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

\+ LPA 151/2016

HARISH CHANDER SAH ..... Appellant

Through: Mr.Atul T.N., Advocate.

versus

BANK OF INDIA ..... Respondent

Through: Mr.Jagat Arora with Mr.Rajat Arora, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

<u>O R D E R</u>

% 28.08.2017

The appellant has preferred the present Letters Patent Appeal to assail the judgment dated 12.10.2015 passed by the learned Single Judge in W.P.(C) No.9872/2006 preferred by the respondent-bank. By the impugned judgment, the learned Single Judge has modified the Industrial award dated 07.03.2006 made in the favour of the appellant. By the said Industrial award, the Industrial Tribunal had directed reinstatement of the appellant in service with stoppage of four increments with cumulative effect. The Learned Single Judge, however, set aside the reinstatement of the appellant, and directed payment of compensation to the appellant quantified at Rs.15 lakhs after adjustment of the amounts paid to the appellant under Section 17B of the Industrial Disputes Act. The appellant is aggrieved by the judgment insofar as it has substituted the reinstatement awarded by the Industrial Tribunal in favour of the appellant, with payment of lump sum compensation.

Learned counsel for the appellant submits that the Letters Patent Appeal preferred by the respondent-Bank against the same judgment was dismissed vide LPA No. 99/2016 on 16.02.2016. He further submits that while passing the said order, the Division Bench made observations against the respondent-bank to the effect that it was recalcitrance in its conduct which lead to delay of about ten years. Learned counsel submits that there was no justification for substituting the award rendered by the Industrial Tribunal in favour of the appellant.

Having heard learned counsel for the parties and perused the impugned judgment, we are not inclined to interfere therein.

We may observe that during the pendency of the present appeal on 20.07.2016, the Court had directed the respondent to take instructions on the aspect of the appellant's reinstatement in service. On that date, the appellant had offered that he is also willing to forego backwages, in case the respondent-bank agrees to reinstate the appellant. Time was granted to the respondent-bank to take instructions in this regard. Thereafter, offer was made to the appellant by the respondent-bank. In this regard, the appellant has himself placed on record the letter dated 23.08.2016 issued by the respondent-bank to the counsel for the respondent. The appellant has not accepted the said conditional offer made by the respondent.

Payment of compensation in lieu of reinstatement is the judicial trend in such like cases. The acrimony which results on account of litigation spread over several years leads to loss of faith and trust between the employer and employee. Reinstatement of service, normally in such circumstances, would also have adverse impact on the discipline in the employers' organisation, as there is every likelihood that the reinstated employee may not exhibit the same sense of discipline, as would be expected from an employee. Even otherwise, keeping in view the appellant's impending superannuation in the next 2-3 years, coupled with the fact that he has remained out of service for almost 20 years, the award of compensation in lieu of reinstatement is, in our view, just and fair. The learned Single Judge has relied upon the judgments of the Supreme Court in ***Management of Aurofood Private Limited vs. S. Rajulu*****,** (2008) 14 SCC 608 and ***Bhavnagar Municipal Corporation & Ors. vs. Jadeja Govubha Chhanubha & Anr.****,* (2014) 16 SCC 130 in support of his view. The appellant has not been able to point out any error in the said approach of the learned Single Judge.

In these circumstances we are not inclined to interfere with the impugned judgment which, in our view, fairly balances the rights and obligations of the parties.

Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 28, 2017/gm