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

Date of decision: 14.02.2019

\+ W.P.(C) 7958/2012

RAJESH ANGIRA ..... Petitioner

Through: Mr.Devesh Kumar Agnihotri, Adv.

Versus

GOVT OF NCT & ANR ..... Respondents

Through: Mr.Santosh Kr. Tripathi, ASC with Mr.Rishabh, Advs. for R-1
Mr.Rama Shanker, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioner/workman impugns the Award dated 01.11.2012 passed by the learned Labour Court, Karkardooma Courts, Delhi in DID No.69/10, only insofar as it directs payment of compensation of Rs.2 lakhs to him in lieu of his reinstatement and backwages.

2. Before dealing with the rival contentions of the parties, it may be appropriate to notice the undisputed facts which emerge from the record. The petitioner/workman having been appointed as a Salesman Clerk in the respondent no.2 w.e.f. May, 1987, continued to render satisfactory services for the next 22 years till he was terminated from service on 27.01.2009, when he was drawing a monthly salary of Rs.28,033/-. It is an admitted case

of the parties that during the aforesaid period, no allegation of any kind was ever leveled against the petitioner.

3. Aggrieved by his termination, the petitioner raised an Industrial Dispute, wherein the learned Labour Court upon consideration of the evidence led before it, came to a categorical conclusion that the petitioner's termination from service was illegal. The Court also rejected the respondent's plea that its manufacturing activities stood closed in July, 2009 and, thereafter, instead of granting reinstatement with backwages, awarded the petitioner only a lump sum compensation of Rs.2,00,000/-. In these circumstances, the present writ petition has been preferred by the petitioner/workman, challenging only the quantum of compensation awarded to him.

4. Learned counsel for the petitioner submits that, while awarding a meager compensation of Rs.2,00,000/- to the petitioner, the learned Labour Court has failed to appreciate that he had dedicated 22 years of his life to the service of the respondent no.2 before being unceremoniously terminated on 17.07.2009 when he was only 44 years of age and would have in the normal course continued to work for another 16 years. By placing reliance on the decision of the Supreme Court in the case of ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak [(2013) 10 SCC 324]*** , he states that in cases of wrongful termination of service, reinstatement with continuity of service and backwages is the normal rule. He, thus, contends that once the petitioner was very much willing and keen to join back duties, there was no reason at all for the learned Labour Court not to grant him reinstatement with backwages. He further states on instructions from the petitioner who is present in Court that even though the petitioner is entitled to reinstatement with full

backwages, keeping in view the fact that 10 years have already elapsed from the date of his termination, that he is now also suffering from ill health and apprehends that even if he is reinstated, the respondent is likely to harass him, he does not press his relief for reinstatement but seeks grant of appropriate compensation as against the amount of Rs.2 lakhs awarded to him by the learned Labour Court in lieu of reinstatement.

5. In support of his contention that the compensation awarded to the petitioner is highly inadequate, the learned counsel for the petitioner relies on the decision of Supreme Court in ***O.P. Bhandari vs. Indian Tourism Development [1987 AIR SC 111]***, which was followed by this Court in ***Delhi Stock Exchange & Anr. vs. K.C. Sharma & Ors. [(2002) SCC Online Del 323]*** as also in ***Lt. Col. L. Oliver (Retd.) vs. The Delhi Stock Exchange [2006 SCC Online Del 1649]***. He submits that keeping in view the parameters adopted by the Court in ***K.C. Sharma (supra),*** the petitioner ought to be granted compensation at least equivalent to 3.33 years of his monthly salary of Rs. 28,033/-. which amount works out to Rs.11,20,200/-. As the petitioner has already received a sum of Rs.2,65,115/- by way of compensation, he prays that the respondent be directed to pay a further sum of Rs. 8.5 lakhs to him.

6. On the other hand, Mr.Rama Shanker, learned counsel for the respondent no.2 vehemently opposes the petition and states that there is no reason for this Court to interfere with the discretion exercised by the learned Labour Court in awarding a lump sum amount of Rs.2,00,000/- to the petitioner. He further submits that even otherwise, the petitioner having already accepted the amount of Rs.2,65,119/- as compensation, he is now estopped from claiming that the same is in any manner inadequate.

Furthermore, the unit where the petitioner was employed had remained closed for a considerable period of time and, therefore, there is no reason to enhance the compensation already paid to the petitioner.

7. Learned counsel for the respondent relies on the decision of the Supreme Court in ***Gujarat Water Supply & Sewerage Board vs. Babubhai Mohanbhai Turi & Ors. [MANU/GJ/1823/2016]*** as also the decisions of this Court in ***Ashok Kumar Verma vs. DTC [MANU/DE/3690/201]*** and ***Mehrasons Jewellers Pvt. Ltd. vs. Mr.Jagdish [MANU/DE/1357/2009]*** in support of his contention that the compensation already awarded to the petitioner is just and equitable. He further submits that the decisions relied upon by the petitioner pertain to statutory authorities and cannot be applied to private employers like the respondent.

8. I have heard the learned counsel for the parties at length and with their assistance perused the record. In view of the admitted position that the petitioner's termination was found to be illegal, which finding has attained finality, as also the fact that the plea of the respondent that its production activities had closed in the year 2009, also stands rejected by the learned Labour Court, the sole issue which arises for my consideration is with respect to the adequacy of the compensation awarded to the petitioner.

