

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 22nd August, 2017

Date of decision : November 3rd, 2018

+ W.P.(C) 9095/2007
LAXMI & ANR.

..... Petitioners

Through: Mr.Robin David and Mr.Dhiraj
Philip, Advocates

versus

NEW DELHI INSTITUTE OF MANAGEMENT & ORS.

..... Respondents

Through: Mr.Aditya Laroyia, Advocate

AND

+ W.P.(C) 868/2008

NEW DELHI INSTITUTE OF MANAGEMENT..... Petitioner

Through: Mr.Aditya Laroyia, Advocate

versus

LAXMI & ANR.

..... Respondent

Through: Mr.Robin David and Mr.Dhiraj
Philip, Advocates

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. This judgment shall dispose of the W.P.(C) 9095/2007 filed by the workpersons Laxmi w/o Sh. Nagender and Raj Kumar s/o Sh. Angad against the management i.e. New Delhi Institute Of Management and W.P.(C) 868/2008 filed by the management i.e. New

Delhi Institute Of Management against the same workpersons, who have filed the W.P.(C) 9095/2007.

2. Both these petitions assail the impugned award dated 01.09.2007 of the learned Presiding Officer Labour Court-X, Karkardooma, Delhi in Ref. No. F.24(1773)/2002-Lab. dated 09.10.2002 in ID 214/2006.

3. The services of the workpersons Laxmi and Raj Kumar were allegedly terminated by the management i.e. New Delhi Institute of Management in relation to which the reference was made by the appropriate Government on being satisfied regarding the existence of the industrial dispute between the parties and the reference made for adjudication was to the effect : -

“Whether the services of Smt. Laxmi w/o Sh. Nagender & Sh. Raj Kumar s/o Sh. Anagad have been terminated illegally and, or unjustifiably by the management, and if so, to what sum of money as monetary relief alongwith consequential benefit in terms of existing laws/Government notifications and to what other relief is he entitled and what directions are necessary in this respect.”

4. The relationship of the employer and the employee between the parties was admitted. The workpersons were also found vide the impugned award to have worked for more than 240 days in a year preceding the date of their termination. Admittedly, the workperson Laxmi was working with the management i.e. New Delhi Institute Of Management as a Safai Karamchari from the year 1997 and the workperson Raj Kumar was working as a Driver with the management i.e. New Delhi Institute Of Management from 14.04.2008. As per

letter dated 01.10.1997 of the Registrar of the New Delhi Institute Of Management, the consolidated salary of the workperson Laxmi was Rs.1,300/- including allowance of Rs.100/- per month and as per letter dated 17.04.1998 of the Registrar of the New Delhi Institute Of Management, the consolidated salary of the workperson Raj Kumar was Rs.3,000/- inclusive of all allowances per month. According to the management i.e. the New Delhi Institute Of Management, the salary of the workperson Laxmi was Rs.2,100/- per month at the time when she left her services on 07.01.2002 and that the salary of the workperson Raj Kumar was raised to Rs.3,750/- per month at the time when he left the services on 24.12.2001. According to the management i.e. New Delhi Institute Of Management, both the workpersons were appointed on adhoc basis and it was thus contended that the Minimum Wages Act, 1948 does not apply. It was further submitted on behalf of the management that nevertheless both the workmen were paid salary much higher than the market standard.

5. As per the statement of claim, the management i.e. New Delhi Institute Of Management was not providing the legal facilities such as PF, ESI, appointment letter, attendance card, leave book, payslip, annual and casual leave, overtime wages, bonus etc. to its employees and on their demanding the minimum wages, the management i.e. New Delhi Institute Of Management got annoyed with them and terminated the services of the workperson Laxmi on 07.01.2002 and that of the workperson Raj Kumar on 24.12.2001 after allegedly obtaining their signatures on blank papers, pursuant to which the workmen issued demand notice dated 22.02.2002 to the management

but the same was not replied to by the management nor were they reinstated and through their claim was entertained by the Labour Conciliation Officer but no settlement was arrived at.

