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

+ **W.P.(C) No. 8218/2015**

% Judgment Reserved on: 4th December, 2017
Judgment Pronounced on: 21st December, 2017

RAM SAMUJH VERMA Petitioner
Through: Mr.S.S.Ali, Advocate

versus

M/S. ABBEY & SONS Respondent
Through: Mr.Iqbal Ashraf Rahmani, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India, praying, *inter alia*, for a writ of certiorari or any other appropriate writ, order or direction calling for the records of DID No.182/2010 decided by Sh.Satinder Kumar Gautam, Presiding Officer, Labour Court, Karkardooma Courts, Delhi and for setting aside the award dated 04.01.2014 to the extent it has granted a paltry compensation of Rs.50,000/- instead of reinstatement and full backwages.
2. Learned counsel for the petitioner has submitted that he has not filed any other similar writ petition or other legal proceedings in this Court or in any other High Court or in the Supreme Court of India.
3. I have heard the learned counsels for the parties and have also gone through the written synopsis filed by them.

4. The case of the petitioner, as noted by the Trial Court, is that the workman filed the direct claim with the grievance that the Management has illegally terminated his services without any charge-sheet or without conducting any domestic enquiry on 08.01.2009 which is violation of Section 25F of the Industrial Disputes Act, 1947 (in short, called the “ID Act”), though the workman has served the Management since 02.01.2006 as ‘helper’ on the last drawn wages of Rs.3683/- per month. During the entire period of service, there was no charge-sheet issued and the workman worked with honesty and dedication. The Management has not provided the legal facilities like ESI, PF, bonus, leave, overtime, etc. The Management only issued the ESI card from 01.04.2008 though the same was demanded from the date of appointment i.e. 02.01.2006. When the dispute took place between the parties, the Management became annoyed and the ESI card was not issued from the date of appointment. Later on, the Management terminated the services of the workman on 08.01.2009.

5. The petitioner/workman demanded the legal benefits including the payment of deduction of ESI & PF which has not been deposited by the Management to the concerned department(s). The workman also raised the issue by sending the demand notice dated 14.01.2009 for reinstatement of service with consequential benefits. The matter was referred to the Assistant Labour Commissioner and the Labour Inspector visited the Management on 21.02.2009 but no settlement was arrived at between the parties, since the Management became adamant and alleged before the Labour Inspector that the workman has already received his full and final payment of Rs.4968/- on 15.01.2009 against the payment voucher and his resignation letter. Since the matter could not be settled between the parties before the Labour

Inspector, as such, the matter was referred. The workman is claiming for his reinstatement along with the backwages and other legal benefits as well as claiming the litigation charges of Rs.5000/- from the Management.

6. The Management/respondent in the Trial Court through the written statement controverted the claim and submitted that the claim was not maintainable because of concealment of fact by the workman, as the workman voluntarily resigned from the service w.e.f. 15.01.2009 after taking his full and final settlement amount of Rs.4968/-, went away and thereafter never came back. He concealed this fact from the Court as well as Labour Authorities by playing fraud. When the petitioner/workman was exposed before the Labour Authorities, he abandoned his complaint there and filed the same before the Labour Court by concealing all these relevant and material facts. The petitioner has never raised any demand to the Management in any manner whatsoever prior to the filing of his case before the Labour Department as well as before the Labour court. The petitioner/workman, in fact, was working from 02.01.2006 and he on his own resigned from his services voluntarily vide letter dated 15.01.2009 in which he had demanded his full and final payment. He was given his due wages as per his entitlement. There was no occasion for the workman to ask for the ESI card, as the same had been issued to him at the time of his entitlement/coverage by the ESI Department. The Management never terminated his services nor refused to his service in any manner, as such, there is no question of serving any demand notice or conducting any domestic enquiry. The ESI contribution of the workman was deducted from the period he had become entitled and the same had been deposited to the concerned authority timely and periodically. The workman is raising baseless claim in order to mislead

the Court. The allegations made by the petitioner are false, just to harass the respondent and extorting money out of it. There is no question of payment of overtime to the workman in any manner whatsoever. The workman has no reservation to modify his claim.

7. By the impugned Award, the Labour Court held that the letter of the petitioner/workman Ex.MW-1/1 did not reflect the resignation of the petitioner, rather the same was for the payment of earned wages etc. for the period of work he had done, and further held that there was no document to show that the petitioner was employed despite the best efforts for the re-employment after termination of his services by the respondent/Management and also there was no document to show as to where he had applied for re-employment or enrolled himself in any Employment Exchange.