9. In determining the aforesaid issue, it has to be kept in mind that as observed by this Court in ***K.C. Sharma (supra)***, it is not possible to lay down any fixed formula for determining the fair and adequate compensation payable to an employee. The Court must keep in mind the nature and the length of the employment, the age of the employee, the last drawn salary and his prospects of getting another job. In the present case, the admitted position is that the petitioner was a regular employee who had put in 22

years of service and was drawing a salary of Rs.28,033/- at the time of his termination. This is not a case of a workman who was a daily wager or had worked only for a short period of time. It is also undisputed that at the time of his termination, the petitioner had about 16 years of service left.

10. Before I determine as to what would be the adequate compensation in the present case, it would be appropriate to deal with the decisions relied upon by the learned counsel for the respondent. In ***Ashok Kumar Verma*** (***supra)***, the Court was dealing with a workman who was drawing a monthly salary of Rs.5,000/- and had been terminated after 11 years, in which case the compensation awarded to him was enhanced from Rs.1 lakh to Rs.4.25 lakhs. Similarly, in ***Gujarat Water Supply & Sewerage Board (supra)****,* the Supreme Court granted compensation amounting to Rs.2 lakhs to a workman who was drawing a salary of Rs.5,000/- and had worked for only about 10 years as against the 22 years of service rendered by the petitioner. Coming to the decision in ***Mehrasons Jewellers (supra)*,** I find that the same relates to a workman who had worked only for five years.

11. I also do not find any merit in the contention of the learned counsel for the respondent that merely because the respondent is a private organization, the petitioner should be granted lower amount of compensation. Once it is an admitted position that the respondent is a profit-making concern, there is absolutely no reason for me to ignore the parameters laid down by this Court from time to time for grant of compensation to employees whose termination is found to be illegal. The respondent's plea that the petitioner having already accepted the compensation of Rs.2,65,119/-, he cannot now urge that the same is inadequate, is also meritless on account of two reasons. Firstly, there is

nothing to show that the petitioner had accepted the compensation amount by way of full and final settlement. Secondly, in the light of the fact that the petitioner is a cancer patient, merely because he accepted the meager amount offered to him for his very survival, he cannot be stated to have given up his constitutional rights.

12. On the other hand, I find that the decisions relied upon by the learned counsel for the petitioner are squarely applicable to the present case and it would be appropriate to apply the same parameters as applied in the case of ***K.C.Sharma (supra)***, wherein this Court relying on the decision of the Supreme Court in ***O.P. Bhandari (supra)*****,** held as under:-

> *93. Some sort of a guess work and to some extent even a rule of thumb may be imperative in calculating the damages. In the instant case, the appellant, by orders of this court passed from time, has already paid a sum of Rs. 7,50,000/- to the writ petitioner/respondent. The services of the writ petitioner/respondent were terminated, he was given over a sum of Rs. 42,000/- in lieu of three months' wages. Admittedly, he was entitled to the annual gratuity also. According to the appellant, he was entitled to a sum of Rs. 30,000/- per month. It is, therefore, not a case where the writ petitioner did not receive any sum from the appellant at all.*
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> *94. On the question of amount of compensation to be paid in lieu of reinstatement, the Hon'ble Supreme Court has held:-*
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> *"Para 10. In our considered opinion, compensation equivalent to 3.33 years salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the Appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz:-*
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> *1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances. In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:*
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> *i. He will be getting this amount without working.*

ii. He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.

iii. If he had been reinstated he would have earned the salary only up to the date of superannuation (up to 55, 58 or 60 as the case may be) unless the died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

iv. The corpus of lump sum compensation would remain intact, in any event."

95. In that view of the matter, we are of the opinion that payment of compensation for a sum of Rs. 12 lakhs shall meet the ends of justice. Out of the aforementioned amount of Rs. 12 lakhs, the amount which has already been paid to the respondent by the appellant, shall be adjusted. Such balance amount should be paid to the appellant within a period of three months from date."

13. I am, thus, inclined to accept the petitioner's submission that the compensation as awarded by the learned Labour Court in the facts of the present case, is far too inadequate and the same is required to be enhanced by this Court in the exercise of its power of judicial review. Keeping in view the fact that the petitioner was a regular employee having served for 22 years and may not be able to get any suitable employment at this age, especially because of his ill-health, it would be just and equitable to use the same formula as applied by this Court in ***K.C.Sharma (supra)***, i.e., an amount equivalent to 3.33 years of his salary, which works out to a sum of about Rs.11.15 lakhs. Needless to say, the amount of Rs.2.65 lakhs already received by the petitioner would be adjusted with the amount of Rs.11.15 lakhs and he would be entitled to receive a further sum of Rs.8.5 lakhs from the respondent.

14. The impugned award is, thus, modified to the above extent and the

respondent is directed to pay the aforementioned amount of Rs.8.5 lakhs within eight weeks, failing which the same will be payable with interest at the rate of 10% per annum.

15. The writ petition is accordingly allowed in the aforesaid terms, with no orders as to costs.

(REKHA PALLI)
JUDGE

FEBRUARY 14, 2019/gm