

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

+ **W.P.(C) 1352/2015**

% Judgment reserved on 12.03.2015
Judgement pronounced on: 20.03.2015

SHIVJI SHARMA Petitioner

Through: Mr S.K. Tanwar, Advocate

versus

SECRETARY (LABOUR) & ANR. Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The petitioner has filed the present writ petition aggrieved by the order of the Labour Court, whereby the Labour Court has ordered the payment of the compensation of Rs.1,00,000/- along with interest @ 9% per annum if the payment is not done within 30 days of publication of Award. The petitioner has confined his challenge of award, to the order of grant of compensation of Rs.1,00,000/- in lieu of reinstatement and back wages.
2. The contention of the petitioner is that Labour Court has not given any reasonable criteria for awarding the compensation and the said order is arbitrary and contravenes Article 14 of the Constitution.
3. As per the contention of the petitioner in his claim before the Labour

Court, he was appointed by the Management of M/s New Era Public School as a Helper at a salary of Rs. 2400/- per month and had served them for five years. The contention of the respondent No.2 before the Labour Court, however, was that the workman was employed by M/s Universal Security and Placement Services (Registered) (Agency), an independent establishment which was engaged in providing security and placement service to many establishments and they employed the claimant on 12.06.1998 as Helper. They provided the services of claimant to them and he had started absenting from duty with effect from 25.10.1999. Thereafter, the petitioner moved an application, whereby he impleaded M/s Universal Security and Placement Services as the Management, but they could not be served and subsequently they were dropped.

4. The Labour Court, after completing the trial, reached to the conclusion that the petitioner was the employee of respondent No.2 M/s New Era Public School and that his services were terminated illegally by them. It is clear that the respondent No.2-M/s New Era Public School has not so far challenged the findings of the Labour Court. Therefore, these findings have become final.

5. On reaching to the conclusion that the termination was illegal, the

Labour Court, instead of granting reinstatement with full back wages had awarded the compensation of Rs. 1,00,000/-, and it is this part of the award, which has been challenged by the workman before this Court.

6. The question for consideration is, if the Labour Court had acted without jurisdiction or illegally while awarding compensation in lieu of reinstatement and back wages.

7. Section 11A of the Industrial Disputes Act reads as under:-

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen-

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 reinstatement 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:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

8. It, therefore, is clear that the Labour Court has the power and jurisdiction to give any such relief as the circumstances of the case may require on reaching to the conclusion that the order of discharge or dismissal of a workman was not justified. Therefore, the Labour Court has passed its order in exercise of power under Section 11A of Industrial Disputes Act.

9. Moreover, in catena of judgments, one of which has been cited by the Labour Court itself, the Supreme Court has held that the reinstatement with full back wages is not an automatic relief which is available to a workman and the Court can modify the said relief as per the facts and situations of the case.

10. The question whether back wages should be awarded to the workman in each and every case of illegal retrenchment had come up for consideration before Three-Judge Bench of the Supreme Court in **General Manager, Haryana Roadways v. Rudhan Singh**, (2005) 5 SCC 591 and the Court has ruled as under:-

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or

inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily- wage employment though it may be for 240 days in a calendar year.”

In the above cited case, the Court had relied upon its findings in Smt. Saran Kumar Gaur and others vs. State of Uttar Pradesh and others [JT 1991 (3) SC 478], State of U.P. and Anr. vs. Atal Behari Shastri and Anr. [JT 1992 (5) 523], and Virender Kumar, General Manager, Northern Railways, New Delhi vs. Avinash Chandra Chadha and others [(1990) 3

SCC 472] and has held “*these authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.*”

11. One of such case, wherein Supreme Court has laid down the principles governing grant of back wages while setting aside termination is **Madhya Pradesh Administration vs. Tribhuban** (2007) 9 SCC 748. In this case, the workman was appointed on a temporary basis from time to time with break in service. He worked for the period 13.12.1991 to 01.03.1994. After his termination, he raised the industrial dispute. The Tribunal, on reaching to the conclusion that termination was illegal, only granted retrenchment compensation along with notice pay together with interest at the rate of 9% per annum to the workman. The validity of the award was questioned by the workman before the High Court and the High Court had allowed the writ petition directing reinstatement of the respondent with full back wages. The said order of the High Court was challenged before the Supreme Court and the Supreme Court has held as under:-

“6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should

have directed re-instatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its umbrage all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application for constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.* (2006)IILLJ722SC, and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.”

12. While reaching to the conclusion, the Court has relied on the findings of several cases, including *M.P. Housing Board and Anr. v. Manoj Shrivastava* (2006)IILLJ119SC, *State of M.P. and Ors. v. Arjunlal Rajak* (2006)IILLJ104SC and *M.P. State Agro Industries Development Corporation Ltd and Anr. v. S.C. Pandey* (2006)IILLJ215SC, *Jasbir Singh v. Punjab & Sind Bank and Ors.* (2007)1SCC566, *U.P. State Brassware*

Corporation Ltd. v. Uday Narain Pandey (2006)ILLJ496SC.

In all the above cases the workman was compensated in lieu of reinstatement and back wages.

13. In **Gurmail Singh vs. Principal, Government College of Education** (2000)9 SCC 496, the Supreme Court has held that it is a discretionary relief and must be granted upon taking into consideration all the attending circumstances. In that case, the Court has observed that the fact that the workman was appointed on a temporary basis. It was unlikely that he would have remained unemployed for such a long time and also observed that it would have been unjust to direct reinstatement after a period of more than 30 years and awarded a compensation of a sum of Rs.50,000/- in lieu of reinstatement and back wages.

14. In the case of **Madhya Pradesh Administration vs. Tribhuban** (*supra*), the Supreme Court has further observed as under:-

“12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled to, had the provisions of Section 25F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been

taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.”

15. In view of the settled proposition, it is apparent that the Labour Court has the authority and power to award any relief which is suitable to the facts and circumstances of the case in lieu of reinstatement and full back wages.

16. Thus, the argument that the Courts must, in all cases where it found the termination illegal, award back wages, with reinstatement is not a valid argument.

17. It is apparent from the impugned award that the Labour Court has taken into consideration the length of service of the workman. The Labour Court had also taken into consideration the fact that there was no direct contract of service with the Management as per the allegation of the Management. On these facts, Labour Court has awarded compensation in lieu of back wages and reinstatement.

18. There is no dispute to the fact that workman was working as a Helper and had worked for about five years and it was not the case of petitioner before Labour Court that he was working on any permanent nature of job.

19. For the foregoing reasons, I find no infirmity in the award. The

petition has no merit and the same is dismissed.

**DEEPA SHARMA
(JUDGE)**

MARCH 20, 2015
BG