6. According to the management i.e. the New Delhi Institute Of Management, the workperson Laxmi had approached the management on 07.01.2002 that due to certain personal reasons she was not in a position to continue her services and thus she was treated to have resigned w.e.f. 07.01.2002 and thus the salary due to her for 7 days was paid to her. The workperson Raj Kumar as reflected vide the impugned award, approached the management to settle his account on 24.12.2001 as he had joined another job and thus according to the management his account was fully and finally settled by the management in the sum of Rs.3,750/-.

7. On 07.05.2004, the issues were framed by the learned Labour Court, which are to the effect : -

“1. Whether the workmen himself tendered his resignation?”

2. As per terms of reference.”

8. Both the workmen Laxmi and Raj Kumar examined themselves as WW1 and WW2 and filed their affidavits Ex.WW1/A and Ex.WW2/A respectively. The management examined Mr. Sunil Kumar as MW1, who testified to his affidavits as Ex.MW1/A & Ex.MW1/B, which were in support of the claim of the management.

9. As regards Issue No. 1, the onus was laid on the management and the management claimed that the workperson Raj Kumar approached the management on 24.12.2001 and requested for a full

and final payment on the ground that he had taken up some other job and thus the management paid him his full and final payment on 24.12.2001 vide Ex.WW2/M2 to the tune of Rs.3,750/-.

10. As regards the workperson Laxmi, the management claimed that she had approached the management on 07.01.2002 and stated that due to some personal reasons she was not in a position to continue her services and the same was treated as her resignation from 07.01.2002 and that she had stated that she be treated as a part time worker as she used to come to the office for two hours in the morning and for two hours in the evening.

11. Vide the impugned award, it was held that the workperson Laxmi had not submitted any resignation letter nor had she in any letter requested the management for making full and final payment nor had the workperson Raj Kumar submitted that he was taking up some other job. The impugned award also indicates that the management had stated that the request was made orally to the management by the workmen for payment of full and final arrears.

12. Vide the impugned award, it was held that MW1 Sunil Kumar examined by the management, had himself joined the services of the management on 01.04.2002 and that Sunil Kumr was not in the service of the management at the time of payment of the stated full and final wages to the workperson Raj Kumar on 24.12.2001 nor on 07.01.2002 when the said full and final payment of Rs.474/- was made to the workperson Laxmi vide Ex.WW1/M1.

13. It was also held by the impugned award that there was thus no question of any request having been made by the workperson in the

presence of MW1 as he was himself not in the services of the management at the relevant time and with whom the request was made by the workperson nor had the management had examined any witness to whom or in whose presence the workperson had made a request for settlement of his accounts with the management as he had taken up some other job and thus the management had failed to prove that the workperson Raj Kumar had made a request for settlement of his dues as he had taken some other job. Likewise, the management had failed to prove that the workperson Laxmi had made a request for settlement of her dues as she was not in a position to continue her services and thus it was held vide the impugned award that the management had failed to prove that the workmen had resigned from their jobs voluntarily.

14. Vide the impugned award, it was thus held that the services of the two workmen have been illegally terminated by the management in as much as there was nothing to indicate that the workmen had been appointed on any temporary basis or adhoc basis. The impugned award also indicated that there was no document placed on record by the management to show that the workmen were appointed on adhoc basis or on temporary basis or that the workperson Laxmi was a part time worker and thus she does not fall within the definition of workperson as defined under Section 2(s) of the Industrial Disputes Act, 1947. The impugned award also indicated to the effect that the workmen had worked for more than 240 days in a year preceding the last date of their termination and the management had not succeeded in bringing forth their contentions.