8. The petitioner has been awarded a lump-sum amount in lieu of reinstatement in service and backwages etc., while relying upon the judgment passed by the Supreme Court titled as ***M/s D.S.I.I.D.C. v. Pravin Kumar Sharma***, 2012 LLR 718. The relevant part of the judgment reads as under:-

“Termination of workmen, without compliance of section 25F of the Industrial Dispute Act, is illegal retrenchment attracting reinstatement with back wages.

Award of reinstatement with full back wages should not be granted mechanically when termination is held to be illegal.

Lump-sum compensation of a reasonable amount in lieu of reinstatement with back wages is justified.”

9. Learned counsel for the petitioner has submitted that the Award of the Labour Court granting the compensation in lieu of reinstatement and

back wages is contrary to law. The Labour Court ought to have granted the relief of reinstatement in the employment along with consequential benefits to the petitioner. More so, the Industrial Adjudicator failed to appreciate this position of law that when the termination of service of the petitioner was upheld to be illegal, the onus will be on the respondent/Management to establish the normal relief for the petitioner i.e. for reinstatement in service with consequential benefits and back wages. However, the Industrial Adjudicator has only granted the lump-sum compensation to the tune of Rs.50,000/- without giving any reason or basis thereof.

Learned counsel of the petitioner has relied upon the following judgments:-

- (i) Sudarshan Rajpoot v. Uttar Pradesh State Road Transport Corporation, (2015) 2 SCC 317
- (ii) Bhuvnesh Kumar Dwivedi v. M/s. Hindalco Industries Ltd., AIR 2014 SC 2258
- (iii) Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, 2013 (11) Scale 268
- (iv) Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116
- (v) Mohan Lal v. Management of M/s Bharat Electronics Ltd., (1981) 3 SCC 225
- (vi) M/s Nicks (India) Tools v. Ram Sarat and another, AIR 2004 SC 4348

10. Learned counsel for the petitioner has also submitted that the short question, which is involved in this matter, is that whether the petitioner is entitled for reinstatement in service or whether the award of the Labour

Court for the lump-sum compensation of Rs.50,000/- in lieu of reinstatement of service with back wages is justifiable or not.

11. Learned counsel for the petitioner has further submitted that the impugned Award does not provide any relief to the petitioner/workman but simply puts a premium on breach of the law, as any party can rely upon this award to contend that the Management can simply flout the binding provisions of the ID Act and natural justice and all that the workmen shall get after a life draining and prolonged industrial adjudication is the payment of paltry compensation and that too without any interest or costs/damages for the delay and resultant litigation.

12. On the other hand, learned counsel for the respondent has submitted that the Labour court has relied upon the judgment *M/s D.S.I.I.D. C. (supra)* and accordingly in view of the law laid down by the Supreme Court, granted a lump-sum compensation of the reasonable amount in lieu of reinstatement with back wages.

13. I have gone through the judgments relied upon by the learned counsel for the petitioner as well as the submissions made on behalf of the parties and have also gone through the facts of the case.

14. There is no doubt that there is certainly a shift in the approach of the courts in dealing with the cases involving wrongful dismissal, wrongful termination, wrongful retrenchment etc. and it is being held by the Supreme Court time and again that the reinstatement of service along with compensation and full back wages in some matters may not be granted and a lump-sum reasonable amount in lieu of the reinstatement is justifiable in such matters.

15. In the case in hand, the petitioner has been employed with the respondent as helper from 02.01.2006 and his last drawn salary was Rs.3683/- p.m. and his services were terminated on 08.01.2009, as such the petitioner worked with the respondent little over three years. It has come on the record that the petitioner was of the age of around 25 years when his services were wrongfully terminated by the Management.

16. The Supreme Court has recorded in *M/s D.S.I.I.D.C. (supra)* as under:-

“7. Ms. Anusuya Salwan, the learned counsel for the petitioner-management contended that the award of the Labour Court is not at all sustainable to the extent the relief of re-instatement in service with back wages has been granted even though the findings regarding the validity of termination of services also are not sustainable. It was also argued that the impugned award suffers from perversity as the legal position regarding grant of back wages and re-instatement is now different from what was there more than a decade back and the recent trend of judicial pronouncements of the Apex Court is to award only monetary compensation to the successful workmen when the termination of their services by their employer is found by the industrial adjudicators to be illegal because of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and since that has not been done by the Labour Court in the present case there is a justified reason for this Court to interfere with its award and to support these submissions various judgments of the Apex Court were cited.

