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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 02.08.2022
Pronounced on: 17.08.2022

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W.P.(C) 5077/2003**DIR.OF EDUCATION & ANR****..... Petitioners**

Through: Mrs. Avnish Ahlawat, Standing
 Counsel, GNCTD (Services)
 alongwith Mr. Nitesh Kumar Singh,
 Mr. Uday Singh Ahlawat, Ms. Tania
 Ahlawat, Ms. Palak Rohmetra,
 Ms.Laavanya Kaushik and Ms.
 Aliza Alam, Advocates.

versus

KALAWATI**..... Respondent**

Through: Ms. Meghna De, Ms. Lin G. and
 Mr.Kshitij Sarin, Advocates.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The Petitioners, in the present Writ Petition is impugning the Award dated 12.03.2003 passed by the Presiding Officer, Industrial Tribunal No. III, Delhi in Industrial Dispute No.4/01 ("Impugned Award"). Vide the said Impugned Award dated 12.03.2003, the learned Tribunal was pleased to hold that the Petitioner/Management terminated the services of the Respondent/Workman illegally and unjustifiably w.e.f. 14.08.2000 and hence directed the Petitioner/Management to



reinstate the Respondent with continuity in service and full back wages in proper pay scale with usual allowances of Lab Attendant as applicable to Class IV employees.

The facts relevant for the consideration of the present Writ Petition are as follows

2. That it is the case of the Respondent that she was in employment of the Govt. Composite (Model) Co-Edn. Sr. Sec. School, GP Block, Pitam Pura, Delhi (“the school”) from April, 1987. It is further the case of the Respondent that the Petitioner/Management paid Rs. 489/- per month to her from 1987 to 1993 and Rs.984/- per month from 1993 to 1998 as muster roll wages. The services of the Respondent was initially terminated on 20.04.1998. But later on, she has been reinstated in service by the intervention of Chaudhary Sahib Singh Verma, the then Hon’ble Chief Minister of Delhi, but with a reduced monthly wages of Rs. 500/- per month. A demand notice dated 05.08.2000 for regularisation of the service of the Respondent was served upon the Petitioner/Management. It is the case of the Respondent that after the receipt of the notice dated 05.08.2000 she was being put to harassment by the Principal of the School by disallowing entry in the school on 14.08.2000 and thereby terminated her service without any orders. Being aggrieved by the termination, the Respondent raised an Industrial Dispute,



which was referred by the appropriate Government to the Industrial Tribunal with the following terms of reference:

- i. *Whether Smt. Kalawati is entitled for pay and allowances applicable to regular class IV employees working under the management for the period w.e.f. 1987 to 14.8.2000 and if so, what directions are necessary in this respect?*
- ii. *Whether the services of Smt. Kalawati have been terminated illegally and/or unjustifiably and if so, to what relief is she entitled and what directions are necessary in this respect?"*

3. The Respondent filed Statement of Claim explaining her case as stated above. The Petitioner/Management filed their Written Statement stating that the Respondent was not an employee of the Petitioner/Management or the school. She was engaged in the school of the Petitioner/Management as a domestic help/maid servant to wash the utensils of the Home Science during practical and her duty hours ranges from 2 to 2 ½ hour a day. She has been paid for this work from the P.T.A. Fund. It was purely a temporary arrangement on part time basis from PTA Fund. The Petitioner/Management further contended that the Respondent was firstly engaged in the month of November, 1992 and was lastly engaged in September, 1998 @ Rs. 20/- per day for half to one hour duty in recess period for distributing the lunch packets brought by the parents to their wards. It is further the case of the Petitioner/Management that the Respondent on her own stopped coming to the school after 29.07.2000. Later on, when she came to the concerned school to collect her wages for the period she



worked, she informed the officials of the school that she got some other work as house maid and hence she is not interested in the work of the school. With this submission, the Petitioner/Management contended that the Respondent was not in regular employment and hence she is not entitled for any relief as claimed by her in the Statement of Claim.