15. Vide the impugned award however taking into account the observations of the Hon'ble Supreme Court in *AIR 2005 SC 633* wherein it was observed to the effect : -

“It is not always mandatory to order reinstatement after holding the termination illegal, and instead compensation can be granted.;

and taking into account their verdict of the Hon'ble Division Bench of this Court in *123 (2005 DLT 509* titled as *Pramod Kumar Vs. Presiding Officer* and likewise the verdict in *LPA 1647/2005* titled as *M/s. Lords Homeopathic Laboratories Pvt. Ltd. Vs. Ms. Lissy Unnikunju & Ors.* and the observations of this Court in *ILR (2007) I DELHI 219* wherein it was held to the effect that : -

“Even if termination of a person is held illegal, Labour Court is not supposed to direct reinstatement alongwith full back wages and the relief can be moulded according to the facts and circumstances of each case. Labour Court can allow compensation to a workperson instead of reinstatement and back wages,

and thus vide impugned award, the management was directed to pay a compensation of Rs.35,000/- to the workperson Laxmi and a compensation to the tune of Rs.50,000/- to the workman Raj Kumar.

16. Through the W.P.(C) 868/2008, the management has assailed the said award contending to the effect that the impugned award was erroneous and proceeded on wrong presumption of law and facts and that the learned Trial Court had failed to appreciate that the onus to prove whether the services of the workmen were illegally terminated was always required to be placed on the workmen and that the learned

Trial Court had erroneously put the onus of the Issue No. 1 on the management and that the services of the respondent had never been terminated. The management submitted that the learned Labour Court ought to have drawn the inference against the workmen. The management also contended that the learned Labour Court had failed to appreciate that at the time of leaving the services of the management both the workmen had duly signed vouchers and acknowledged the payments towards full and final settlement and that even though MW1 Sunil Kumar was not in the services of the management at the time of the signing of the documents / vouchers towards full and final payments made to the workmen nevertheless, the vouchers themselves were sufficient proof that the workmen have left the services on their own. *Inter alia*, the management contended that there was no evidence at all that had been led by the workmen to prove that they had signed the vouchers towards full and final payment without knowing the contents of the same as claimed by them.

17. The management further contended that the learned Labour Court erred in holding that the workmen had not submitted any resignation letter or any other letter requesting the management for making their full and final payment or that the management had failed to prove that the request was made by the workmen for settlement of their dues and rather contended that the learned Labour Court had failed to appreciate that the workmen had tendered their resignations orally and as such no formal resignation was required and none of the workmen had denied their signatures on the vouchers towards full and

final settlement and thus the learned Labour Court ought to have relied upon the receipts without any additional corroborative evidence in as much as none of the workmen had proved that the signatures had been obtained by fraud. *Inter alia* the management contended that there was no reason given by the learned Trial court for grant of compensation to the workmen which in any event was exorbitant and beyond the powers of the learned Labour Court. The management thus sought the setting aside of impugned award dated 01.09.2007 of the learned Presiding Officer Labour Court-X, Karkardooma, Delhi in Ref. No. F.24(1773)/2002-Lab. dated 09.10.2002.

18. Through their joint counter affidavit in W.P.(C) 868/2008, the workmen submitted that the management was misleading the Court by interpreting the salary vouchers as being towards 'full and final settlement' whereas the said salary vouchers were for the salary of the month of the December, 2001 and the phrase '**full and final payment**' was later inserted by the management malafide to thwart the course of justice. *Inter alia*, the workmen submitted that the contention of the management that the workmen entered into a compromise towards full and final settlement is also erroneous in as much as there can be no compromise in relation to the Minimum Wages , PF and salary and thus the workmen ought to be treated in services. The workmen further submitted that the management had not been able to produce any resignation letter of the workmen and reiterated that they had never resigned and their services were terminated by the management and the workperson Laxmi further claimed that she was appointed on 01.10.1997 which was followed

with an interview and she was in service till 07.01.2002 and thus she had worked almost five years and the contention of the management that she was appointed on adhoc basis was thus belied and perverse and that the workperson Raj Kumar was appointed on 14.04.1998 and his services continued till 2001 and the contentions of the management that the workperson Raj Kumar had worked on adhoc basis could not be accepted. **The workmen reiterated that their services had been illegally terminated and they were liable to be reinstated with consequential relief.**

19. On behalf of the workperson Laxmi it was thus contended that apart from the factum that back wages awarded by the learned Labour Court to the tune of Rs.35,000/- had not been paid, it was also claimed that the back wages of each month on the basis of last pay drawn for which she remained unemployed need to be paid to the tune of Rs.3,86,400 apart from claiming of Rs.83,000/- towards contesting the matter before the Karkardooma Courts and before this Court.

