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

Date of Decision: 30th September, 2015

+ W.P.(C) 5300/2012
ANAND KUMAR

..... Petitioner

Through: Mr Akash Bhalla, Advocate

Versus

EMKAY INDUSTRIES

..... Respondent

Through: Mr Pankaj Tripathi, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By way of this writ petition, the petitioner/workman, who was employed as a helper with the respondent company, had challenged the Award dated 1st May, 2012, passed by the Presiding Officer, Labour Court-XI, Karkardooma Courts, Delhi in ID No.265/2008 whereby the plea of reinstatement in service with back wages was denied to him even after coming to the conclusion that his services have been illegally terminated by the respondent/management and a lump sum compensation of Rs.40,000/- besides Rs.10,000/- as litigation expenses were awarded to him.

2. As per the case of the petitioner/workman, he was employed with the respondent/management since 1995 as a helper. His last drawn salary was Rs.3150/- per month. According to the workman, the respondent/management was guilty of violating the labour laws and not

providing him legal facilities like overtime wages, leave wages, appointment letter with correct date of entry, attendance cards, bonus, earned wages etc. When the workman tried to raise his voice, the respondent/management terminated his services on 12th March, 2008. The respondent/management contested the claim of the workman, *inter alia*, on the ground that the workman was working with the Management since the year 1999 as helper and was drawing a salary of Rs.3,150/- per month. He had taken loan of Rs.15,000/- from the management and signed a voucher for the same. When the Management wanted to deduct the said loan from the salary of the workman, he started blackmailing the management and threatened to file false and vague case against the management. He himself left the work without any notice or information to the management. The management tried to call him back on duty but despite efforts, the workman is not ready to come back on duty with the Management.

3. Following issues were framed by the Labour Court for trial:-

- (i) Whether the services of the workman were terminated illegally and/or unjustifiable by the management.
- (ii) Relief, if any.

4. Evidence was adduced from both the sides and after examining the evidence, the Labour Court vide its award under challenge came to the conclusion that the termination of the service of the petitioner/workman was illegal and prior to termination of his services, provisions of Section 25F of Industrial Disputes Act were not complied with. However, as regards the relief, the workman was not granted the benefit of reinstatement in service and back wages but instead, a compensation of Rs.40,000/- was awarded.

Relevant findings of the Labour Court in this regard are reproduced below:-

“21. As the date of termination is far situated, i.e., in the month of February, 2008, therefore, the reinstatement of the workman seems not to be feasible in this case. But this court is of the view that the wrong done to this workman can be made good by awarding him a sufficient amount of compensation against his illegal retrenchment.

22. This court is of the view that the compensation amount should be determined after having regard to the date of appointment, the date of termination, then total length of employment of the claimant/workman, his last drawn salary, the present value of rupees as compared to that on the date of retrenchment (i.e. inflation and the devaluation of money) and the circumstances in which he was retrenched.

23. At the time of retrenchment i.e. after a service of about 13 years, the claimant/workman was entitled to get almost Rs.26,000-27,000 as notice pay and the compensation amount. But he was not given this amount at that time i.e. in the month of February, 2008. Approximately by this time the said amount would have multiplied upto Rs.40,000/-. Therefore, it is directed that a sum or Rs.40,000/- be given to the claimant/workman as compensation. A sum of Rs.10,000/- be also given to him as litigation expenses.”

5. The petitioner/workman felt aggrieved by the award of the Labour Court as regards the relief granted to him. However, the respondent/management did not feel aggrieved with the decision of the Labour Court to the effect that it had illegally terminated the service of the petitioner/workman.

6. Learned counsel for the petitioner contended that the petitioner, who was employed with the respondent for the last 9 years before his illegal termination, was denied the benefit of reinstatement and back wages primarily on the ground that there was delay in adjudication of the industrial dispute. It was submitted that delay in adjudication of disputes is not attributable to the petitioner. Reliance was placed on the following observations of Hon’ble Supreme Court in ***Deepali Gundu Surwase vs.***

Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors., (2013) 10 SCC 324:

“33.....

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can still afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (1979)2 SCC 80.”

7. Reliance was also placed on ***J.U. Akhtar vs. Management of Markfed Agro***, MANU/DE/8748/2006 for contending that once the termination has been held to be illegal then the workman was entitled for reinstatement and full back wages.

