

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

% *Date of decision : August 28, 2015*

+ **LPA 801/2014**

RAM MURAT Appellant
Through Mr.Sanjay Ghose, Adv.

versus

M/S DYNATECH CONTROLS (P) LTD Respondent
Through Mr.Satender Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Ram Murat raised an industrial dispute claiming that he joined the services of M/s. Dynatech Controls (P) Ltd. (in short M/s. Dynatech) as Machine Operator with effect from December 01, 1994 and his services were illegally terminated on February 07, 2005 whereas the case of M/s. Dynatech was that he was employed as a Helper with effect from May 01, 1995 and he choose to leave the services of the company of his own free will after executing the necessary documents evidencing his resignation and receiving his dues in full and final settlement. On the basis of pleadings the following issues were settled by the Labour Court:

“a) Whether the workman himself left the job on 07.02.05 on his own voluntarily after the receipt of accrue dues? If so, its effect? OPM

b) If issue no.1 is proved in favour of the workman, whether his services were terminated by the management illegally and/or unjustifiably? If so, its effect? OPW

c) *Relief.*”

2. Ram Murat asserted that signatures on blank papers were taken at the time when he joined the services which were subsequently filled up to show his resignation and receipt of full and final settlement and a voucher indicating that he had received a sum of ₹19,353/- in full and final settlement of the claim, which was refuted by M/s. Dynatech stating voluntary resignation of Ram Murat on the strength of three documents i.e. resignation letter (Ex.WW1/M1) and a voucher for a sum of ₹19353/- (Ex.WW1/M2) both dated February 07, 2005 and a calculation sheet showing details of the payment due towards gratuity, earned leave, bonus and wages for February (Ex.WW1/M5).

3. Learned Labour Court vide award dated December 05, 2009 held that the management examined only one witness Aman Yadav who could not prove that the final receipt was signed by Ram Murat in his presence and no witness to final payment was examined, thus the management failed to establish that Ram Murat left the job voluntarily after receiving the accrued dues. The second issue whether Ram Murat's services were terminated illegally was also decided against the management. On the issue of relief learned Labour Court held that in case reinstatement was ordered there will not be any industrial peace left with the parties and hence instead of reinstatement directed compensation. On the basis that his date of appointment in the ESI Card was May 01, 1995 and minimum wages in the year being 2005 were ₹3210/- per month for a semi-skilled worker, a total compensation of ₹33,705/- which included the service compensation and also the gratuity payable was passed besides litigation expenses of ₹5000/-.

4. The award dated December 05, 2009 was challenged both by Ram Murat and M/s. Dynatech by two separate writ petitions being W.P.(C) No.8404/2010 and W.P.(C) No.3496/2011 respectively. Both these writ petitions were dismissed by the impugned order dated October 30, 2014 by the learned Single Judge. Challenging the order dated October 30, 2014 Ram Murat prefers the present appeal to the extent it does not provide adequate compensation instead of reinstatement and full back wages only provides for statutory compensation which Ram Murat was entitled to. The order dated October 30, 2014 has not been challenged by M/s. Dynatech and thus the findings of the learned Labour Court to the extent that Ram Murat did not voluntarily leave the services and was illegally terminated have attained finality.

5. The only issue before this Court is whether the compensation of ₹33,705/- in lieu of reinstatement with full back wages warrants interference by this Court.

6. Indisputably Ram Murat had worked for nearly 10 years with the management for the reason though he claims to be employed on December 01, 1994, the management claim him to be employed on May 01, 1995 but there is no dispute that his services came to an end on February 07, 2005, thus three months short of 10 years. There are two sets of compensation available to a workman one is the statutory compensation for illegal termination and secondly compensation in lieu of reinstatement with full back wages. The learned Labour Court was conscious of the fact that it had not only to award the statutory compensation but also compensation in lieu of reinstatement for the reason in the operative part of the award though the direction to management to pay a sum of ₹33,705/- as compensation for

unjustified termination is typed, however the phrase “*in lieu of reinstatement*” has been added by hand.

7. Section 25-F of the Industrial Dispute Act (in short the I.D. Act) provides for condition precedent to retrenchment of a workman as under:

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

8. Admittedly, the workman in this case has worked for more than one year with M/s. Dynatech; thus besides one month's pay he was entitled to 15 days average pay for 10 years. The minimum wages for a semi-skilled worker in the year 2005 as noted above by the learned Labour Court was ₹3210/-. Thus retrenchment compensation as per Section 25-F itself would have been ₹19,260/- payable to Ram Murat besides gratuity on the basis of which the Labour Court awarded ₹33,705/-. It is apparent that in the compensation awarded there is no element of “*compensation in lieu of reinstatement*”. Thus to this extent the award dated December 05, 2009 and

the impugned order passed by the learned Single Judge suffers from illegality.

9. The factors relevant to determine a reasonable compensation are length of service, whether the workman was employed during the period after retrenchment etc. Ram Murat had worked for 10 years with the management. Thereafter the litigation has been pending between the parties for the last 10 years. There is no material on record to show that Ram Murat was gainfully employed all these years and thus considering the facts and circumstances of the case a compensation of ₹3 lakhs “*in lieu of reinstatement with full back wages*” would be an adequate compensation which would be less than the full back wages (i.e. ₹3120/- X 12 X 10 = ₹3,74,400/-).

10. The appeal is disposed of directing the management to pay a lump sum compensation of ₹3 lakhs in addition to the compensation of ₹33,705/- as directed by the learned Labour Court if not paid till now within a period of six weeks failing which it will entail an interest @ 9% from the date of this order till the date of realization.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 28, 2015
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