20. On behalf of the workperson Raj Kumar, it was contended that apart from the factum that back wages awarded by the learned Labour Court to the tune of Rs.50,000/- had not been paid, it was also claimed that the back wages of each month on the basis of last pay drawn for which he remained unemployed need to be worked out to be Rs.8,47,600 apart from claiming of Rs.80,000/- towards contesting the matter before the Karkardooma Courts and before this Court.

21. On behalf of the workmen reliance was placed on the verdict of this Court in *Municipal Corporation of Delhi Vs. Shri Rishi Pal Singh 2015 SCC Online Del 12589* to contend that once the

management has admitted that the workmen were engaged by it, the onus shifted to the management to prove the manner in which the workmen were disengaged from the employment and once the workmen attained the status of workmen under Section 2(s) of the Industrial Disputes Act, 1947 and completed 240 days of service in a year, the onus shifted to management to prove that their services were terminated as per Section 25F & G of the Industrial Disputes Act, 1947. *Inter alia*, it was sought to be contended on behalf of the workmen whilst placing reliance on the verdict of this Court that the factum that there was no document on record to suggest that any notice was ever issued to the workmen on the termination of their services after completion of 240 days of service and that the management had adopted the due procedure for termination from service, itself brought forth that the termination of the services of the workmen was illegal.

22. Reliance was also placed on behalf of the workmen on the verdict of the Hon'ble Supreme Court in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalya (D. ED.) and Ors. (2013) 10 SCC 324*** to contend that in the instant case, the Labour Court having held that there had been wrongful termination of services of the workmen, reinstatement with continuity of services and back wages, which is the normal rule ought to have been implemented and thus reliance was placed on observations in para 38.3 of the said verdict which reads to the effect that:

“38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

23. Reliance was also placed on behalf of the workmen on the verdict of this Court in ***Delhi Transport Corporation VS. Jagdish Prasad 2016 SCC Online 5802*** to similar effect.

24. The workmen further submitted that the testimony of MW-1 Mr. Sunil Kumar examined by the management who was not in the services of the appellant on the date of his examination or on the date of the occurrence, was rightly not considered by the learned Labour Court.

25. Reliance was placed on behalf of the workmen on the verdict of this Court in ***Om Prakash Vs. Lamba Plastic 2010 (116) DRJ 740 (DB)*** to contend that the contention of the management that false submissions had been made by the workmen in relation to their

signatures having been taken forcibly on vouchers, it is essential to observe that workmen had put forth their plea of their signatures having been taken forcibly at the first instance the learned trial Court, and thus their contentions had essentially to be accepted.

26. Reliance was also placed on behalf of the workmen on the verdict of the Hon'ble Supreme Court in ***Jasmer Singh Vs. State of Haryana and Anr. (2015) 4 SCC 458*** to contend that where the workmen had worked for a period of more than 240 days in the establishment of the respondent/employer company immediately before the termination of his services, and where the termination was set aside due to non-compliance of the statutory provision under Section 25F, 25G and 25H of the ID Act, 1947, the workmen were entitled to reinstatement and full back wages and reliance was thus placed on behalf of the workmen on the observations in the said verdict to the effect:

“19. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their

dues. More than 41 years ago, Gajendragadkar, J, opined that

"10.The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare state."

