

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C).No.8856/2003

Judgment reserved on : 11.08.2017

Date of decision: 01.05.2019

SMT. GITESH VERMAPetitioner

Through: Ms.Praveena Gautam and
Mr.Jitesh P. Gupta, Advocates

versus

M/S DHAWAN EXPORTS & ORS Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, Smt. Gitesh Verma, vide the Writ petition (Civil) under Article 226 and 227 of the Constitution of India seeks the issuance of a writ of *certiorari* and seeks the setting aside of the impugned award dated 2.5.2003 of the learned Labour Court in ID No. 27/98 and has also sought and prayed that her claim dated 16.9.98 to the learned Labour Court-X of reinstatement with full back wages and continuity of services, be granted.
2. The respondent arrayed to the petition as the respondent No.1 is the employer of the petitioner and the respondent No.2 is the Government of NCT of Delhi, who put in appearance on service.
3. Written submissions have also been submitted on behalf of the petitioner.

4. No written submissions were submitted on behalf of the respondent despite an opportunity granted vide order dated 7.3.2017 and as observed vide order dated 11.8.2017, the respondent No.1 has not chosen to put in appearance from 15.4.2010 onwards. Thus vide order dated 11.8.2017, a further opportunity to the respondents to file the brief note of written submissions was closed. None chose to appear on behalf of the respondent even on the date 11.8.2017.
5. The claim submitted by the petitioner before the learned Labour Court was to the effect that she was appointed to the management of the respondent No.1 in the year 1988 to perform the job of final checker and worked as such without any complaint in relation to her work/conduct or behaviour. The last drawn salary of the petitioner was stated to be Rs.2100/- per month. The petitioner submitted that through her claim, the management did not give her salary for the month of January, 1998 and terminated her services on 4.2.1998 without a requisite notice of one month and without one month's salary before terminating her service in violation of Section 25F and Section 2(oo) of the Industrial Disputes Act, 1947. The petitioner further submitted through her claim that she lodged a complaint through the Union against her illegal termination in the office of the Assistant Labour Commissioner of dated 20.6.1998 and the Labour Inspector visited the management but the management refused to take her back on duty. Thus she served a demand notice through Registered A.D. postdated 18.2.98 demanding her reinstatement with full backwages and continuity in service which was not replied to by the management which did not

reinstate her and thus she raised an industrial dispute before the Conciliation Officer but the conciliation proceedings did not succeed due to the non-cooperative attitude of the management.

6. Vide order No. F.24(3810)/98-Lab./30082-86 dated 31.8.98 as indicated vide the impugned award, the appropriate government on being satisfied about the existence of an industrial dispute between the parties made a reference under Section 10(1)(c) and 12(5) of the Industrial Disputes Act, 1947 with the following terms of reference:

“ Whether the services of Smt. Gitesh Verma have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect? ”

7. The respondent No.1 herein i.e., the management is indicated to have filed the written statement before the learned Labour Court contending to the effect that the petitioner/the workwoman had been absenting from duty w.e.f. 4.2.1998 and had not reported on duty despite letters dated 4.3.1998, 7.4.1998, 20.5.1998, 15.6.1998, 14.9.98, and 2.12.1998 and thus the charge sheet dated 1.1.1999 was issued against the petitioner and it was decided to hold a domestic enquiry and the management informed the workman about the holding of the domestic enquiry vide letter dated 20.2.1999 but the workwoman intentionally avoided to receive the same and that the enquiry was conducted in her absence and the workwoman was held guilty by the enquiry officer vide his finding dated 15.3.1999 and thus she was not entitled to any relief.

8. Through her replication, the petitioner denied the contents of the written statement that had been submitted before the learned Trial Court for the management.
9. The issues framed by the learned Labour Court were to the effect:

*“ (i) Whether the workman was terminated after holding proper enquiry?
(ii) As per terms of reference.
(iii) Relief.”*
10. The petitioner examined herself as WW-1 and filed her affidavit Exhibit WW-1/1 and the documents WW1/1 to WW1/16. The petitioner categorically denied that she had abandoned her services with the management w.e.f. 4.2.1998 and denied that she refused to take the charge sheet sent by the Management. She also denied that she refused to take notice of the domestic enquiry being conducted by the Enquiry Officer.
11. The workwoman however admitted that she did not report for duty during the pendency of the proceedings in Court but denied that she had intentionally avoided to receive the letter sent by the Management and further stated that during the conciliation of the proceeding she had been abused and turned out of the job by the management. The management, on the other hand denied that no charge sheet was served on the workwoman and denied that the management had not participated in the conciliation proceedings.
12. The learned Labour Court vide the impugned award held that the domestic enquiry conducted after the reference was received by the learned Labour Court was a mere eyewash just to circumvent and foreclose the right of the workwoman to claim relief and that the

enquiry was held without any compliance of the principles of natural justice.