8. The counsel further submits that a plea was taken by the respondent the industry has been closed. The proprietor of the respondent was called to ascertain this fact and was directed to file additional affidavit, however, the same has not been filed till date. Even otherwise, before closure of the industry, it was incumbent upon the respondent company to have complied with the provisions of Section 25FF of the Act which has not been complied with. As such, the respondent has failed to prove that the industry has been closed. That being so, the petitioner is entitled for reinstatement with full back wages.

9. Rebutting the submission of learned counsel for the petitioner, learned counsel for the respondent submitted that a fictitious date of appointment has been presumed by the Labour Court. The workman was given a loan of Rs.15,000/- and when the management wanted to deduct the said amount from his salary, then the workman himself left the job. A letter was also sent by the Management to the workman to join duty but he failed to join. Moreover, the Management has since been closed and, therefore, even otherwise, the petitioner cannot be reinstated in service.

10. Undisputedly, there existed relationship of employer and employee between the parties. There is also no dispute that last drawn wages were Rs.3150/- per month. There is a dispute regarding date of appointment as according to workman, he joined the establishment in the year 1995 whereas according to Management, he joined on 01.09.1999. The Labour Court took a fictitious date of 01.07.1995 as date of appointment. Whether such a date could have been taken or not does not require much consideration in view of

the admitted relationship of employer and employee between the parties. On the basis of evidence adduced by the parties, the learned Labour Court arrived at a conclusion that services of workman were terminated illegally without following the provisions of Section 25 F of the Act. These findings are not even assailed by the Management in any proceedings . Even otherwise, same does not call for interference.

11. The only question remains for consideration is whether the award of the Labour Court regarding the relief awarded to petitioner needs to be interfered with by this Court or not.

12. The factual matrix of the present are substantially similar to the facts in ***Ramesh Kumar Rawat vs. The management of M/s. Northern Scales Company 2012 SCC online Del 2790*** where also after holding the termination of service by the Management to be illegal, a lump sum compensation of Rs.20,000/- was awarded to the workman. A Single Judge of this Court noticed the recent trend in the Supreme Court judgment on the question of grant of reinstatement and back wages to successful workman and observed as under:-

“9.....

In a very recent decision rendered in the case of “Devinder singh vs. Municipal Council, Sanaur”, (2011) 6 Supreme Court Cases 584 the Supreme Court took note of many of its earlier judgments on this aspect as also the impact of delay in adjudication of the industrial disputes by the industrial courts and gave its views in the following paras:-

“17. Section 25-F is couched in a negative form. It imposes a restriction on the employer's right to retrench a workman and lays down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the reasons for

retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

18. This Court has repeatedly held that the provisions contained in Sections 25-F(a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(o) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative. **State of Bombay v. Hospital Mazdoor Sabha, Bombay Union of Journalists v. State of Bombay, SBI v. N. Sundara Money, Santosh Gupta v. State Bank of Patiala, Mohan Lal v. Bharat Electronics Ltd., L. Robert D'Souza v. Southern Railway, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, Gammon India Ltd. v. Niranjan Dass, Gurmail Singh v. State of Punjab and Pramod Jha v. State of Bihar.**

19. the termination of service of a workman without complying with the mandatory provisions contained in Sections 25-F(a) and (b) should ordinarily result in his reinstatement.

28. The other reason given by the High Court is equally untenable. The appellant could hardly be blamed for the delay, if any, in the adjudication of the dispute by the Labour Court or the writ petition filed by the respondent. The delay of four to five years in the adjudication of disputes by the Labour Court/Industrial Tribunal is a normal phenomena. If what the High Court has done is held to be justified, gross illegalities committed by the employer in terminating the services of workman will acquire legitimacy in majority of cases. Therefore, we have no hesitation to disapprove the approach adopted by the High Court in dealing with the appellant's case." (emphasis supplied)

10. In **"Anoop Sharma vs. Executive Engineer, Public Health Division no. 1, Panipat (Haryana)", (2010) 5 Supreme Court Cases 497** the Apex Court held as follows:-

