

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 07th September, 2017

**W.P.(C) 2558/2011
BHUDEV SHARMA**

..... Petitioner

Through Mr. Anil Sharma, Advocate

Versus

**KALINDEE RAIL NIRMAN ENGINEERS
LTD**

..... Respondent

Through Mr. Alok Kumar, Advocate

**CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA**

**JUDGMENT
(ORAL)**

ANU MALHOTRA, J.

1. The pleadings on the record are complete.
2. The written submissions of either side are on the record.
3. Oral submissions have also been made on behalf of the petitioner by his learned counsel Mr. Anil Sharma and on behalf of the respondent by its learned counsel Mr. Alok Kumar.
4. Vide the present petition, the petitioner assails the Award dated 02.02.2011 of the learned Presiding Officer, Labour Court No. XVI, Karkardooma Courts, Delhi in I.D. No. 50/2008 whereby the reference to the effect : -

***“Whether Sh. Bhudev Prashad Sharma S/o Late
Sh. Puren Singh Sharma himself left the job or
his services have been illegally and/or***

unjustifiably terminated by the management; and if yes, to what relief is he entitled?”

was answered in favour of the workman / petitioner to the effect that the services of the petitioner had been illegally and unjustifiably terminated by the management i.e. the respondent herein with an amount of Rs.50,000/- having been awarded as lump sum compensation in lieu of his reinstatement and other dues.

5. The challenge made by the petitioner is to the effect that the petitioner be reinstated with full back wages in relation to his illegal termination w.e.f. 16.08.2004 submitting *inter alia* to the effect that the petitioner was in the employment of the petitioner since May, 1993 and w.e.f. 09.10.2002, he was drawing a salary of Rs.4,066/- per month.

6. On behalf of the respondent, learned counsel for the respondent has fairly submitted in reply to a specific Court query that there has been no challenge made by the respondent to the findings in the impugned Award holding that the respondent had been unable to discharge the burden in relation to the Issue No. 1 framed qua the aspect of the workman having abandoned the job of the management himself and it is thus submitted on behalf of the petitioner that there has thus been no challenge to the findings in the impugned Award to the effect that the services of the petitioner had been illegally and unjustifiably terminated and that the management was unable to show that the workman had voluntarily absented from the service.

7. Learned counsel for the respondent further submits that the observation in relation to Issue no. 1 itself indicates that the record shows that even after the oral termination of the petitioner / workman by the management on 16.08.2004, for one year the petitioner / workman did nothing with respect to his claim and service condition and that the claim was filed in the Labour Court only after a year, which had been dismissed for being beyond the period of limitation, whereafter the petitioner had approached the Labour Officer for a reference which had thus been taken up for consideration vide the impugned Award.

8. On behalf of the petitioner, it has been submitted that there has been a total violation of the provisions of Section 25F (a) and (b) of the Industrial Disputes Act, 1947 and that the Labour Court had failed to consider that the petitioner had worked more than 11 years and that he had not been in employment for more than 6½ years at the time of the Award and the compensation award of Rs.50,000/- was insufficient to meet the ends of the justice and even if the salary of the petitioner @Rs.4,066/- per month was taken into account with interest without Sundays, National Holidays, Overtime and T.A.D.A. on the date of the Award his salary worked out to Rs.3,17,145/- and that the petitioner had in his cross-examination deposed that even in the year 2004 he was unemployed and that the management had not led any evidence in relation thereto.

9. The petitioner seeks to place reliance upon the judgments in : -

- “i. Bhuvnesh Kumar Dwivedi V/s Hindalco Industries Ltd. VIII (2014) SLT 392 SC;*
- ii. Anoop Sharma V/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana) III (2010) SLT 445 SC*
- iii. General Manager, Haryana Roadways V/s Rudhan Singh (2005) SCC 591 SC*
- and
- iv. Mahabir Singh V/s. Delhi Transport Corporation 171 (2010) DLT 637”*

to contend that the relief of reinstatement with full back wages could be available to the petitioner.

