

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

% *Judgment Reserved on: November 16, 2015*
Judgment Delivered on: November 30, 2015

+ **LPA 587/2014**

GOPAL Appellant

Represented by: Mr.V.Thomas, Advocate.

versus

HINDUSTAN TIMES LTD Respondent

Represented by: Mr.Harvinder Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Gopal, the appellant herein was appointed as a Canteen Boy with the respondent M/s Hindustan Times Limited (in short 'Hindustan Times') w.e.f April 01, 1974, confirmed as Helper and later promoted to the post of Assistant Offset Machine Man on July 25, 2001. Services of Gopal were terminated vide order dated July 23, 2004 on the ground that he had been absenting without leave and thus Gopal raised an industrial dispute on which a reference was made to the Labour Court. In the claim petition, Gopal stated that the order of termination was passed without any inquiry in violation of principles of natural justice and hence the termination was mala fide and illegal.

2. In reply the case of the Hindustan Times was that show cause notice

was issued to Gopal for his unauthorised absence for which he gave no satisfactory reply and thus there was no requirement of holding a domestic inquiry and the termination was justified and legal. The respondent pointed out that the last drawn wages of Gopal were ₹10,919.57 and the dues relating to gratuity and leave encashment had been duly paid. The case of Hindustan Times further was that in the year 1999 Gopal was on leave for 112 days with 86 days without pay, in the year 2000 leave for 125 days with 98 days without pay, from January 01 to October 2001 he was on leave for 101 days with 80 days leave without pay and from January 2003 to October 2003 he was on leave for 106 days with 88 days leave without pay.

3. Since no inquiry was held the learned Labour Court permitted the parties to lead evidence. Gopal proved his appointment letter and termination notice etc. The documents of Hindustan Times showing absence of Gopal from duty were held to be inadmissible in evidence and were thus not considered and the matter was decided in the light of the documents proved by Gopal. The learned Labour Court held that Gopal was retrenched from the services however, instead of granting him reinstatement and back wages directed Hindustan Times to pay lump sum compensation of ₹2 lakhs to Gopal.

4. Aggrieved by the order passed by the learned Labour Court dated May 17, 2013 Gopal preferred a writ petition being W.P.(C) No.6791/2013 which was disposed of by the impugned order dated May 19, 2014 modifying the award and directing Hindustan Times to pay a lump sum compensation of ₹4 lakhs which was in the nature of final settlement with regard to all the claims of Gopal like back wages, future wages, terminal benefits like gratuity etc.

5. Gopal has preferred the present appeal. Neither the order of the Labour Court was challenged by Hindustan Times nor the impugned order passed by the learned Single Judge.

6. Thus the issue before this Court is whether on the facts of the case the learned Single Judge was justified in denying the relief of reinstatement with full back wages instead of enhancing the compensation to ₹4 lakhs. Vide the impugned order the learned Single Judge noted that the finding of the Labour Court that Gopal was retrenched from service was incorrect for the reason that the termination of Gopal was by way of punishment for misconduct and thus it was not retrenchment, however, the question which the learned Labour Court could have posed itself was whether the show cause notice issued to Gopal on June 30, 2004 would constitute sufficient compliance of principles of natural justice. The learned Single Judge noted that the show cause notice dated June 30, 2004 called upon Gopal to reply as to why the order of dismissal should not be invoked and he be dismissed from services of respondent. Thus the show cause notice could not substitute for disciplinary proceedings as it was actually seeking a reply as to why he should not be dismissed from services meaning thereby a response on the punishment to be imposed on Gopal was sought rather than seeking reasons for his absence. Thus the show cause notice demonstrated that Hindustan Times had pre-judged the issue and decided to dismiss Gopal. Thus the dismissal of Gopal from service was held to be bad and illegal as no show cause notice was issued to Gopal asking him to explain the reasons for his alleged unauthorised absence. The learned Single Judge however, noted that the termination relates back to the year 2004 and case of Gopal even as per his documents was that he was absent primarily due to the

illness of his son who appears to be suffering from epilepsy. Further the reply filed by Gopal was not supported by any document and he admitted that he continuously lived in Madhya Pradesh and had been coming to Delhi to attend the case. The learned Single Judge held that though the misconduct could not be proved because of the technical lapse on the part of management witness however, in the interest of justice the present was not a case of reinstatement with back wages but for grant of compensation for a wrongful termination and thus enhanced the compensation to ₹4 lakhs.

7. Before this Court Gopal reurges that he should be reinstated with back wages. It is well settled that even if the termination is held to be illegal the relief of reinstatement with full back wages is not automatic. The Court can always mould the relief according to the facts of the case.

8. In the decision reported as AIR 1960 SC 1264 Assam Oil Co.Ltd.vs. Its Workmen the Supreme Court held that even in a case of wrongful dismissal where the dismissed employee occupied a position of confidence with the employer and the employer states that he had lost confidence in the employee and is dissatisfied by the work, it would not be, in the circumstances of the case, fair either to the employer or to the employee to direct reinstatement and compensation might be the appropriate relief. Even in the decision reported as AIR 1970 SC 1401 M/s Hindustan Steels Ltd., Rourkelavs.A.K.Roy the Supreme Court held that where the Tribunal comes to the conclusion that the apprehensions of the employer were genuine and the employer truly felt that it was hazardous or prejudicial to the interests of the industry to retain the workman in his service, the case would be properly one where compensation would meet the ends of justice.

9. On the facts of the instant case the view taken by the learned Single

Judge cannot be faulted keeping in view the fact that the appellant would have otherwise superannuated from service on March 08, 2013 when he turned 58 years of age. Thus, loss of service of the appellant is about 9 years. It has to be kept in mind that in the year 1999 he was absent for 112 days out of which 86 days were without pay. In the year 2000 he was absent for 125 days out of which 98 days were without pay. In the year 2001 he was absent for 101 days out of which 80 days were without pay. In the year 2003 he was absent for 106 days out of which 88 days were without pay. The misdemeanour is stark.

10. Thus we find no error in exercise of the discretion by either the Labour Court or the learned Single Judge. We find no reason to interfere in the impugned order. Appeal is dismissed accordingly.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 30, 2015
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