"17. This Court has repeatedly held that Sections 25-F(a) and (b) of the Act are mandatory and non-compliance therewith renders the retrenchment of an employee nullity—**State of Bombay v. Hospital Mazdoor Sabha, Bombay Union of Journalists v. State of Bombay, SBI v. N. Sundara Money, Santosh Gupta v. State Bank of Patiala, Mohan Lal v.**

Bharat Electronics Ltd., L. Robert D'Souza v. Southern Railway, Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, Gammon India Ltd. v. Niranjan Dass, Gurmail Singh v. State of Punjab and Pramod Jha v. State of Bihar.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated." (emphasis supplied)

11. In ***"Krishan Singh vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana); (2010) 3 Supreme Court Cases 637*** the Supreme Court had laid down the guidelines which the High Court should keep in mind while interfering with the discretionary powers exercised by the labour courts. In the following paras of its judgment the Supreme Court had noticed the facts of the case and then had set down the legal position regarding grant of relief of re-instatement etc.:-

"6. The only question that we have to decide in this case is whether the High Court was right in setting aside the Award dated 18.07.2006 of the Labour Court directing reinstatement of the appellant with 50% back wages and directing instead payment of compensation of Rs. 50,000/- to the appellant. We find that the dispute that was referred to by the State Government under Section 10 of the Act to the Labour Court was: "whether the termination of the services of the appellant was justified and if not, to what relief he was entitled to?" As per the claim-statement filed by the appellant before the Labour Court, he was appointed by the respondent as a daily wager against a regular post on 01.06.1988 under the Junior Engineer at Meham and the appellant worked there for different periods until the respondent terminated his services in December, 1993 without any notice and without complying with the provisions of Section 25F of the Act. The respondent in its objections did not take a plea that the engagement of the appellant was either against a post which was not sanctioned or contrary to the statutory rules.....the Labour Court held that the appellant has completed 267 days from 1.6.1988 to 30.4.1989 and without any notice or notice pay

and without retrenchment compensation. In the relief portion of the Award, the Labour Court held that as the services of the appellant had been terminated illegally, he was entitled to be re-instated in his previous post with continuity of service and 50% back wages from the date of demand notice, i.e. 31.12.1997.

7. In a recent judgment of this Court in **Harjinder Singh v. Punjab State Warehousing Corporation** JT 2010 (1) SC 598 the Labour Court, Gurdaspur, by its Award directed re-instatement of the workman with 50% back wages, but the Award of the Labour Court was modified by a learned Single Judge of the Punjab and Haryana High Court in the writ petition and this Court has held that the order of the learned Single Judge of the High Court was liable to be set aside only on the ground that while interfering with the Award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution. Learned Brother G.S. Singhvi, J., in his opinion, has observed that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV of the Constitution including Articles 38, 39(a) to (e), 43 and 43A thereof. Learned Brother Asok Kumar Ganguly, J. agreeing with learned Brother G. S. Singhvi, J., has also observed that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it.

8. Section 11A of the Act clearly provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct re-instatement of a workman with 50% back wages taking into consideration the pleadings of the parties

and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well- settled principles laid down by this Court for a writ of certiorari against an order passed by a Court or a Tribunal.

9. The High Court, however, has relied on the decision of this Court in **Mahboob Deepak v. Nagar Panchayat, Gajraula and Anr.** (supra) and on reading of the aforesaid decision, we find that this Court in the aforesaid decision has mentioned the following factors, which are relevant for determining whether an award of re-instatement should or should not be passed:

- (i) whether in making the appointment, the statutory rules, if any, had complied with;
- (ii) the period he had worked;
- (iii) whether there existed any vacancy; and
- (iv) whether he obtained some other employment on the date of termination or passing of the award.

This Court further held in the aforesaid decision that in the light of these principles the relief of re-instatement granted by the Labour Court in that case was wholly unsustainable and has accordingly directed payment of a sum of Rs. 50,000/- by way of damages to the workman with interest at the rate of 9% per annum.

10. The High Court has also relied on the decision of this Court in **Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.** (supra) and on reading of the aforesaid decision we find that the contention of the management before the Labour Court was that the post, in which the workman was working in that case, was not sanctioned after 31.03.1990 and this was not disputed by the workman and this Court held that if there did not exist any post, the Labour Court should not have directed re-instatement of the workman in service.

