

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

+ **W.P.(C) 2669/2015 and CM No. 4772/2015**

Judgment reserved on: 21.04.2015

Judgement pronounced on: 28.04.2015

RAMESH CHAND

..... Petitioner

Through: Mr. M.Husain, Advocate.

versus

JAMIA MILLIA ISLAMIA

..... Respondent

Through: Mr.Rohit Gandhi and Mr.Varun Garg,
Advocates

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner has challenged the findings of the learned Labour Court whereby the Labour Court while holding that the termination of the petitioner was illegal, instead of awarding reinstatement with full back wages and continuity in service has awarded compensation @ 50% of last drawn wages since 14th January, 2008 (date of filing claim) till the date of passing of an award.

2. The contention of the petitioner is that whenever the termination of workman is found to be illegal, the order of reinstatement is the natural consequence and is a normal rule. It is submitted that any deviation from

the normal rule is bad in law. It is submitted that he has been denied the reinstatement on the grounds that more than 7 years have passed since the date of termination, it is submitted that the delay is not attributable to him. Within one month of his termination of services, he had raised dispute and filed the claim under Section 2(A) of Industrial Disputes Act before the Labour Court and it was the Labour Court who took three and a half years to decide the matter and matter was decided by the Labour Court only when a direction dated 08.09.14 had been issued for expeditious disposal by this court in WP(C) No. 5935/2014 titled as **Shri Ramesh Chander Vs. Presiding Officer Labour Court-V and Anr.**

3. It is further argued that management had failed to prove the misconduct of theft and hence the reinstatement could not be denied to him on the ground that this would adversely affected the relationship of trust and confidence between the workman and management.

4. It is submitted that the order of the learned Labour Court therefore needs modification and it is prayed that the order for reinstatement of the workman with continuity in service and back wages be passed.

5. The brief facts of the case as set out in the petition and are apparent from the award is that the petitioner was working with the management

since 1990 and his services were terminated on 12.12.2007 as he was allegedly caught red handed committing theft of the management property on 04.08.07 by security guard Abdul Rashid.

6. The management thereafter issued a letter/show-cause notice dated 27.08.07, to show the cause as to why a penalty of compulsory retirement be not imposed upon the petitioner. Apprehending his termination, the petitioner filed a civil writ petition in the Hon'ble High Court of Delhi vide W.P.(C) No. 7156/07 and vide order dated 28.09.2007, the management was directed to consider the representation of the workman before taking any action against him and permitting him to continue working till Executive Council decides the matter. Vide letter dated 11.12.2007, the services of the workman were terminated by way of compulsory retirement in view of a resolution passed by the Executive Council. The petitioner challenged his termination before the Labour Court by filing the petition under Section 2(A) of the Industrial Disputes Act.

7. Before the learned Labour Court, the contention of the management had been that the petitioner was caught red handed stealing the property of the management and had also admitted the commission of offence in his own handwriting vide letter dated 04.08.2007 in presence of witnesses.

8. During the evidence, the petitioner had admitted his signatures on this document which was exhibited as Ex. WW1.M1 at point X. He however had disputed the handwriting on the said letter of admission of guilt.

9. The learned Labour Court however found the termination being illegal and set aside the termination but ordered the payment of compensation in lieu of the reinstatement.

10. The petitioner has, during the course of argument, clearly stated that the respondent/management has not challenged the award in any court. Thus, the part of the order whereby the learned Labour Court has found the termination of petitioner being illegal is not under challenge. Hence, that part of the award has attained finality.

11. The only issue before this court is whether the order of the learned Labour Court, granting compensation in lieu of reinstatement is as per the settled principle of law or not and/or whether the finding suffers with illegality being contrary to the provisions of law.

12. While giving such findings, the learned Labour Court has relied on the findings of this court in the case of **Pramod Kumar and Anr. Vs. The Presiding Officer and Anr in LPA No. 692/2002** decided on 09.09.2005 and also on the Supreme Court Judgment titled as **Rattan Singh Vs. Union**

of Inda & Anr., (1997) 11SCC 396. In both the cases, the courts have held that the Labour Court has the power, in appropriate cases, to deny the reinstatement, even where the termination is found illegal. Hence, it is apparent that although the normal rule is, order of reinstatement in the case of illegal termination, the rule can be deviated in appropriate cases.

