

M/s Kuber Travels Private Limited

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal
-cum-Labour Court-II, Gurgaon & others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vivek Lamba, advocate,
for the petitioner.

Mr. Ved Parkash, Advocate,
for respondent No.3.

RAJIV NARAIN RAINA, J. (Oral)

Having heard the learned counsel for the parties and having read the award of the Labour Court at Gurgaon and having regard to the fact that the period of service is only from March 03, 2004 to February 11, 2005 reinstatement to service is not being justified. The petitioner runs a Taxi service in which the respondent was employed as a Driver. The Labour Court has awarded reinstatement with continuity of service and full back wages of the last drawn salary of ₹ 5000/- per month till reinstatement vide the impugned award dated January 03, 2014. The management was *ex parte* before the Labour Court for which dereliction and default it cannot be complimented even when they were served with the summons to appear before the Labour Court in the reference to answer the claim. The reference was registered in the Industrial Tribunal-cum-Labour Court-II, Gurgaon on January 07, 2008. The award is far too sketchy in its reasons assigned to

deny relief to be supported. The application for setting aside the *ex parte* award contains reasons which do not justify reopening the case on merits. The management says the passing of the award was known to it only when it received a show cause notice [Annex P.6] to proceed against it under Section 29 of the Industrial Disputes Act, 1947 for non-implementation of the award. Proceedings under Section 29 are quasi criminal proceedings and when registered they go to the Chief Judicial Magistrate for a trial. The show cause notice is dated August 20, 2014 and which is as per showing of the management is the immediate cause for bringing this petition in November 2014.

The award is non-speaking in character and does not reveal much of the reasons why the reference has been answered to the hilt in terms of relief in favour of the claimant. The relationship of employment is not denied and learned counsel for the petitioner submits that the Management has been ever ready to take back the respondent in service but he has not responded positively to the offer. Since this is not a matter noticed in the award, I would not go into it for the first time and leave it for the disputing parties to contend with by private settlement de hors this order.

Nevertheless, this case can well be moulded into one for compensation in lieu of reinstatement and there is sufficient indication in the judgments of Supreme Court and this Court on quantum that for a little less than one year of service, the compensation package can lie anywhere between ₹ 50,000/- to ₹ 3 lakhs, a measure culled out roughly from the financial dispensations in Assistant Engineer, Rajasthan Development

Corporation & another vs. Gitam Singh, (2013) 5 SSC 136, where the Supreme Court awarded ₹ 50,000/- as compensation for 240 days of service in lieu of reinstatement to service. The Division Bench of this Court in Municipal Council, Dina Nagar vs. Presiding Officer, Labour Court, Gurdaspur and another, 2015 (1) RSJ 765 indicated compensation ought to be granted at the rate of ₹ 1 lakh to ₹ 1.25 lakhs for every year of service spent prior to retrenchment/termination. In BSNL vs. Man Singh, 2012 (1) SCC 558, was a case where the Supreme Court granted to each of the two workers ₹ 2 Lakhs for two years of service and in BSNL vs. Bhurumal, (2014) 7 SCC 177, an amount of ₹ 3 Lakhs was given for two or more years of documented service. These rulings are for guidance only with no hard and fast rules.

Giving an allowance to passage of time and the rising price index, I feel that the ends of justice will be served if reinstatement is denied and compensation in a sum of ₹ 75,000/- is awarded as compensation in lieu of reinstatement. It is so ordered.

The amount determined be paid within one and a half months to the respondent and in case he refuses or is not found, the same be deposited in the Labour Court from where he can collected. His counsel is present and he will inform him about the order.

In case the amount is not deposited within the time stipulated the same shall be paid with interest @ 12 per month from the date of default till date of payment as a harness to satisfy the decree. Accordingly, the award of the Labour Court stands modified.

The writ petition is partially allowed. The order proceeding *ex parte* against the management is set aside to accommodate the appearance of the counsel for the management in the present proceeding.

(RAJIV NARAIN RAINA)
JUDGE

01.05.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>