

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: March 26, 2015

Judgment Delivered on: April 06, 2015

+

LPA 334/2013

MAHESH DUTT

..... Appellant

Represented by: None.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 685/2013

DHARAM PAL & ORS

..... Appellants

Represented by: Mr.A.K.Bajpai, Advocate.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 113/2014

TARA CHAND

..... Appellant

Represented by: Mr.A.K.Bajpai, Advocate.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+ **LPA 114/2014**
BALRAJ Appellant
Represented by: Mr.A.K.Bajpai, Advocate.
versus
RAMJAS FOUNDATION Respondent
Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+ **LPA 115/2014**
SRI NARYAN JHA Appellant
Represented by: Mr.A.K.Bajpai, Advocate.
versus
RAMJAS FOUNDATION Respondent
Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+ **LPA 116/2014**
ASHA GABA Appellant
Represented by: Mr.A.K.Bajpai, Advocate.
versus
RAMJAS FOUNDATION Respondent
Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 117/2014

MAN SINGH

..... Appellant

Represented by: Mr.A.K.Bajpai, Advocate.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 118/2014

NARENDER KUMAR

..... Appellant

Represented by: Mr.A.K.Bajpai, Advocate.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 119/2014

M K BHARGAV

..... Appellant

Represented by: Mr.A.K.Bajpai, Advocate.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 127/2014

SHRI PRAVEEN KUMAR GUPTA Appellant
Represented by: Mr.Rajiv Aggarwal and
Ms.Neelam Tiwari, Advocates.

versus

RAMJAS FOUNDATION Respondent
Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 128/2014

SMT D LATHA Appellant
Represented by: Mr.Rajiv Aggarwal and
Ms.Neelam Tiwari, Advocates.

versus

RAMJAS FOUNDATION Respondent
Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 134/2014

KUSUM NIGAM Appellant
Represented by: Mr.A.K.Bajpai, Advocate.

versus

RAMJAS FOUNDATION Respondent
Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 143/2014

DHEER SINGH

..... Appellant

Represented by: Mr.A.K.Bajpai, Advocate.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 464/2014

DAYA NAND

..... Appellant

Represented by: Mr.Arun Bhardwaj and
Ms.Gunjan Bansal, Advocates.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

+

LPA 611/2014

HEM KUMARI MITTAL

..... Appellant

Represented by: Mr.Rajiv Aggarwal and
Ms.Neel Tiwari, Advocates.

versus

RAMJAS FOUNDATION

..... Respondent

Represented by: Mr.S.P.Gautam and Mohd.Adil
Rasheed, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Ramjas Foundation owned a vast tract of land measuring about 16000 bigha in the revenue estate of village Chowkri Mubarikabad and village Sadhora Khurd. It constructed various buildings on the tract of land, which were given to different persons on lease and licence basis. Several people were employed to realize the lease-cum-licence fee and maintain a record thereof as also keep accounts concerning the lease-cum-licence money realized and expenditure incurred on the maintenance of the properties and allied works. In the year 1999-2000 the land was acquired by the Delhi Development Authority, which resulted in less number of working hands being required by Ramjas Foundation. These surplus hands, numbering 78, were retrenched. The management of Ramjas Foundation computed the compensation payable under Section 25F of the ID Act, 1947 and tendered the same to the said 78 workmen, who raised the issue that the compensation paid was not correctly computed because House Rent Allowance, which forms part of wages, as defined by Section 2(rr) of the ID Act, 1947 was not taken into account while fixing the wages on basis whereof compensation payable under Section 25F of the ID Act 1947 was computed. According to the workmen Ramjas Foundation had established various schools in Delhi and also a college where they could be adjusted and in respect of which claim an extended limb made was that workmen who had been appointed in said institutions after they were appointed should be retrenched and not they.

Pithily put the principle of last come first go was put in the forefront of the claim.

2. The appellants were amongst the said 78 workmen who were retrenched. They are the only ones surviving to litigate because most of their brethren accepted the retrenchment compensation which was tendered and did not raise any dispute or are happy by the verdict rendered by the learned Single Judge.

3. By and under different orders, but identically worded, references were made to the Labour Court by the Appropriate Government. The term of the reference was:-

*“Whether the retrenchment from service of (**name of workman**) is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?”*

4. Vide different awards dated October 24, 2009, October 30, 2009, October 31, 2009, December 10, 2009 and May 21, 2010, the references were disposed of.

5. Whereas except for appellant Mahesh Dutt, the awards held that the termination was illegal. All were directed to be reinstated in service with continuity; the awards neither expressly grant nor expressly deny back wages. The award in the reference concerning Mahesh Dutt held the termination of his service to be illegal and in lieu of reinstatement he was awarded compensation in sum of ₹1,00,000/- (Rupees One Lac only).