4. The Respondent examined herself as WW-1 and produced Documents **Ex.WW-1/1** to **Ex.WW-1/15**. The Petitioner/Management examined Mr. Krishna Avtar Singhal as MW-1. The learned Tribunal, based on the evidence adduced before it passed the impugned Award dated 12.03.2003 and directed for the reinstatement of the Respondent with full back wages and continuity in service in proper pay scale with usual allowances of Lab Attendant as applicable to the Class IV employees. Aggrieved by the said Impugned Award, the Petitioners filed the present Writ Petition.

Submission on behalf of the Petitioners

5. Ms. Avnish Ahlawat, learned counsel for the Petitioners submitted that the Respondent is not an employee of the Petitioner/Management. The learned counsel further submitted that there is no sanctioned post of Lab Attendant or part time Aaya in any of the schools managed by Directorate of Education, Govt. of NCT of Delhi. However, in some schools, Parent Teacher Association, the District Officers or Principles have been appointing individuals as part-time helpers for their children's convenience on daily wages for providing services for 2 to 2½



hours per day in the schools. She further contended that no person can appointed without any sanctioned post and moreover selection of a candidate can only be made after inviting application from the eligible candidate for a particular post through advertisement. They are paid from the PTA Fund or the Boys Fund or by the teachers from their own salaries. Learned counsel for the Petitioners further submitted that the Respondent was also appointed like this and she was paid from the PTA Fund. Hence, she is not an employee of the Petitioners or the school concerned. Vide Memo dated 06.01.2000, the Petitioner/Management instructed the schools not to engage any part-time workers from Boys/PTA funds and wherever they are engaged, they should be removed forthwith. It is further the case of the learned counsel for the Petitioners that similarly situated workmen have also approached Central Administrative Tribunal, whose claims were rejected. Learned counsel for the Petitioners further contended that the Respondent on her own stopped coming to the school and there was no termination of her services. With this submission, learned counsel for the Petitioners prays for setting aside the impugned Award. Learned counsel for the petitioners concluded her arguments by bring to the attention of this Court that during the pendency of the present Writ Petition, the Respondent has been paid minimum wages under Section 17-B of the Act in terms of order dated 03.07.2006 passed by this Court. In order to substantiate her arguments learned counsel relied on the case of NCT of Delhi vs Champa



Devi reported as DLT 12 (2006) DLT 611 (DB); smt Kanta Devi Vs Sarvodaya Kanya Vidyalaya reported as 2015 SCC Online 9547; Union of India & others Vs Bishamber Dutt reported as (1996) 11 SCC 341.

Submission on behalf of the Respondent

6. Ms. Meghna De, learned counsel for the Respondent argued in support of the impugned Award and submitted that the Respondent was an employee of the Petitioner/Management and her service was illegally terminated. Learned counsel for the Respondent relied on Identity Card issued by Directorate of Education, GNCTD whereby the designation of the Respondent was shown as 'Water Woman'. She further contended that no attendance record has produced by the Management which was withheld intentionally by the management and as adverse inference has to be drawn against the Management. Learned counsel further relied on the judgment Learned counsel for the Respondent pointed out that identity card was issued in the name of the Respondent by the Petitioner/Management which itself shows that the Respondent was an employee of the Petitioner/Management. Learned counsel for the Respondent further contended that the learned Tribunal passed the Award based on the evidence on record and there is no infirmity in the Impugned Award passed by the learned Industrial Tribunal.

Legal Analysis based on the facts of the present case

7. Heard learned counsel for the parties and perused the documents placed on record by the parties.



8. It is the case of the Petitioner/Management that the Respondent was not an employee of the Petitioner/Management/school. In order to appreciate this fact, this Court takes note of the following facts:

- (a) The Respondent placed on record the identity card issued by the Government of NCT, Directorate of Education under the signature of the competent authority of the school (Exhibit WW1/4). The said Identity card was issued in the month of September, 1994 and the designation of the Respondent was noted as '*water woman*'. In the said identity card, nowhere it is mentioned that the Respondent is a part time employee working only for 2 to 2½ hours a day.
- (b) It is the case of the Petitioner/Management that the Respondent's wages were paid from the PTA Fund. The Petitioner/Management has filed an Affidavit before this Court in reply to an application under 17-B of the Industrial Disputes Act, 1947 ("**ID Act**") filed by the Respondent being CM No. 11918/2003, wherein the Petitioner/Management annexed a chart showing the payment made to the Respondent by the school concerned through the PTA Fund. However, the Petitioner/Management failed to place on record any document whatsoever to substantiate this stand.
- (c) The Petitioner/Management failed to even examine the concerned officials from the school to prove that the wages of the Respondent were paid from the PTA Fund. The only



