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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12.01.2018

LPA 736/2017

BHUDEV SHARMA

..... Appellant

Versus

KALINDEE RAIL NIRMAN (ENGINEERS) LTD Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Anil Kumar Sharma, Advocate
For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present Letters Patent Appeal impugns a judgment and order dated 07.09.2017, passed by a learned Single Judge of this Court in W.P.(C) 2558/2011, tiled as “*Bhudev Sharma vs. Kalindee Rail Nirman Engineers Ltd and Ors*” (hereinafter referred as ‘the subject petition’) whereby, the subject petition was disposed of by enhancing the compensation amount granted to the appellant by the industrial adjudicator, by way of an award dated 02.02.2011 of the learned Presiding Officer, Labour Court No.XVI, Karkardooma Courts, Delhi in I.D. No.50/2008, in *lieu* of reinstatement,

from Rs.50,000/- to Rs.2,00,000/-.

2. A perusal of the said impugned order dated 07.09.2017 reveals that the issue whether the services of the appellant had been unjustifiably and/or illegally terminated by the management was held in his favour. However, in the facts and circumstances of the case, the industrial adjudicator awarded an amount of `50,000/- as a lump sum compensation to the appellant in *lieu* of his reinstatement and other dues.

3. The appellant being aggrieved by the said award; carried the same to this Court by way of the subject petition. The learned Single Judge considering the circumstance that the appellant had been in service for a period of eleven years i.e. from May, 1993 to 16.08.2004, and the last drawn salary of the appellant being `4,066/- per month w.e.f. 09.10.2002, came to the conclusion that the lump sum compensation of `50,000/- awarded by the Industrial Adjudicator was grossly inadequate and, consequently, enhanced the same to `2,00,000/-. It is an admitted position that the appellant has received the said enhanced lump sum compensation from the respondent.

4. In the present appeal, it has been urged by the learned counsel appearing on behalf of the appellant that the courts below fell into error in not reinstating the services of the appellant.

5. Learned counsel appearing on behalf of the appellant has also urged that in cases of wrongful termination of service, reinstatement with continuity of service and award of back wages is the normal rule.

6. In order to buttress his submission, learned counsel appearing on behalf of the appellant has relied upon a decision of the Hon'ble Supreme

Court of India in **Hindustan Tin Works Pvt. Ltd. vs. Employees of Hindustan Tin Works Pvt. Ltd.**, reported as (1979) 2 SCC 80, which held as under:-

“...Ordinarily, 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 litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen'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.”

7. Our attention has also been invited to decisions of the Hon'ble Supreme Court of India in **Deepalu Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) & Others**, reported as (2013) 10 SCC 324 and **General Manager, Haryana Roadways vs. Rudhan Singh**, reported as 2005 SCC (L&S) 716, and in particular paragraph 8 thereof, to urge that even if the industrial adjudicator gives a finding that the termination of services was in violation of the provisions of the Industrial Disputes Act, 1947, the entire back wages should have been awarded and factors, *inter alia*, the length of service must be considered. The paragraph 8 of the said decision is extracted hereinbelow:-

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification

required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.”

(emphasis supplied)

8. We have heard the learned counsel for the parties and have given our consideration to the judicial precedents mentioned hereinabove.

9. In view of the foregoing, in our considered view, it would be prudent and necessary to consider the following judicial pronouncements of the Hon’ble Supreme Court in order to fairly adjudicate the present appeal:-

a) In *M.P. State Electricity Board v. Jareena Bee*, (*supra*), the Supreme Court held that when termination of a workman is set aside the Award of back wages is not the only consequence.”

b) In *Ram Ashray Singh v. Ram Baksh Singh* (*supra*), the Supreme Court observed that when fixing the back-wages several factors need to be noted. It is a well settled position in law that on reinstatement there is no automatic entitlement of full back-wages.”

c) In *Allahbad Jai Sansthan v. Daya Shankar Prasad*, [2005 (105) FLR 943 (SC) : 2005 (32) AIC 664 (SC).] The Hon'ble Supreme Court whilst considering the issue of reinstatement/backwages/arrears, and after analyzing the decisions of the Supreme Court in *Hindustan Tin Works Pvt. Ltd.* (supra), *M.P. State Electricity Board* (supra) and *Ram Ashray Singh* (supra) observed that—

“We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back-wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.”

d) In *M.P. Administration v. Tribhuban*, [2007 (113) FLR 886 (SC).] while considering the award of the Industrial Tribunal, where after holding that the services of the workman therein were terminated illegally and unjustly, the Industrial Adjudicator had awarded only retrenchment compensation along with notice pay together with interest @ 9% per annum; the Supreme Court allowed the appeal against the direction of the Division Bench of the Delhi High Court ordering reinstatement with full back-wages, with the following observations:-

“12. In this case, the Industrial Court exercised its discretionary jurisdiction under section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said

order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.”

10. From a conspectus of the above, it is well settled that in cases of wrongful dismissal or discharge, reinstatement and award of back wages is always the only consequence. The Industrial Adjudicators are invested with discretion to give such other relief to the workman in *lieu* of reinstatement as the circumstances of the case may require, or where for some valid reasons it considers that reinstatement will not be fair or proper. The award of compensation in *lieu* of reinstatement in such a case is the solatium for unjustified and premature termination of employment.

11. Even otherwise, the decision in ***Deepali Gundu Surwase*** (*supra*), does not come to the aid of the appellant, inasmuch as, there was neither any pleading nor a statement by the appellant before the adjudicating authority or the Court of first instance that he was not gainfully employed or was employed on lesser wages pursuant to the wrongful termination, which is a *sine qua non* for the award of back wages; in terms of the dictum contained in the said decision.

12. For the foregoing reasons, we are of the considered view that neither the Industrial Adjudicator nor the learned Single Judge fell into error whilst awarding a lump sum compensation in *lieu* of reinstatement and other dues. In fact it is observed that the award of lump sum compensation in the sum of Rs.50,000/-, as awarded by the Industrial Adjudicator, has been enhanced to Rs.2,00,000/- by the learned Single Judge after taking into consideration all the relevant factors; as required by the above cited decisions of the Hon’ble

Supreme Court of India.

13. Consequently, there is no infirmity in the impugned order so as to warrant any interference in appeal by this Court. The appeal being devoid of merit is accordingly dismissed. There shall be no order as to costs.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 12, 2018
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