13. No cross-objections to the award had been submitted on behalf of the respondent and even through the counter affidavit submitted to the present petition it has only been sought to be contended that the domestic enquiry conducted by the respondent was in accordance with the principles of natural justice.
14. In the circumstances, it is apparent that the observations of the learned Labour Court where it held to the effect, that there had been a total abandonment of the services of the respondent by the petitioner cannot be faulted with, in as much as there had been a temporary abandonment of services only in as much as the failure to perform duties by the petitioner was with an intent to relinquish her duties and that immediately after her alleged termination on 4.2.1998 the petitioner had agitated her rights before the concerned authorities against the illegal and unjustifiable termination by the management. Thus apparently, as the services of the petitioner had not been terminated illegally, issue No.2 was decided by the learned Labour Court to the effect that the management having failed to prove the plea of abandonment of services by the petitioner in as much as immediately after her alleged termination on 4.2.1998 the workwoman agitated her rights before the concerned authorities against the illegal and unjustifiable termination by the management and lost no time to ventilate her grievances immediately after her termination, and as rightly held

vide the impugned award the plea of abandonment was not available to the management.

15. As regards the relief that was granted by the learned Labour Court-X, it is essential to observe that the learned Labour Court has rightly held that it was not a fit case for ordering reinstatement of the petitioner in the services of the respondent which apparently, in the circumstances, where she was employed as a Final Checker, and her services were terminated on 4.2.1998. Thereafter despite having been offered duty by the written statement on 11.2.2000, she chose not to resume her duties, and taking into account the unconditional offer of reinstatement given in the written statement of the respondent before the learned Labour Court in as much as it was stated by the management vide para 3 of the reply on merits to claim petition submitted:

“ Further the management once again direct the worker to join her duty leaving other matter to be adjudicated by this Honorable Court as the name of the workman is still (‘till’ sic.) on the rolls and she is being marked absent.”

16. It is apparent that no reinstatement of the petitioner to the services of the respondent No.1 can be granted and the same has rightly not been granted by the learned Labour Court though the learned Labour Court despite the said observation awarded compensation to the tune of Rs.15,000/- only as a lumpsum compensation. As also held 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 repeatedly in 2002 (63) DRJ 776, 2004 (73) DRJ 249, 205 (84) DRJ 638, 96 (2002) DLT 877.***

17.It has, however, rightly been submitted by the petitioner that even if taking into account that the amount payable for 24 months from February, 1998 to February, 2000 itself works out to Rs.50,400/- and she has submitted further vide her calculation filed on 19.9.2008 to the effect that there were unpaid wages @ Rs.2,100/- for the month of January, 1998, unpaid wages Reg. 1998 @ Rs.300/- that there was bonus for the year 1997-98 to the tune of Rs.2,100/- which had not been paid, leave with wages of Rs.4,200/-

, and that she also claimed Gratuity for 10 years service @ Rs.2,100/-.

18. In the circumstances of the instant case, it is considered appropriate and essential that the impugned order to the extent that it awards only Rs.15,000/- as compensation in lumpsum in favour of the petitioner and against the respondent No.1, is essentially to be modified to enhance the compensation payable to the petitioner and it is thus directed that in view of the factum that the services of the petitioner had been illegally terminated by the respondent No.1 without following the principles of natural justice and without a requisite notice in compliance of Section 25F read with Section 2(o) of the Industrial Disputes Act, 1947, the compensation amount is enhanced from Rs. 15,000/- to Rs.1,50,000/- in the facts and the circumstances of the case which is directed to be paid to the respondent to the petitioner within a period of three months from the date of this judgment and in the event of the respondent failing to comply with the direction herein above, the respondent would be liable to pay interest on the said amount @ 9% per annum till realization.

19. The petition is disposed of accordingly.

ANU MALHOTRA, J.

MAY 1st, 2019/SV