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

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Decided on: 11.02.2020

+ W.P.(C) 4765/2001

RUMAL SINGH

..... Petitioner

Through: Ms. Anubha Singh, Adv.

versus

D.T.C. & ANR.

..... Respondents

Through: Mr. Uday N. Tiwary and Mr. Utkarsh
Tiwary, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition seeks enhancement of the award of 25% of back wages granted by the learned Labour Court vide order dated 07.01.2000. The learned counsel for the petitioner submits that after the award was passed, the petitioner was re-instated in service. He was paid back wages from the date of the Award till his re-instatement. He worked for another 12 years and superannuated on 31.10.2014. He had got all his retiral benefits. However, it was decided by the learned Labour Court after a period of roughly 14 years. The rationale for awarding the petitioner mere 25% back wages has been recorded in the impugned order as under:-

“8. As regards back wages, it may be observed that workman has done no better than making an allegation that

he is unemployed since termination. He has not alleged that he made any efforts to find alternative employment. He did not enter the witness box to prove the efforts made by him. He has not alleged that he got himself registered with employment exchange. It cannot be believed that he would have sit idle through out the period of 12 years. The management is a public sector undertaking running into losses. In order to avoid unreasonable burden on the management, it would be fair to both the sides if 25% of back wages are granted. For this reliance may be placed 1998(10) LLN 311. The issue is decided accordingly.”

2. It was the petitioner’s case that he was not in gainful employment during the aforementioned period, and if the management contended otherwise then it must prove that the petitioner was actually employed.

3. The learned counsel for respondent no. 1 relies upon the dicta of this Court in *Management of Asiatic Air vs. Presiding Officer, Labour* 114 (2004) DLT 358, to state that there cannot be a presumption that the workman was unemployed for a very long period. In the aforesaid case, the Industrial Dispute took almost 15 years to be adjudicated, referring to various decisions, it was held that the workman was not entitled to back wages because he was not registered with employment exchange and had not even shown any effort seeking employment during the pendency of the claim before the learned Labour Court. The same judgement however refers to *Municipal Coporation of Delhi v. Prem Chand Gupta*, (2000) 10 SCC 115, wherein the worker who had been out of work for 33 years was granted 50% back wages because it was noted that it was reasonably possible that the worker, being a helper doing manual labour, could have possibly got some daily wage or intermittent employment during the pendency of the industrial dispute.

4. In the present case, the petitioner was working as a bus conductor; he was removed from service on account of financial irregularity which was never proven. The petitioner was removed on 16.05.1986, the award was passed on 07.01.2000 i.e. roughly after 13½ years. (albeit, the impugned order records that it was after 12 years).

5. The Court would note that simply because a person is registered with the employment exchange, that by itself does not show that he would necessarily be employed. In dire state, a person may offer his services by rendering academic tuition to the neighbourhood children, if he managed to get such pupils, or some other desperate measures to tide over his financially straightened circumstances. For a person to be hired as a daily wager, the health of the individual is a vital factor. It also cannot be assumed that mere registration with the Labour Chowk would guarantee his employment in due course. In any case, till such employment, the individual would need to meet his daily needs and him being present at the Labour Chowk would not necessarily mean that he was employed and was doing physical labour. Therefore, such factor coupled with the fact that the petitioner had to suffer humiliation for 13½ years against an allegation of embezzlement, which was neither proven nor there is anything on record to otherwise establish that he was gainfully employed in the interim. Hence, relying upon the dicta of *Devi Dayal* (supra), the Court is of the view that instead of 25% back wages, 50% would be fair. Accordingly, 50% of the back wages is directed to be paid to the petitioner.

6. The petition is disposed-off in the above terms.

NAJMI WAZIRI, J

FEBRUARY 11, 2020

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