6. The reasoning in all the awards is the same. The reasoning takes note of the fact that while computing compensation payable under Section 25F of the ID Act, 1947 the management of Ramjas Foundation did not include, as required by Section 2(rr) of the ID Act, 1947, the House Rent Allowance

which was being paid. Taking into account the number of years the workmen had worked, the violation was on account of sums between ₹8,000/- to ₹17,000/- paid less. In the absence of a seniority list of the employees being filed, much less proved, a finding has been returned that the management had failed to comply with Rule 77 of the Industrial Disputes Rules. But, no finding has been returned expressly with respect to the violation of Section 25G of the ID Act, 1947.

7. From a perusal of the statement of claims filed by the workmen, apart from alleging that while reckoning the wages for purposes of retrenchment compensation the House Rent Allowance was not included, we find that it is pleaded that the work being done by the workmen was now being done through other workmen on commission basis, but without disclosing the names of the said workmen. It has been pleaded that the same work was being got done through junior workmen, but names of none have been disclosed. In the statement of claims there are no pleadings that the 78 workmen could be adjusted in other establishments of Ramjas Foundation.

8. Ramjas Foundation filed writ petitions challenging the awards under which the workmen were directed to be reinstated in service and paid 50% back wages. Mahesh Dutt challenged the award by filing a writ petition being aggrieved by the fact that he was paid ₹1,00,000/- as compensation and not reinstated in service with 50% back wages.

9. All the writ petitions have been heard and decided by the learned Single Judge vide impugned judgment dated July 15, 2003. The directions in the awards that the workmen be reinstated in service and be paid 50% back wages have been replaced with the direction that the workmen be paid compensation in sum of ₹3.25 lacs. Thus, even Mahesh Dutt has been

brought at par with all other workmen because even he has been directed to be paid compensation in sum of ₹3.25 lacs. The retrenchment compensation paid to the workmen has been held liable to be adjusted from out of the sum of ₹3.25 lacs directed to be paid by the learned Single Judge.

10. The impugned decision would reveal that the workmen argued before the learned Single Judge, as per their stand taken before the reference was made to the Labour Court, that they could be adjusted in other establishments of Ramjas Foundation, which we note are educational institutions established by Ramjas Foundation. This was not the case of the workmen pleaded in the statement of claim before the Labour Court. The other stand taken by the workmen i.e. retrenchment compensation paid to them being deficient in law and hence termination of their services being illegal has been urged before the learned Single Judge. As regards Ramjas Foundation it argued before the learned Single Judge that the reference made had two distinct limbs : (i) whether the retrenchment was justified; and (ii) whether the termination was illegal. Ramjas Foundation relied upon various judgments which drew the distinction between a retrenchment being justified, but found to be illegal and in said context holding that in such cases reinstatement should not be directed and instead monetary compensation should be paid. With respect to the claim of the workmen that they could be adjusted in other establishments of Ramjas Foundation, decisions were cited where in the absence of functional integrity between independent establishments under the same management, the principle of adjustment or last come first go could not be applied by treating all the workmen in different units as having a common seniority.

11. The learned Single Judge has held that with the acquisition of its land

on which buildings were constructed by Ramjas Foundation and from which rent was being realized there being no requirement to realize rents and maintain accounts, the management was justified in ordering retrenchment. Finding justification, the learned Single Judge has held that merely because House Rent Allowance was not factored while paying the retrenchment compensation would render the retrenchment compensation paid being less and in that sense the termination being illegal. Taking cue from the decisions of the Supreme Court that in such cases monetary compensation would suffice, the learned Single Judge has awarded monetary compensation. On the plea of work being available in schools or the workmen could be adjusted in said schools above those who joined the said schools later than the workmen, the learned Single Judge held that the schools were independent establishments.

