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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 689/2019, C.M. Appl.No. 47789/2019 (Delay of 93 days in re-filing the appeal)

KRISHAN KUMAR KASHYAP

..... Appellant

Through: Mr. Girish Kumar, Advocate with
appellant in person.

versus

THE STATESMAN LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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04.03.2020

1. The appellant/petitioner is aggrieved by the order dated 06.05.2019, passed by the learned Single Judge disposing of a petition filed by him assailing the Award dated 18.10.2008, passed by the learned Labour Court, wherein it was held that his termination was illegal and unjustified. However, keeping in view the fact that the appellant had attained the age of superannuation, the learned Labour Court had opined that it was not a fit case where he should be reinstated with back wages and ends of justice would be served if a lump sum compensation is awarded to him instead of giving him back wages. Accordingly, after considering all the facts and circumstances of the case, the nature of the job of the appellant/workman, his last

drawn salary and the long tenure of his service with the respondent/employer, the Labour Court awarded a lump sum compensation of Rs.2 lakhs in favour of the appellant, in place of reinstatement and back wages.

2. The factual matrix of the case has been captured in para 2 of the impugned order, which is reproduced below:-

“2. The petitioner joined the services of the respondent as a Store Clerk on 07th January, 1967 and he was confirmed on 01st May, 1970. The respondent suspended the petitioner on 10th December, 1994 and issued a charge sheet on various grounds inter alia that he has refused to perform the assigned work; he was a habitual late comer; he signed official memos on his own without permission; he harassed the clients and disobeyed orders of superiors. The respondent found the petitioner guilty of misconduct after enquiry and dismissed him from service on 15th February, 1997 whereupon the petitioner raised an industrial dispute which was referred to the Labour Court. The Labour Court held that the management failed to prove the charges against the petitioner and, therefore, the termination was held to be illegal. The petitioner attained the age of superannuation during the pendency of the proceedings before the Labour Court. The Labour Court, therefore, awarded a lump sum compensation of Rs.2,00,000/- to the petitioner.”

3. Learned counsel for the appellant/petitioner had stated before the learned Single Judge that the appellant/petitioner was entitled to full back wages from 15.02.1997 i.e. date of his termination, till the age of superannuation and besides full back wages, he was also

entitled to allowances towards loss of HRA, DA, LTA, medical, loss due to revision of pay scales, arrears of Provident Funds, gratuity and bonus, etc.

4. The aforesaid submission was however refuted by learned counsel for the respondent, who had submitted that the appellant/petitioner had received subsistence allowance to the tune of Rs.1 lakh, during the pendency of the proceedings and the Labour Court has fairly awarded a sum of Rs.2 lakhs in his favour, which should suffice. It was further submitted that the claims made by the appellant/petitioner are speculative in nature and beyond the scope of the writ petition, as he had neither raised the said claims before the Labour Court, nor had he led any evidence on the said aspect.

5. After hearing the arguments advanced by learned counsel for the parties, the learned Single Judge partly allowed the writ petition filed by the appellant/petitioner and enhanced the lump sum compensation awarded by the Labour Court from Rs.2 lakhs to Rs.5 lakhs, alongwith interest @ 6% per annum from the date of publication of the Award. Aggrieved by the said order, the appellant has filed the present appeal.

6. At the outset, we requested learned counsel for the appellant/petitioner to clarify as to whether any evidence was led before the Labour Court to plead and prove that after being dismissed from service, the appellant was not gainfully employed anywhere and he did not have any earnings to maintain himself or his family.

Learned counsel for the appellant/petitioner concedes that the only submission made in this regard was in para 16 of the affidavit by way of evidence wherein the appellant had averred that *“he was unemployed since the date of his dismissal and despite making his best efforts he could not get any re-employment.”*

7. The said averment can hardly be treated as adequate evidence for learned counsel for the appellant/petitioner to urge that the Labour Court had erred in granting a lump sum compensation to the appellant instead of directing payment of full back wages for his illegal termination. It is a settled legal position that given the facts and circumstances of a case, the court may decline even the back wages in entirety whereas in some cases, it may award partial back wages. However, each case has to be considered on its own facts, depending on the evidence led by the parties in this regard.

8. In the above context, we may usefully refer to the decision of the Supreme Court in Rajasthan State Road Transport Corporation, Jaipur vs. Phool Chand (Dead) Through Legal Representatives, reported in (2018) 8 SCC 299, wherein, it has been held as under:-

***“12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.*”**

13. *In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, M.P. State Electricity Board v. Jarina Bee(Smt.), (2003) 6 SCC 141, G.M. Haryana Roadways v. Rudhan Singh, (2005) 5 SCC 591, U.P. State Brassware Corporation v. Uday Narain Pandey, (2006) 1 SCC 479, J.K. Synthetics Ltd. v. K.P. Agrawal & Anr., (2007) 2 SCC 433, Metropolitan Transport Corporation v. V. Venkatesan, (2009) 9 SCC 601, Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr., (2009) 15 SCC 327) and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya(D.Ed.) & Ors., (2013) 10 SCC 324.*

14. *The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.”*

(emphasis added)

9. Similarly, in an earlier decision in the case of Senior Superintendent Telegraph (Traffic), Bhopal vs. Santosh Kumar Seal and Others, (2010) 6 SCC 773, the Supreme Court emphasised that relief by way of reinstatement with back full wages is not automatic even if the termination of an employee is held to be illegal or in contravention of the prescribed procedure and appropriate relief can

be by way of granting other monetary compensation in lieu of the reinstatement and back wages We may usefully extract below the view expressed by the Supreme Court in the captioned case:

“9. In last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate, (See U.P. State Brassware Corpn. Ltd. & Anr. v. Uday Narain Pandey, (2006) 1 SCC 479; Uttaranchal Forest Development Corpn. v. M.C. Joshi, (2007) 9 SCC 353; State of M.P. & Ors. v. Lalit Kumar Verma, (2007) 1 SCC 575; Madhya Pradesh Administration v. Tribhuban, (2007) 9 SCC 748; Sita Ram & Ors. v. Moti Lal Nehru Farmers Training Institute, (2008) 5 SCC 75; Jaipur Development Authority v. Ramsahai & Anr., (2006) 11 SCC 684; Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr., (2008) 4 SCC 261; and Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr., (2008) 1 SCC 575).

10. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr., (2009) 15 SCC 327, the aforesaid decisions were noticed and it was stated :

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court

has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee".

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. In our considered view, the compensation of Rs. 40,000/- to each of the workmen (respondent nos. 1 to 14) shall meet the ends of justice. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum."

10. In the instant case, having regard to the fact that the

appellant/petitioner did not lead any evidence to prove that after being dismissed from service, he was not gainfully employed anywhere and he did not have any earnings to maintain himself and his family, except for making a bald statement in the penultimate para of the affidavit by way of evidence, the onus did not shift to respondent/employer to prove otherwise. We are therefore of the opinion that the learned Single Judge was justified in enhancing the lump sum compensation awarded by the Labour Court from Rs.2 lakhs to Rs.5 lakhs, while declining the relief of full back wages, HRA, DA, LTA, etc.

11. The impugned order is sustained. The present appeal is dismissed as meritless alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

MARCH 04, 2020

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