8. On the other hand, Mr. Sudhir Nandrajog, learned senior counsel for the respondent-workman argued that the impugned award does not suffer from any perversity as the legal position regarding grant of back wages and re-instatement is still the same as it used to be always and the

recent trend of judicial pronouncements of the Apex Court is not to the effect that reinstatement and back wages are never to be awarded to the successful workmen when the termination of their services by their employer is found by the industrial adjudicators to be illegal because of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and since that is what has been done by the Labour Court in the present case there is no reason for this Court to interfere with its award. In support of his submissions Mr. Nandrajog also cited some judgments.

9. *Before proceeding further it should be mentioned here that even though in the writ petition challenge were made to the conclusion of the Labour Court that it was a case of illegal retrenchment on the ground that respondent having been appointed for a particular project and that project having come to end the services of the respondent-workman had come to an end automatically but the learned counsel for the petitioner-management could not seriously pursue this point before me as no document was proved in the Labour Court to prove the same. So, I do not find any infirmity in the findings of the Labour Court that this is a case of retrenchment of the workman and that too illegal retrenchment as undisputedly, Section 25-F of the Industrial Disputes Act was not complied with. However, it was strongly argued that reinstatement of the respondent-workman with full back wages was not at all justified in view of the recent trend of the Hon'ble Supreme Court on this aspect of reliefs given to the daily wagers."*

17. In the matter of ***U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey***, JT 2005 (10) SC 344, the Supreme Court held as under:-

"41. The Industrial Courts while adjudicating on disputes between the Management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under

the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. *A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.*

43. *x x x x x*

44. *x x x x x*

45. *The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.”*

18. In another case titled as ***Sita Ram v. Moti Lal Nehru Farmers Training Institute***, JT 2008 (3) SC 622, the Supreme Court held as under:

“21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors there for were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. See **Jaipur Development Authority v. Ramsahai**, (2006) 11 SCC 684; **M.P. Admn. v. Tribhuban**, (2007) 9 SCC 748 and **Uttaranchal Forest Development Corpn. v. M.C. Joshi**, (2007) 9 SCC 353.

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.”

19. Further, the afore-referred two decisions and few more decisions were considered by the Supreme Court in the case of **Jagbir Singh v. Haryana State Agriculture Marketing Board**, JT 2009(9) SCC 396 albeit in the context of retrenchment of a daily wager in violation of Section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and observed as under:-

“7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

20. The Supreme Court in the case of *Ashok Kumar Sharma v. Oberoi Flight Services*, AIR 2010 SC 502 has held that monetary compensation in lieu of reinstatement of the workman cannot be said to be unjustified.

21. There are many other judgments of the Supreme Court as well as of this Court justifying the grant of compensation of reasonable amount in lieu of reinstatement of service along with compensation and back wages. The judgments relied upon by the learned counsel for the petitioner are not of much help to the petitioner in view of aforesaid discussions and the facts and circumstances of the case. In the light of the aforesaid legal position, the view of the Labour Court that it will be better to meet the ends of justice to award a lump-sum compensation in lieu of reinstatement and backwages, cannot be said to be unjustified. However, I find that the compensation awarded in the sum of Rs.50,000/- is grossly inadequate.

22. Hence, taking into consideration the observations of the Labour Court regarding the efforts made by the petitioner/workman and the fact that the petitioner did not enrol himself with the Employment Exchange as well as the duration of service of the petitioner, i.e. just over three years, and the legal position in this regard and further that had the retrenchment compensation been paid along with notice pay, the amount which could have been paid to the petitioner along with other legal dues, I deem it appropriate to award a sum of Rs.1,50,000/- to the petitioner that would meet the ends of justice. Ordered accordingly. The said amount shall be paid by the respondent/Management to the petitioner/workman after deducting the amount already paid, if any, on the basis of the impugned Award, within four weeks from today, failing which the same shall carry interest @ 10% per annum on unpaid amount.

23. The present petition is accordingly allowed in part to the aforesaid extent, with no order as to costs.

CHANDER SHEKHAR, J

DECEMBER 21, 2017

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