12. Supporting the findings returned by the learned Labour Court, learned counsel for the workmen relied upon the decisions reported as AIR 2010 SC 1116 Harjinder Singh Vs. Punjab State Warehousing Corporation, JT 2010 (2) SC 599 Krishan Singh Vs. Executive Engineer Haryana State Agricultural Marketing Board, JT 2010 (4) SC 229 Anoop Sharma Vs. Executive Engineer, Public Health Division Haryana, (2013) 10 SCC 324 Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya, decision dated November 18, 2014 in CA No.10353-54/2014 Sudarshan Rajpoot Vs. UP State Road Transport Corporation, 2005 (81) DRJ 344 (DB) MCD Vs. Satish Kumar, 1990 (LLJ) SC 70 Punjab L.D.& RC Vs. PO Labour Court, 2004 (VIII) AD (SC) 444 M/s. Nicks India Tools Vs. Ram Surat & Anr., 1980 (2) LLJ 72 Santosh Gupta Vs. State Bank of India AIR 1987 SC 111 O.P.Bhandari Vs. ITDC AIR 2004 SC 4282 Krishna Bahadur

Vs. Purna Theatre & Ors., 1981 SCC (L&S) 478 Mohan Lal Vs. Management of Bharti Electronics, 2000 (3) SCC 588 Nar Singh Pal Vs. UOI & Ors. and (2007) 2 SCC 433 J.K.Synthetic Ltd. Vs. K.P.Aggarwal & Ors. From the decisions it was urged that wherever retrenchments have been found to be illegal the normal rule is to direct reinstatement. The decisions explain what a retrenchment would be. As per the decisions a writ Court would not interfere with a discretion exercised by a Labour Court while ordering reinstatement and not directing compensation lieu thereof.

13. Per contra learned counsel for Ramjas Foundation cited the decisions reported as (1969) 2 SCR 976 Parry & Co. Ltd. Vs. P.C.Pal, (1994) 4 SCC 445 Shiv Kumar Sharma & Ors. Vs. State of Haryana & Ors., (2007) 7 SCC 366 District Red Cross Society Vs. Babita Arora & Ors., (1995) 3 SCC 474 Hindustan Steel Works Construction Ltd. & Ors. Vs. Employees Union, (2000) 10 SCC 490 R.B.Sewak Ram Maternity Hospital Vs. Presiding Officer, Labour Court, Jalandhar, (2007) 9 SCC 748 Madhya Pradesh Administration Vs. Tribhuban, (1995) 4 SCC 549 Rolston John Vs. Central Government Industrial Tribunal and in LPA No.59/2008 P.K.Sharma Vs. Municipal Corporation of Delhi.

14. From a perusal of the aforesaid paragraphs it is apparent that the workmen have been shifting stands from time to time. While seeking reference to their dispute to the learned Labour Court the workmen staked their claim only on two counts. Firstly while computing wages the language of Section 2 (rr) of the ID Act, 1947 not being taken into account and as a result retrenchment compensation paid being not in conformity with Section 25 F of the ID Act, 1947 because House Rent Allowance was ignored. Secondly that the workmen could be adjusted in various schools and a

college established by Ramjas Foundation and as an extended limb that those who were appointed in said schools and college after them should have been retrenched by following the principle of last come first go. Before the learned Labour Court, in the statement of claim, the second basis of the claim was not pleaded. Rather it was replaced with a plea that after retrenching them the management given the same work to others appointed afterwards and that persons junior to them were retained for the works. Before the learned Single Judge arguments have been advanced on the second stand taken while seeking reference of the dispute to the Labour Court.

15. Thus, we shall be dealing with all the contentions of the workmen taken at different stages.

16. It would be useless for us to cull out the ratio of law in the 14 decisions cited by learned counsel for the workmen and 8 cited by learned counsel for Ramjas Foundation, because of the principles of law laid down in the said decisions are well recognized and accepted. That retrenchment is a very wide term and would embrace termination of services of the workmen for whatever reasons other than those expressly excluded by Section 2 (oo) of the ID Act, 1947; that when retrenchment is found to be illegal, reinstatement being the norm, the exception would be where the management does not have work for the workmen and in said eventuality monetary compensation should be paid; that if there is no functional integrity of different units or undertakings of a common management, the workmen would not be entitled to claim a right to be adjusted and absorbed in other units; that a discretion exercised by a Labour Court would not be substituted by a Writ Court unless found to be perverse, are the principles of

law laid down in the said 22 decisions. And in our opinion this should suffice the purpose of our decision in avoidance of the torturous route to cull out the ratio of each decision separately.

17. The learned Single Judge has correctly opined that the discretion exercised by the learned Labour Court in favour of the workmen (other than Mahesh Dutt) was illegal for the reason the learned Labour Court did not consider the case law on the point of drawing a distinction between the justification for retrenchment and the legality thereof. The learned Single Judge has correctly opined that the learned Labour Court has ignored the reference made.

18. We have noted the reference made in paragraph 3 of the our opinion above. It embraces the issue of justification of the retrenchment as also the issue of the legality thereof.

