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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 07th December, 2017

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W.P.(C) 3864/2003

S.L.THAKURAL

..... Petitioner

Through: Mr. R.K. Saini & Mr. Prashant
Sharma, Advocates

versus

DELHI CONSUMER COOP.WHOLESALE Respondent

Through: Ms. Sujata Kashyap & Ms. Ateka
Khan, Advocates with Mr. Gurpreet
Singh, Law Officer

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

1. The petitioner has filed the present petition praying for a writ in the nature of certiorari quashing the actions of the respondent in (i) not giving promotion and other consequential benefits e.g. arrears of pay and allowances, bonus etc. to the petitioner as if he was never removed from service and (ii) not paying the correct salary to the petitioner from the date of reinstatement till the date of retirement i.e. from 26.5.2000 to 30.4.2002 being illegal, arbitrary, vindictive, unjust and malafide and a writ in the nature of mandamus commanding the respondent to (i) give promotion and other consequential benefits e.g. arrears of pay and allowances, bonus etc. to the petitioner as if he was never removed from service and (ii) pay the correct salary to the petitioner from the date of reinstatement till the date of retirement i.e. from 26.5.2000 to 30.4.2002 on the ground that the services of the petitioner were wrongfully terminated by the respondent.

2. The petitioner earlier raised an industrial dispute, which was referred by the Government of National Capital Territory of Delhi, with the following terms of reference:

“Whether the termination of Shri S.L. Thakural was illegal or unjustified and if so, to what relief he is entitled?”
3. The Labour Court vide its Award dated 21.07.1995, as stated in Para 6 of the petition, held as under:-

“Net result of the above discussion therefore is the termination of the services of the workman concerned is illegal and is therefore set aside. Workman is entitled to reinstatement with full back wages and reinstatement of service.”
4. The aforesaid Award was published in the Gazette of India and became enforceable from 18.10.1995. Thereafter, the respondent challenged the Award by way of a writ petition, however, the same was dismissed by a Single Bench of this Court, vide order dated 21.4.1999 and the Award dated 21.7.1995 was upheld. Thereafter, the respondent filed an LPA No.376/1999 before the Division Bench of this Court against the aforesaid order dated 21.4.1999, which was dismissed by this Court vide its order dated 17.7.2000, observing that, since the petitioner had already been reinstated in service, the LPA did not survive. Meanwhile, the petitioner was reinstated in service on 24.5.2000 and he retired on 30.4.2002 on attaining the age of superannuation.
5. The petitioner in this petition has submitted that a number of representations were made, praying that the petitioner be treated as if he was never removed from service and he is entitled to get all the consequential benefits, i.e., seniority, promotion, arrears of pay, allowances, bonus etc., which he would have been entitled to, had he not been dismissed from service due to illegal action of the respondent. But neither any heed was paid to these representations nor was any reply

sent by the respondent. The respondent did not implement the Award in two senses – fully in letter and spirit and without giving the petitioner any seniority and promotion etc. It is further submitted that the petitioner is also entitled to get bonus for 27 years, the period during which he was under removal, as he was never removed from service. However, the respondent did not give him any bonus till his retirement on 30.4.2002. It is also stated that, when the petitioner was dismissed from service on 28.7.1975, he was senior to certain employees, who later on got promotions and higher positions in the respondent organization with the passage of time as per their positions in the seniority list. One such person was Shri Puran Chand, who joined service of the respondent on 17.9.1966 and was junior to the petitioner, who joined on 12.8.1966.

6. On the other hand, learned counsel for the respondent has not denied the fact that the workman was reinstated in service and the Award was passed, holding that the petitioner is entitled to reinstatement with “full back wages.” It is stated in the counter-affidavit that the petitioner was duly reinstated in service and was paid all the emoluments due to him in the post of Salesman. It is also stated in the counter-affidavit that the respondent is a cooperative organization and promotions/appointments are made on the basis of fitness of the person to the post. It is also stated that since the petitioner was not in service of the respondent from 28.7.1975 till 25.5.2000, it would not be possible to determine his suitability to the higher post after his reinstatement in service. Thus, he can neither be considered for promotion on the basis of seniority with reference to his next below person nor can be granted promotion on the date of his reinstatement. It is also stated that the promotions in the respondent society are made by selection, looking into the capability and

merit of the employees. Seniority is not the only dominating criteria and, as such, the claim of the petitioner for his promotion is not tenable. Learned counsel for the respondent has also placed on record a letter dated 5.12.2017, copy whereof has been given to learned counsel for the petitioner.