13. In the case of **Pramod Kumar** (*supra*), this Court has held as under:-

“9. Since the decision of the Federal Court in the case of Western India Automobiles Association vs. Industrial Tribunal reported in AIR 1949 FC 111 is a settled LAW THAT AN Industrial Tribunal has jurisdiction to direct re-instatement and in a case of wrongful dismissal, re-instatement is the normal rule. However, there are exceptions to this rule and these exceptions have been recognised in various judgments. Re-instatement has not been considered desirable in cases where there have been strained relationship between employer and employee or there is lack of trust or loss of confidence. Reinstatement is also denied when an employee has been found to be guilty of subversive activity or acting prejudicial to the interest of the industry. Courts have also denied reinstatement with back wages in cases where long time has lapsed. Reference in this regard may be made to the judgment of the Supreme Court in cases of Rattan Singh vs. Union of India & Anr. (1997) 11 SCC 396, Rolston John vs. Central Government Industrial Tribunal-cum-Labour Court & Ors 1995 (Supp) 4 SCC 549, Gujarat State Road Road Transport Corporation & Anr vs. Mulu Amra, 1995 Supp (4) SCC 548 and MP Shikshak Snagh & Ors vs. State of MP & Ors, 1995 Supp (1) SCC 556.

10. In the case of Haryana Tourism Corp. Ltd. Vs. Fakir Chand and Ors. (2003) 8 SCC

248), Supreme Court directed payment of compensation of Rs.70,000/-, instead of reinstatement with 25% back wages taking into consideration factors like (a) workers were daily wagers (b) workers were not recruited through employment exchange or regular mode of selection (c) services of the workers were terminated long back and (d) considering nature of work, the workers must have done similar work atleast intermittently.

11. In a number of matters, this Court has also examined the same issue and it has been repeatedly held that where a long period has lapsed since the date of termination, compensation should be paid in lieu of re-instatement and back wages. Reference in this regard may be made to the judgments in the cases of *Murari Lal Sharma Vs. Nehru Yuva Kendra Sangathan* 96 (2002) DLT 412 (DB) and *K.H. Pandhi vs. The Presiding Officer, Addl. Labour Court & Anr*, 110(2004) DLT 101 and *Pal Singh vs. NTPC Ltd* 96(2002) DLT 877.”

14. Also, in the subsequent judgment of this court in the case of **Mohan Lal vs. MCD** in W.P.(C) No. 5288/2007 decided on 22.04.2009 reported in MANU/DE/3971/2009 , this court has dealt with the same issue which has been adjudicated upon before this court. In that case, the workman was a beldar w.e.f. 17th June 91 and his services were terminated on 21st October, 2006 and the Labour Court, instead of directing reinstatement with full back wages and continuity in service, awarded compensation.

15. Furthermore, in several cases, the Apex Court has also held that the payment of back wages is a discretionary relief which has to be exercised

keeping in view the facts and circumstances of each case. In case of *Incharge Officer and Anr vs. Shankar Shetty reported in (2010) 9 Supreme Court Cases 126*, the Supreme Court had awarded the compensation of Rs.1 lac instead of reinstatement only on the ground of long lapse of time between the termination and the order of the court.

16. In the present case, the workman was terminated on 12.12.2007 and the award was passed on 9th January, 2015 after 8 years of the termination. Above all, there were allegation of theft being committed by petitioner and caught red handed and also that he had admitted the commission of the theft by way of letter exhibited as Ex. WW1/M1 on which he had also admitted his signatures (although denied that it was in his handwriting). This establishes the element of distrust which has seeped into their relationship. The faith and trust is the basis of the relationship and where it is lacking it will not be appropriate to thrust upon the management, a worker who had lost his credibility in their eyes.

17. In view of the above, I find no illegality in the order of the learned Labour Court.

18. The writ petition is hereby dismissed with no order as to costs.

CM No. 4772/2015 (stay)

In view of the above, the application also stands dismissed as infructuous.

DEEPA SHARMA
(JUDGE)

APRIL 28, 2015
sapna