10. Learned counsel for the respondent apart from submitting as already observed hereinabove that the impugned Award itself mentioned that there were vague facts that had been given by the workman in relation to his contention of oral termination of the services, also submitted that in the facts and circumstances of the instant case, it would not be appropriate to reinstate the petitioner in service after such a long time and that the monetary compensation in lieu of reinstatement and full back wages would meet the ends of the justice in relation to which reliance is placed on behalf of the respondent on the verdicts in :-

“Senior Superintendent Telegraph (traffic), Bhopal (2010) 6 SCC 773, (2006) 5 SCC 127, (2006) 5 SCC 173, (2006) 9 SCC 434, (2006) 13 SCC 727, (2007) 5 SCC 742, (2007) 9 SCC 748, (2008) 1 SCC 575, (2005) 5 SCC 124, (1979) 2 SCC 80, (2006) 11 SCC 684, , (1996) Suppl. 1 SCC 557, 2002 (63) DRJ 776, 2004 (73)

DRJ 249, 2005 (84) DRJ 638, 1994 AIR (SC) 112, 2002 (65) DRJ 88, (2007) 1 SCC 575, (2007) 9 SCC 353, 2010 (172) DLT 502, Maheshwar Singh Vs. Management of Indomag Steel Technology Ltd. W.P.(C) 8495/2011 decided by Delhi High Court on 31.01.2014, Vinod Kumar & ors Vs Salvan Public School & Anr. (W.P.(C) 5820/2011 decided by Delhi High Court on 17.01.2014.

to contend that this Court has ***repeatedly held that where a long period has lapsed since the date of termination, compensation should be paid in lieu of reinstatement and back wages placing reliance on the verdicts repeated in 2002 (63) DRJ 776, 2004 (73) DRJ 249, 205 (84) DRJ 638, 96 (2002) DLT 877*** to contend that a long period had elapsed since the termination and compensation should be paid in lieu of reinstatement and full back wages.

11. It has also been submitted on behalf of the respondent whilst placing reliance on the verdict of the Hon'ble Supreme Court in ***Syed Yakooob Vs. K.S. Radhakrishnan & Others AIR 1964 SC 477*** that it is a settled legal position that the Labour Courts or the Tribunals exercising their jurisdiction under the provisions of various Labour Acts and statutes are the final courts of facts and the High Court does not ordinarily interfere with the findings of the facts recorded by the Labour Court or the Tribunal unless such findings by these adjudicatory bodies are perverse or irrational on the very face of it and that while exercising supervisory power under Article 227 of the Constitution of India, the High Court does not act as an Appellate Court and cannot re-weigh the evidence with a view to substitute its own view or to appreciate the findings of fact.

12. On a consideration of the rival contentions, written submissions and oral submissions made on behalf of either side as well as on a perusal of the impugned Award, taking into account the factum that the impugned Award dated 02.02.2011 of the learned Presiding Officer, Labour Court No. XVI, Karkardooma Courts, Delhi in I.D. No. 50/2008 has nowhere been challenged by the respondent and thus the termination of the services of the petitioner having been held to be illegal w.e.f. 06.08.2004 is an admitted fact. It has also been admitted that the petitioner was in service for the period from May, 1993 to 16.08.2004 i.e. 11 years, it is apparent that the compensation to the tune of Rs.50,000/- in lieu of reinstatement and other dues is insufficient taking into account the last drawn salary of the petitioner being Rs.4,066/- per month w.e.f. 09.10.2002 and undoubtedly in the facts and circumstances of the instant case where 13 years have already elapsed from the date of the termination of the services of the petitioner w.e.f. 16.08.2004 though it is not considered appropriate to award reinstatement as prayed by the petitioner, however, the compensation amount of Rs.50,000/- awarded in lieu of the reinstatement and other dues vide the impugned Award dated 02.02.2011 in I.D. No. 50/2008 is modified and enhanced to Rs.2,00,000/- (Rupees Two Lakhs only) to be paid to the petitioner within a period of six weeks from today.

13. The petition is disposed of .

ANU MALHOTRA, J

SEPTEMBER 7th, 2017/mk