11. The aforesaid two decisions of this Court in **Mahboob Deepak v. Nagar Panchayat, Gajraula and Anr.** (supra) and **Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.** (supra) have no application to the facts in this case. In the present case, the respondent has not taken any stand before the Labour Court in his objections that the post in which the workman was working was not sanctioned or that his engagement was contrary to statutory rules or that he was employed elsewhere or that there was no vacancy. In the absence of any pleadings, evidence or findings on any of these aspects, the High Court should not have modified the Award of the Labour Court directing

re-instatement of the appellant with 50% back wages and instead directed payment of compensation of Rs. 50,000/- to the appellant.” (emphasis laid)

12. In **“P.V.K. Distillery vs. Mahendra Ram”**; (2009) 5 Supreme Court Cases 705 the Supreme Court had noticed all its earlier decisions on the aspect of grant of the relief of re-instatement and back wages to the industrial workmen whose services are found to have been terminated illegally and it was held as under:-

“10. The only question which requires to be considered by us in this appeal is, whether the Labour Court was justified in awarding full back wages, while directing the employer to re-instate the workman in service.....

*11. In the case of **P.G.I. of M.E. and Research, Chandigarh v. Raj Kumar**; 2000(8)SCALE469 , this Court has held that the payment of back wages having a discretionary element involved in it, has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable.*

*12. In the case of **Hindustan Motors v. T.K. Bhattacharya**: (2002)11LLJ1156SC , this Court has stated that Section 11A as amended in 1971, is couched in wide and comprehensive terms. It vests a wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows, that, the Tribunal is duty-bound to consider whether in the circumstances of the case, back wages have to be awarded and if so, to what extent. Court then held that Industrial Tribunal and Division Bench of High Court erred in proceeding on the assumption that quashment of dismissal order should be followed by reinstatement with full back wages as a matter of course. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case*

including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement.

13. In **U.P. State Brassware Corp. Ltd. v. Uday Narain Pandey** : (2006)ILLJ496SC , it is observed that the person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

14. In the case of **Haryana Urban Development Authority v. Om Pal**: (2007)2LLJ1030SC , it is stated that, it is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full back-wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

15. In deciding the question, as to whether the employee should be recompensed with full back wages and other benefits until the date of reinstatement, the tribunals and the courts have to be realistic albeit the ordinary rule of full back wages on reinstatement. [**Western India Match Co. Ltd. v. Third Industrial Tribunal, West Bengal** : (1978)ILLJ206SC .]

16. In **Hindustan Tin Works (P) Ltd. v. Employees**: (1978)ILLJ 474SC , this Court has held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

17. In the case of **Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court** : (1981)ILLJ386SC , this Court has observed

that the plain common sense dictates that the removal order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief.

18. *In Allahabad Jal Sansthan v. Daya Shankar Rai : (2005)11LLJ847SC*, this Court has observed: A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration.

19. *In Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan: (2005)11 LLJ SC*, the quantum of back wages was confined to 50%, stating: It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retiral benefits like gratuity, etc. and accepting the statement of the learned Senior Counsel for the appellant Mills that it is undergoing a financial crisis, on the facts of this case we think it appropriate that the full back wages granted by the Labour Court be reduced to 50% of the back wages."

20. *In the instant case, the notice had been issued limiting the question to the payment of 50% of the total back wages. This does not mean that the respondent is not entitled to further relief. The point that his services were terminated in the year 1985 and since then the case is pending for the last two decades in different courts also has no relevance, since he had approached the court within a reasonable time. It is not his fault that the case is still pending before the court. These grounds could not be held against him for denying the relief of back wages otherwise he would*

suffer double jeopardy of losing back wages and delay in getting the reinstatement for no fault of his. Therefore, it would have been more enlightening, had the High Court reasoned out as to why the appellant should reinstate the respondent with full employment benefits and should pay full back wages to him for nothing in return from him in terms of work, production etc.

21. Giving a realistic approach to the matter and in spite of all these circumstances we are restricting ourselves to the question of 50% of the total back wages. Although services of the respondent have been terminated unjustifiably and illegally, it itself does not create a right of reinstatement with full employment benefits and full back wages. The notice was issued with a view that the appellant's factory has been taken over by a new management altogether and by asking the appellant to pay full back wages for the long interregnum would be unfair and unjust. it would be unreasonable to put a huge burden on the appellant by directing them to reinstate respondent with continuity of service and with full back wages, because the appellant's factory had been declared sick and remained closed for many years and has been assigned to a new management led by its Chief Executive Director, Sri M.K. Pilonia in order to rehabilitate/reconstruct it."