7. It is also stated in para 23 of counter-affidavit as under:

“23.The contents of para 23 of the writ petition are wrong and denied. It is submitted that the petitioner was duly paid the arrears of pay and allowances admissible to him for the period for which he was out of service of Delhi Consumer Cooperative Wholesale Store Ltd. However, when he was reinstated he was paid at the minimum stage of the pay scale attached to the post of ‘Salesman’ viz. Rs.3050-4590 subject to refixation of his pay subsequently in accordance to the Rules. Unfortunately refixation of the pay at the appropriate state last sight of the Dealing Assistant and the Petitioner continued to receive the pay at the initial stage of the pay scale plus allowances applicable to him. The petitioner also did not either personally or formally approach the pay roll section for refixation of his pay and disbursement of the pay and allowances on the basis of refixation of basic pay. However, the pay of the petitioner has now been refixed at the stage of Rs.3700-3775 w.e.f. October, 2000 and Rs.3825/- w.e.f. October 2001, and the arrears due to him have been paid to the petitioner vide cheque No.883738 dt. 16.11.2006 for Rs.26,430/- (Twenty Six Thousand Four Hundred and Thirty Only) and another cheque of Rs.21,209/- (Twenty One Thousand Two Hundred Nine Only) bearing cheque No.883743 dt. 16.11.2006.”

8. I have heard learned counsels for the parties and have perused the record. At the outset, learned counsel for the petitioner has submitted that he is giving-up the claim for bonus. Secondly, learned counsel for the petitioner has also admitted that quantification of the amount is not possible in this writ petition. It is also stated that the petitioner is not pressing the prayer to pay the salary to the petitioner from the date of

reinstatement till the date of retirement i.e. from 26.5.2000 to 30.4.2002, since the same stands paid by the respondent during the pendency of the writ petition.

9. Learned counsel for the respondent *per contra*, on the other hand, submitted that the petitioner ought to have raised such a claim under the Industrial Disputes Act, 1947 ('ID Act'); this Court is not the proper forum for the relief claimed in this petition. It is also stated that the petitioner is not entitled to any relief prayed, since the petitioner is not granted continuity of service and is only granted the reinstatement with full back wages. While relying upon the judgment in *M/s. Hamdard (Wakf) Laboratories v. Deputy Labour Commissioner. & Ors.*, (2007) 5 SCC 281, learned counsel for the respondent submitted that the petitioner cannot be granted the said relief since what is not granted in the Award cannot be claimed by the petitioner.
10. The important question, which has arisen for consideration of this court in the present writ petition is, whether the relief prayed can be granted by this Court and/or the petitioner is having the proper alternative remedy and a Forum available in connection with a right or an obligation, if any, provided under the ID Act, 1947. In this regard, the submissions of learned counsel for the petitioner are very relevant, who submitted that the quantification of the amount, in view of the reliefs claimed in the writ petition, cannot be done in writ proceedings and he shall file a petition or an application for quantification of the amount under Section 33 C (2) of the ID Act, 1947 before the competent Labour Court or appropriate proceedings before the Competent Authority under the ID Act, 1947. Thus, he seeks only a direction from this Court that the petitioner is entitled for promotion and other consequential benefits,

as if he was never removed from service in view of relief granted in the Award dated 21.07.1995.

11. It is a fact on record that the Labour Court, vide its Award dated 21.7.1995, granted a relief to the petitioner, holding that the petitioner is entitled to reinstatement with full back wages. The petitioner was reinstated as well as paid the back wages and he now stands superannuated. Now, the question is, whether reliefs, which are sought in the present writ petition, come within the purview of the reinstatement with full back wages or not or whether such direction can be given, as sought by the petitioner in the present writ petition. It is a fact that the impugned Award does not talk of continuity of service or revision and there is an ambiguity about the same. However, there is no doubt that the petitioner is entitled to reinstatement with full back wages but then the question for determination is that what comes within its purview. Learned counsel for the respondent submitted that the back wages already stand paid and accepted by the petitioner. However, learned counsel for the petitioner submitted that the correct back wages have not been paid by the respondent to the petitioner. I feel it proper that the proper forum, which the petitioner ought to have approached for this purpose, is the Labour Court and/or competent authority under the ID Act, since there is no doubt as well as no dispute that the petitioner has been held to be entitled to reinstatement with full back wages thus, a right and a benefit had accrued in favour of petitioner. However, whether the promotion and/or consequential benefits and allowances come within the purview of such reinstatement with full back wages will be determined by the Labour Court/proper forum under the ID Act.
12. The case in hand does not involve mere application of a legal principle to the admitted or undeniable facts but depends on concrete facts

required to be brought out in evidence and the quantification thereof, as admitted by the parties. Hence, having regard to the contentions of the parties, facts on record and the factual controversy involved, I am of the considered view that the reliefs prayed for by the petitioner in the present writ petition cannot be granted. However, liberty is granted to the petitioner to agitate the issue(s) and/or claim(s) before an appropriate forum under the ID Act, with a direction to the appropriate forum under the ID Act where such issue(s) and/or claim(s) would be raised by the petitioner, to exclude the period elapsed in prosecuting the present writ petition.

13. The writ petition is accordingly disposed of. However, it is made clear that the discussions hereinabove shall not be construed as an expression or any view on the merits of the respective contentions.

CHANDER SHEKHAR, J.

DECEMBER 07, 2017/tp

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