20. in view of the aforesaid statement of law the setting aside of the award by the learned Single Judge which is affirmed by the Division Bench is vitiated in law as the same is contrary to the judgments of this Court referred to supra, upon which the learned counsel for the appellant has rightly placed reliance in support of the correctness of the finding recorded by the Labour Court on the various issues, particularly the finding of fact that the workman has worked for more than 240 days in a calendar year and termination order is void ab initio in law for non-compliance with Sections 25-F clauses (a) & (b), 25-G and 25-H of the Act, therefore, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workman and awarded the order of reinstatement with continuity of service and full back wages.

21. The said relief in favour of the appellant workman, particularly the full back wages is supported by the legal principles laid down by this Court in Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya, wherein the Division Bench of this Court to which one of us was a member, after considering three-judge Bench decision, has held that if the order of termination is void ab initio, the workman is entitled to full back wages."

27. Reliance was also placed on behalf of the workman on the verdict of the Hon'ble Supreme Court in ***Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker (2015) 9 SCC 345*** to contend that the Industrial Disputes Act, 1947 is a social welfare legislation and needs

to be interpreted to secure a social order for promotion or welfare of people and to ensure that workers get their dues. Specific reliance was placed on behalf of the workman on the observations in para-23 of the said verdict which read to the effect:

*“The findings and reasons recorded by the High Court in its judgment and setting aside the award of the Labour Court is contrary to the decision of this Court. Further, in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya**, this Court, after adverting to the three Judge Bench judgment of this Court in the case of **Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court**, has categorically held that the termination order passed by the employer is the subject matter of dispute either before the Tribunal or before the Labour Court and it is for the employer to show that the workman was gainfully employed from the date of the termination till the date of passing of the Award so as to deny him back wages and this Court further held that if the termination order is set aside, the award of reinstatement is the normal rule and awarding of the back wages must follow, the same need not be awarded if the workman is either gainfully employed during the period of adjudication or if the employer is facing any financial crunch. The said decision of this Court in the Deepali Gundu Surwase’s case reads thus:*

*“24. Another three-Judge Bench considered the same issue in **Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court** and observed:*

“6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it

must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

28. Reliance was also placed on behalf of the workman on the verdict of the Hon'ble Supreme Court in ***M/s Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. & Ors. (1979) 2 SCC 80*** to contend that where a workman's service has been illegally terminated, he is entitled to full back wages except

to the extent he has been gainfully employed during the enforced idleness and reference was made to observations in para-9 of the said verdict which reads to the effect that:

*“9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. **The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally***

*terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the D employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages. the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it the were forced to litigation upto the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. **If the workman were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.** A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamldar Mandal, and a Division Bench of the Allahabad in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court II, Lucknow &*

ors.(l), have taken this view and we are of the opinion that the view taken therein is correct.”

29. Reliance was also placed on behalf of the workman on the verdict of the Hon’ble Supreme Court in ***Management of State Bank of India Vs. Smita Sharad Deshmukh (2017) 4 SCC 75*** to contend that it was not upon to this Court to re-appreciate the evidence as appreciated by the Labour Court and it was only to see whether there is evidence in support of the impugned conclusion and that this Court has to take evidence as it stands and its only limited jurisdiction is to examine, whether on the evidence, the conclusion could have been arrived at and thus this Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority and so long as there is some evidence in support of the conclusion arrived at by the departmental authority, the same has to be sustained.

30. On behalf of the management reliance was placed on the verdict of this Court in ***Guru Harkrishan Public School Vs. Jaspal Singh & Ors. 2006 III CLR 915*** to contend that the impugned award of the Labour Court had failed to take into account the factum that the workmen had not complained about the alleged duress under which they were made to write their resignation and that there had been thus no objective examination of the pleadings and evidence produced before it.

31. Reliance was also placed on behalf of the management on the verdict of the Hon’ble Division Bench of this Court in ***Lords Homeopathic Laborites Pvt. Ltd. Vs. Ms. Lissy Unnikunju and Ors. 2006 (88) DRJ 243*** to contend that there is no hard and fast rule that

when the termination order is set aside, reinstatement with full back wages has invariably to be granted and it all depends on the facts of each case and that whether compensation should be awarded or reinstatement is to be awarded is in the Tribunal's discretion.

