement of claim directly before the Labour

Court for their reinstatement with back-wages and other consequential benefits. Vide order dated 01.06.2012, the Labour Court found that the termination of the petitioners was illegal but did not direct the management to reinstate them with continuity of service along with back-wages rather granted lump-sum compensation of Rs.30,000/- each.

3. After the writ petition was filed, vide order dated 01.03.2013, it was observed that so far as the challenge to the award regarding denial of reinstatement and back-wages is concerned, the petition was not entertained and limited notice was issued to the respondent regarding enhancement of compensation. As such, the only question which survives in this writ petition is as to whether the petitioners are entitled for enhancement of compensation or not.

4. It is submitted by learned counsel for the petitioners that in case the petitioners were granted the relief of reinstatement with full back-wages, the amount would have exceeded Rs.2.5 lacs. The petitioners were in the services of the respondent management since 2000 and as such their length of service was about 4-6 years and as such the compensation awarded is on very lower side. They have also suffered the litigation for almost six years because of the illegal acts done by the respondent – management. Reliance was placed on ***Faridan and State of U.P.***, (2010) 1 SCC 497 for submitting that the compensation is liable to be enhanced.

5. Learned counsel for the respondent, on the other hand, submits that the termination of the petitioners – workmen was held to be illegal being in violation of Section 25F of the ID Act. The only requirement of Section 25F is that the amount which is to be paid to the employee is 15 days' pay for each year's service and a 30 days' notice pay. That, at the most, comes to Rs.6,000/- to Rs.10,000/- whereas the learned Labour Court already awarded a sum of Rs.30,000/- as compensation and, therefore, there is no ground for enhancement of compensation. Reliance was placed on ***M/s Genesis Printers v Shri Rati Ram Jatav Presiding Officer & Ors.***, (2010) 174 DLT 431.

6. The case of the petitioners – workmen before the Labour Court was that they were working with the management in different capacities for the last over several years. However, when they made a complaint for providing legal facilities through the labour union before the Labour Department, the management terminated their services without following the norms of Industrial Disputes Act. The management took the plea that the

petitioners – workmen were appointed on probation basis for a period of six months. During the probation period, their work and performance was not found satisfactory yet their probation period was extended for a further period of six months and they were given an opportunity to improve their work and performance but they failed to improve themselves. Accordingly, the probation period of the workers was discontinued. That being so, the case is covered under Section 2(oo)(bb) of the Act and there was no requirement of complying with the provisions of Section 25F of the Act. The Labour Court went through Rule 26 of the Standing Orders providing for probation and came to conclusion that the plea raised by the management is contrary to the said clause of the Standing Orders. On the basis of material on record, it was held that the petitioners-workmen were in regular service of the management and were getting GPF and Provident Fund facilities and that being so their termination was illegal. However, relying upon judgments of this Court in ***Mohd. Shakir v Sunder Lal Jain Hospital***, (2009) 122 FLR 618 and ***Indian Acrylics Ltd. and Anr. v Presiding Officer, Labour Court, Patiala and Ors.***, 2010 LLR 794, the petitioners – workmen were awarded a sum of Rs.30,000/- as compensation in lieu of reinstatement and back-wages.

7. In ***Faridan and State of U.P.*** (supra), the compensation of Rs.50,000/- awarded by the High Court was considered to be too meagre in the present day affairs and the same was enhanced to Rs.2 lacs. Again in ***Narendra Kumar v The Regional Manager Punjab National Bank and Ors.***, (2009) 14 SCC 219, the Labour Court awarded a sum of Rs.50,000/- as compensation in lieu of reinstatement into service. The writ petition filed before the High Court was dismissed. The matter went to the Supreme Court. It was observed that ordinarily the Court would not have interfered with the concurrent findings of the Labour Court and the High Court, yet, the court cannot be obdurate to the hard realities of life and a humane and pragmatic approach to the various factors, including the steep escalation in prices in the commodity market, the cost of living, the cost of education of children etc have to be considered. Therefore, the compensation was enhanced from Rs.50,000/- to Rs.1 lac. In ***M/s Genesis Printers*** (supra) relied upon by the learned counsel for the respondent – management, despite noticing that the retrenchment amount would not have exceeded Rs.2400/- yet this Court awarded a sum

of Rs.1 lac for illegal retrenchment in violation of Section 25F. Therefore, this judgment does not help the respondent.

8. In the instant case, as per the case of the petitioners–workmen, they were in the employment of the respondent – management ranging from 2000 to 2002 before their termination in the year 2006. Meaning thereby that the petitioners – workmen were in the employment of the respondent – management for a period of four to six years. Under the circumstances, the amount of compensation of Rs.30,000/- as awarded by the Labour Court in lieu of reinstatement and back-wages is too meagre and the same is enhanced to Rs.1 lac each, which shall be paid by the respondent – management within a period of eight (8) weeks from the date of this order and in the event of default, the same shall be payable with interest @ 9% per annum.

The petition stands disposed of accordingly.

There shall be no order as to costs.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 29 2015/*rd*