19. The undisputed position is that the 16000 bigha of land owned by Ramjas Foundation was acquired in the year 1999-2000. Along with the land were acquired the super structures thereon. Ramjas Foundation had let out the buildings to the tenants. Rents had to be realized. Money had to be spent on the maintenance of the structures. Accounts had to be maintained. All these activities required hands. Thus, as the work dissipated due to the lands being acquired, the workmen engaged in the jobs became surplus and thus there is full justification in taking a decision to retrench the surplus hands. The retrenchment is bona-fide and is not vitiated by any consideration to victimise any workman. There is no unfair labour practice.

20. While paying the retrenchment compensation, wages as defined under Section 2(rr) of the ID Act, 1947 required the House Rent Allowance paid to the workmen to be taken into account, and this not being so done, resulted in

the retrenchment compensation offered being deficient and thereby resulting in Section 25 F being violated. In other words a condition precedent to retrenchment being violated resulted in retrenchment being illegal.

21. The learned Labour Court has not even adverted to this aspect of the matter, which has been very succinctly captured by the learned Single Judge. It is obviously a case where while exercising its discretion the learned Labour Court has not kept in mind a legal principle. It is trite that where an original authority ignores a recognized principle of law while exercising its discretion, the exercise of discretion would be illegal and would justify a corrective action being taken by a Court exercising power of judicial review.

22. The workmen have laid no foundation in their pleadings in the statement of claim, and as noted above in the statement of claim have not even pleaded a right to be absorbed in the schools and a college established by Ramjas Foundation. Thus, the workmen have not pleaded, much less shown, functional integration in the work of Ramjas Foundation concerning letting out of its lands and buildings and maintaining the same and collecting rents as also maintaining accounts thereof and the running of the educational institutions. It is settled law that in the absence of a functional integration being established the workmen could not lay a claim of absorption in the schools and the college established by Ramjas Foundation. The learned Single Judge has correctly analyzed the Delhi School Education Act, 1972 and the Rules framed thereunder to bring home the point that every school established in Delhi which is recognized by the Director of Education is an independent entity, distinct from the parent body which has established the school and other schools. Thus, the workmen cannot claim a right to be absorbed in the schools or the college established by Ramjas Foundation.

23. The plea of the workmen that after they were retrenched the work performed by them was given to fresh hands, has remained a mere plea in the statement of claim. In the statement of claim name of no workmen engaged for the same work after the workmen were retrenched has been pleaded and no evidence has been led by the workmen to establish said fact. Further, a bald plea that some workmen junior to the retrenched workmen were retained has not been supported by a definite assertion by giving the name of the junior workmen retained. There is no evidence led by the workmen to said effect. Thus, it has to be held that the plea of the workmen that for the works which they were performing, after they were retrenched the same work was given to others as also the plea that persons junior to them were retained remain unsubstantiated.

24. As regards the violation of Rule 77 of the Industrial Disputes (Central) Rules, 1957, the learned Labour Court has held that since the management did not produce a seniority list of the workmen engaged, an adverse inference had to be drawn against the management. The adverse inference would be that whereas seniors have been retrenched, the juniors are retained.

25. The learned Labour Court has ignored the law declared by the Supreme Court in the decision reported as (2006) 5 SCC 123 State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma that a Labour Court cannot expand the scope of the reference made and unless the reference made expressly encompasses a dispute concerning Rule 77 of the Industrial Disputes (Central) Rules, 1957, a Labour Court would be exercising jurisdiction not vested in it if it ventures into said Rule. Besides, in the instant case, as noted hereinabove, in the statement of claim filed by the

workmen they have made no reference to the Rule being violated. A bald plea, as noted above, that juniors have been retained sans the name of the any being disclosed, with no evidence led of any junior being retained, is the additional reason for which the finding returned in the award concerning Rule 77 and the said reasoning being negated by the learned Single Judge warrants an upholding of the view taken by the learned Single Judge by us.

26. The question of any reinstatement even otherwise is ruled out for the simple reason : there is no work. The decision for retrenchment being bona-fide and justified; the retrenchment being illegal because a condition precedent for retrenchment being violated i.e. House Rent Allowance not being included in the wages which were being paid has rightly resulted in the learned Single Judge ordering monetary compensation to each workman in sum of ₹3.25 lacs. As noted above, the shortfall in the retrenchment compensation paid to the workmen ranges between ₹8,000/- to ₹17,000/- and thus the compensation paid is more than adequate.

27. All the appeals are accordingly dismissed.

28. The amounts directed to be paid by the learned Single Judge to the appellants shall now be paid by the Management of Ramjas Foundation within six weeks from today failing which interest shall accrue on said amount payable at the rate directed by the learned Single Judge.

29. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 06, 2015/mamta