32. Reliance was also placed on behalf of the management on the verdict of the Hon'ble Supreme Court in ***Sain Steel Products Vs. Naipal Singh & Ors. (2003) 4 SCC 628*** to contend that in the facts and circumstances of the instant case, the workmen not having been in service of the management since a long time from the date of the stated resignation i.e. 07.01.2002 and 24.12.2001 qua the workperson Smt. Laxmi and workman Shri Raj Kumar respectively, even if their terminations were held illegal, it would not be appropriate to grant them reinstatement and reasonable compensation in lieu of the back wages would suffice to meet the ends of justice and it was submitted that in the instant case, the compensation amount had already been granted vide the impugned award.

33. Reliance was also placed on behalf of the management on the verdict of the Hon'ble Supreme Court in ***Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and Ors. AIR 1994 SC 131*** also to contend that rather than reinstatement, a lumpsum amount would suffice to meet the ends of justice in lieu of reinstatement and consequential benefits.

34. Reliance was also placed on behalf of the management on the verdict of the Hon'ble Supreme Court in ***Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Ors.*** in Civil Appeal No.2127/1969 decided on 18.12.1969 to contend that in the instant case for

maintenance of industrial harmony and peace, imposition of the services of the workman on an unwilling employer might not be conducive to such harmony and peace and that the rule of reinstatement in the event of illegal termination of services of workman is qualified to mean that in unusual or exceptional cases where it is not expedient to grant the normal relief of reinstatement, the proper relief would be compensation and that would meet the ends of justice.

35. Reliance was also placed on behalf of the management on the verdict of the Hon'ble Supreme Court in ***Anil Kumar Chakraborty and Anr. Vs. Saraswatipur Tea Company Limited and Ors.*** in Civil Appeal No.519 (NL)/1978 decided on 16.03.1982 to reiterate its contention that it is not always expedient to follow the normal rule of reinstatement in case of wrongful dismissal of an employee in the case of loss of confidence in the employee on the part of the management and in such circumstances, reasonable compensation would be appropriate relief.

36. Reliance was also placed on behalf of the management on the verdict of the Hon'ble Supreme Court in ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Ors. (1990) 3 SCR 111*** to similar effect that reasonable compensation would suffice to meet the ends of the justice in the facts and circumstances of the instant case. Reliance was also placed on behalf of the management on the verdict of this Court in ***R. Mugum & Ors. Vs. The P.O., Labour Court No.7 & Anr.*** in Civil Writ Petition No.4718/1998 decided on 30.03.2000 to

contend that where more than a period of nine years had passed since termination of the service of the workmen even if termination had been found to be illegal, the relief of reinstatement could be denied and compensation could be awarded. Reliance was also placed on behalf of the management on the verdict of this Court in ***Surajpal Vs. P.O., Labour Court*** in Civil Writ Petition 1337/1996, decided on 29.05.2002 to similar effect to contend that appropriate compensation in lieu of reinstatement would suffice to meet the ends of justice especially where there has been a long lapse of time between from when the workman had not been working with the management inasmuch as in the instant case, approximately 17 years had elapsed.

37. Reliance was also placed on behalf of the management on the verdict of this Court in ***M/s Harsha Tractors Ltd. Vs. Secretary (Labour) & Ors.***, decided on 19.02.2001 to similar effect. To similar effect reliance was also placed on behalf of the management on the verdict of the Hon'ble Division Bench of this Court in ***Pramod Kumar & Anr. Vs. Presiding Officer & Anr. 123 (2005) DLT 509***. To similar effect is the reliance placed on behalf of the management on the verdict of this Court in ***Pal Singh Vs. National Thermal Power Corporation Limited 96 (2002) DLT 877***. Likewise reliance was placed on behalf of the management on the verdict of this Court in ***Model School for Mentally Deficient Child Vs. Mukh Ram Prasad Maurya & Ors. 109 (2004) DLT 292***. Reliance was also placed on behalf of the management on the verdict of the Division Bench of this Court in ***Smt. Krishni Devi and Anr. Vs. Indian Hydraulic Industries Pvt. Ltd. and Anr.*** in LPA No.154/2007, decided on 08.02.2008 to

contend that where a person had worked only for a few hours a day and that too on a part-time basis as indicated in the case of the workperson Smt. Laxmi, there should not be an order of reinstatement and that compensation would be adequate relief even if the impugned award is upheld.