13. After taking note of the aforesaid judgments, it was observed that in none of these cases it has been held that relief of reinstatement and back wages could not be granted to the workman who succeed in getting the declaration from the Labour Court that termination of his service was illegal and unjustified. All that has been held is that these reliefs should not be granted by the Court mechanically. In that case also, there was an observation in the impugned Award that 10 years had passed by in the litigation and that factor weighed with the Labour Court while denying the relief. It was observed that since delay has not been found to be attributable to the petitioner/workman, it could not be used against him. Similarly, a plea was taken by the management that the firm has been closed down but such plea was neither taken before the Labour Court nor in the writ petition and,

therefore, was not entertained. Accordingly, the petitioner/workman was granted the relief of reinstatement in service with 50% back wages considering the fact that he had not worked with the respondent all these years.

14. In the instant case also, the relief of reinstatement and back wages has been denied to the workman only on the ground that the date of termination was in the month of February, 2008, as such, reinstatement would not be feasible. Immediately after the termination in the month of February, 2008, the workman sent a demand notice calling upon the management to reinstate him to which no reply was given. Thereafter, complaint was made to Assistant Labour Commissioner, Karampura, New Delhi and according to the petitioner/workman, the Labour Inspector along with the workman visited the management and advised them to take back on duty and to pay wages for the month of February, 2008 but the management refused to do so. Thereafter, the workman filed a statement of claim against the management before the Assistant Labour Commissioner, Karampura, New Delhi but nobody appeared from the side of the management. Thereafter, the statement of claim was filed by the workman before the Labour Court. As such, so far as the workman is concerned, there was no delay in his approaching the Court. If after the filing of the claim in the year 2008 itself the Award was passed in the year 2012, the petitioner cannot be held responsible for the same. It is not the case of the respondent that the petitioner was responsible for passing the Award after a lapse of about 4 years.

15. The submission of learned counsel for the respondent that the industry has since been closed, remains unsubstantiated as such a plea was neither taken before the Labour Court nor in the counter affidavit filed to the writ petition. Counsel for the respondent submitted that since the industry has been closed only in the year 2012, therefore, such a plea could not have been taken before the Labour Court. Moreover, since the respondent did not receive any document from the Competent Authority sanctioning the closure therefore this plea was not taken in counter affidavit. Even if it is so, such an averment at least could have been made in the counter affidavit dated 19th July, 2013 but that was not done. Till date no such document has been placed on record. Record rather reveals that on 3rd September, 2014, a submission was made by counsel for the respondent that after the passing of the Award, the establishment has been closed. This fact was rebutted by the counsel for the petitioner, as such, the counsel sought time to verify this fact. On subsequent date, i.e., 24th September, 2014 the counsel for the petitioner admitted that the respondent/management has shifted from Anand Parbat to Gautam Budh Nagar, NOIDA, UP and the establishment over there is under the name and style of M/s. M.K. Electromax with its proprietor Mr. M.L. Malik, husband of Ms. Kusum Malik, who was the sole proprietor of the respondent. Counsel further submitted that the respondent has changed the name of the establishment and proprietorship just to avoid the compensation to be paid to the workman and to avoid other liabilities whereas the business is in control of the proprietor of the respondent. Counsel for the respondent sought time to file additional affidavit, however, till date that affidavit has not been filed. Under the circumstances, the respondent has failed to prove that the establishment has been closed.

16. For all these reasons, the Award of the Labour Court to the extent it has declined the reliefs of reinstatement and back wages is not sustainable in the eyes of law. Without any cogent ground, the Labour Court has denied the relief of reinstatement and back wages to the petitioner merely on the ground of delay in adjudication of industrial dispute for which the petitioner is not responsible.

17. As such, this writ petition succeeds and the petitioner/workman is granted the relief of reinstatement in service. However, considering the fact that he had not worked with the respondent for all those years, he is awarded only 50% back wages from the date of termination of his service till date which be paid to him within a period of eight weeks.

18. The writ petition stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 30, 2015
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