

6

\$~5&8

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

+ LPA 87/2014

INDO ALUSYS INDUSTRIES LTD

..... Appellant

Represented by: Mr.Rajesh Banati, Mr.Sunil
Verma, Adv.

versus

GNCT OF DELHI & ANR

..... Respondent

Represented by: Mr.K.K.Sabharwal, Adv.for
R-2.

+ LPA 598/2014

SIVAN KUTTY N.K.

..... Appellant

Represented by: Mr.K.K.Sabharwal, Adv.

versus

GOVERNMENT OF NATIONAL CAPITAL

TERRITORY OF DELHI & ANR

..... Respondent

Represented by: Mr.Rajesh Banati, Mr.Sunil
Verma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

12.08.2015

CM 15169/2014 in LPA 598/2014

1. For the reasons stated in the application the delay of 184 days in filing the appeal is condoned.
2. Application is disposed of.

LPA 87/2014 and LPA 598/2014

1. Sivan Kutty N.K. (in short the workman) was appointed as a stenographer by the Indo Alusys Industries Ltd. (in short the management) on May 19, 1995 in the pay grade of ₹1600-175-3700/- with basic salary of ₹2825/- which salary was revised later. From August 09, 1996 to September 23, 1996 the workman remained on medical leave and when he sought reimbursement of medical bills and the salary of the medical leave period he was informed that he was not covered under the ESIC scheme. He claims that since he would go for dressing, the management became annoyed and asked him to resign which he refused.

2. His services were terminated on October 18, 1996, as per the termination letter Ex.MW-1/3 which reads as under:

“In view of your gross misbehaviour with your Departmental Head & threatening him for the dire consequences for reasons best known to you, you are hereby terminated from your services with immediate effect.”

3. On a challenge to the termination being illegal a reference was made to the labour Court on the following terms:

“Whether services of Shri Sivan Kutty N.K. have been terminated illegally and/or unjustifiably by the management, if so, what relief is he entitled and what directions are necessary in this respect?”

4. Vide award dated November 07, 2009, the learned labour Court held that the termination of the workman was illegal and misbehaviour was certainly not relatable to the suitability of the post. The order of removal being punitive in nature and no inquiry having been held the termination was illegal. The labour Court however stated that it would not be

appropriate to reinstate the workman and awarded full back wages in lieu of reinstatement.

5. Against the award dated November 07, 2009, the management filed a writ petition being W.P.(C) No.3049/2010 wherein by the impugned order dated December 13, 2013 the learned Single Judge while upholding the termination to be illegal held that since the workman had hardly worked for one year and his services were terminated about 14 years ago a lump sum compensation of ₹2 lakhs would meet the ends of justice. It was further noted that the workman had already received a sum of ₹50,000/- during the pendency of the writ petition and from the amount deposited in this Court a further sum of ₹1,50,000/- be released and the balance amount if any with interest be released to the management.

6. Challenging the order dated December 13, 2013 two appeals have been filed before this Court one each by the management and the workman. The grievance of the management is to the grant of lump sum compensation of ₹2 lakhs and the termination being held illegal whereas the grievance of the workman is to the compensation of full back wages being reduced to ₹2 lakhs in lump sum.

7. Learned counsel for the management contends that since the workman remained on probation even after the expiry of probation period having not been confirmed due to the misbehaviour with the seniors, his services could be terminated without conducting an inquiry and the order of termination cannot be held to be punitive in nature. Further having held that reinstatement was not an automatic relief, the award of compensation of ₹2 lakhs was very high in view of the fact that workman was on probation and had worked barely for a period of one year and had received full payment

till he worked.

8. On the other hand learned counsel for the workman urged that from the date of termination the workman has been unemployed that the awarded full back wages in lieu of reinstatement amounted to ₹ 6,69,476/- which have been reduced to ₹2 lakhs arbitrarily and without any reasoning

9. Indubitably the workman was appointed on May 19, 1995 and on October 18, 1996 when he was terminated, his services had not been confirmed. Thus he was on probation. Though it is in the domain of the management to assess the suitability of the workman during the period of probation and discontinue the services if the workman is not found suitable, however it is well settled that no order of termination can be passed which is stigmatic without holding an inquiry. As noted above the letter of termination Ex.MW-1/3 dated October 18, 1996 states about the gross misbehaviour of the workman with the Departmental Head followed by threatening him for dire consequences. This letter of termination is not a termination simplicitor on unsatisfactory performance but casts an aspersion on the conduct of the workman and is thus punitive in nature. Admittedly no inquiry has been conducted by the management and in the absence of the same, the termination was rightly held to be illegal by the learned labour Court and the learned Single Judge.

10. Issue thus remains whether a monetary compensation would suffice. The workman worked with the management for nearly 17 months i.e. a very short period and was on probation at that time. The contention of workman that he has not been able to get any employment since the date of his termination seems to be wholly unfounded for the reason the workman was appointed as a stenographer and there is no paucity of employment for

people who are skilled in this art.

11. In the decision reported as (2009) 15 SCC 327 Jagbir Singh vs. Haryana State Agriculture Marketing Board and Anr. the Supreme Court laid down that the Courts while granting the relief must apply their mind and reinstatement and payment of full back wages should not be granted automatically after holding termination to be illegal. Some of the factors to be considered while granting the consequent relief are whether the appointment had been made in terms of the statutory rules, delay in raising the industrial dispute, the period of appointment, availability of job etc.

12. In view of the fact that the length of service of the workman was 17 months only and he was still on probation the learned Single Judge in its judicial discretion, keeping the various factors as noted above, rightly held that a lump sum compensation of ₹2 lakhs would suffice and we concur with the same.

13. Vide the order dated July 30, 2010, in W.P.(C) No.3049/2010 the learned Single Judge noted that the management had deposited ₹1,87,000/- in the earlier writ petition being W.P.(C) No.18362/2006 which was decided on May 14, 2008 out of which ₹50,000/- have already been withdrawn.

14. We have sought a report from the Registry which notes that an amount of ₹1,87,500/- was deposited by the management of which ₹55,000/- have been withdrawn by the workman and a balance amount of ₹1,32,500/- is lying deposited with the Registry of this Court in CCD account. The workman is thus entitled to the release of the said amount and in addition the management would pay a further sum of ₹12,500/- to the workman within a period of one month.

15. With these directions the two appeals stand disposed of.

11

CM 1813/2014 (stay) in LPA 87/2014

Dismissed as infructuous.



PRADEEP NANDRAJOG, J.



MUKTA GUPTA, J.

AUGUST 12, 2015

'ga'