38. Reliance was also placed on behalf of the management on the verdict of the Hon'ble Supreme Court in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik* (1996) 2 SCR 434 also to similar effect in which case compensation awarded by the Labour Court had in fact been reduced by the Hon'ble Supreme Court. Reliance was also placed on behalf of the management on the verdict of this Court in *Nehru Yuva Kendra Sangathan Vs. Union of India & Ors.* in Civil Writ Petition 5754/1998, decided on 26.05.2000 to similar effect that due to lapse of time, it would not be a fit case for directing the reinstatement and that compensation/ reinstatement and back wages is virtually the norm and that reinstatement is not the inevitable consequence of quashing of the order of termination and that compensation can be awarded in lieu of the reinstatement and back wages

39. On a consideration of the entire available record and the submissions made on behalf of either side as also the catena of verdicts relied upon on behalf of either side, this Court is of the view that the findings of the learned Presiding Officer Labour Court-X, Karkardooma, Delhi vide the impugned award dated 01.09.2007 cannot be faulted inasmuch as there is no error of law that is apparent on the face of the record of the impugned award and rather the record

which includes the TCR which has been requisitioned and perused brings forth admittedly the factum of no evidence having been led by the management to prove its contentions as to when and before whom the workmen sought resignation. The salary vouchers on which reliance has been placed by the management are signed by the workmen are in English and the workmen had contended that they were not aware of the contents of the same and are also not well-versed with the language in which the vouchers had been prepared. In the circumstances, the observations of the learned Labour Court that there had been a termination of services of the workmen by the management and that it was not a voluntary resignation on behalf of the workmen, has essentially to be accepted and is accepted in the facts and circumstance of the instant case.

40. That no requisite notice was issued to the workmen who had worked for more than 240 days of service in a year and no requisite notice having been issued to the workmen for termination of their services, the services of the workmen could only have been terminated in accordance with Section 25F of the Industrial Disputes Act, 1947, which having not been so done, it is apparent that it has rightly been concluded by the learned Presiding Officer Labour Court-X, Karkardooma, Delhi that the termination of services of the workmen was in contravention of the law and was illegal.

41. Taking into account the nature of services rendered by the workmen i.e. by Smt. Laxmi, being a Safai Karmchari and Shri Raj Kumar being a driver, coupled with the factum that the period of time since when the workmen have ceased to be working with the

management is now virtually 17 years, it is not considered appropriate in the facts and circumstances of the instant case to order any reinstatement of the workmen with the management so that industrial peace and harmony is maintained between the workmen and the management.

42. However, taking into account the factum that there has been an illegal termination of services of the workmen for the period from 07.01.2002 till date of the award i.e. 01.09.2007 qua the workperson Smt. Laxmi, a lumpsum amount of compensation in lieu of reinstatement and back wages to the tune of Rs.1,50,000/- which is inclusive of the amount of compensation already awarded vide the impugned award dated 01.09.2007 is directed to be paid by the management to the workperson Smt. Laxmi and for the period from 24.12.2001 till the date of the award i.e. 01.09.2007 qua the workman Shri Raj Kumar, a lumpsum amount of compensation in lieu of reinstatement and back wages of Rs.2,75,000/- inclusive of the amount of compensation already awarded vide the impugned award dated 01.09.2007 is directed to be paid by the management to the workperson Shri Raj Kumar.

43. The two Writ Petitions i.e. W.P.(C) 9095/2007 and W.P.(C) 868/2008 are disposed of accordingly.

ANU MALHOTRA, J

NOVEMBER 3rd, 2018/mk/vm