witness appeared on behalf the Petitioner/Management was MW-1/Deputy Education Officer (DEO) working with the Department of Education, Government of NCT of Delhi, who was appointed as DEO in the month of August, 2002 i.e. much after the termination of the Respondent. MW-1 deposed that he was a friend of the Principal of the school before his appointment as DEO and he used to see the Respondent coming to the school for performing her duties. The 'friend of the Principal' at the relevant time is not competent to make any statement on behalf of the school regarding its accounts. Therefore, there is no evidence whatsoever placed on record by the Petitioner/Management to show that the Respondent's wages were paid from PTA Fund.

- (d) MW-1 in his evidence deposed that the school concerned was maintaining an attendance register which contain the signature of all the employees of the Petitioner/Management/school concerned. He further submitted that the Respondent's attendance was never recorded in it as she is neither an employee of the Petitioner/Management nor the school concerned. Whereas the Respondent in her evidence stated that the school concerned used to mark her attendance in the attendance register. The said attendance register was in possession of the school concerned, however, the management witness MW-1 failed to produce the said attendance register. This



would have been a useful piece of evidence to throw light on the issue. However, the Petitioner/Management withheld the said crucial evidence and hence an adverse inference can be drawn against the Petitioner/Management.

9. The Petitioner/Management issued the identity card WW1/4. The Petitioner/Management failed to produce the attendance register which was a crucial piece of evidence. The Petitioner/Management also failed to produce any document to show that the Respondent's wages were paid from PTA Fund. It is evident that the Respondent is an employee of the Petitioner/Management and was in continuous employment with the Petitioner/Management from November 1992 till July, 2000.
10. This Court finds no infirmity or perversity in the findings of the learned Industrial Tribunal with regard to treating the Respondent as employee of the Petitioner/Management and hence the objection of the Petitioner/Management in this regard is overruled.
11. That as discussed herein above, the Respondent is in continuous employment of the Petitioner/Management from November, 1992 to July, 2000. MW-1 in his evidence admitted that neither any notice nor any notice pay was given to the Respondent. The learned Tribunal held that the service of the Respondent was terminated illegally as the same was without complying with the provisions of Section 25F of the ID Act or observing the principles underlying the Section 25 G or Section 25 H of the ID Act. This Court has no hesitation in confirming the finding of the



learned Tribunal which was based on cogent evidence and accordingly, it is held that the termination of the Respondent was illegal.

12. That the next question to be considered is whether the Respondent is entitled for reinstatement in service with full back wages and continuity in service in proper pay scale with usual allowances of Lab Attendant as applicable to Class-IV employees. It is to be noted that there is no justification for the learned Industrial Tribunal to treat the Respondent as Lab Attendant. The Respondent's Identity Card shows that she was working as 'water woman'. Even though the Respondent attended the interview for the post of 'Lab Attendant', there is nothing on record to show that she was selected for the said post. It is the categorical stand of the Petitioner that the Respondent was not selected for the post of Lab Attendant. Hence, the Respondent cannot be treated as Lab Attendant.

13. Regarding the relief to be granted in the present case, it is well settled principle of law that the reinstatement with full back wages is not to be granted mechanically. In this context, it is relevant to rely upon the law laid down by the Hon'ble Supreme Court in the case of ***Bharat Sanchar Nigam Limited v. Bhurumal*** reported as (2014) 7 SCC 177, which, inter alia, as follows:

"20. 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, 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.” Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal, wherein this Court stated: (SCC p.777, para 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.”

21. In the case of Telecom District Manager v. Keshab Deb the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months' pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted /given a temporary status. Such a scheme has been held to be unconstitutional by this Court in A.Umarani v. Registrar, Coop. Societies and Secy., State of Karnataka v. Umadevi.

22. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman.



He drew our attention of this Court in the case of Coal India Ltd. Vs. Ananta Saha and Metropolitan Transport Corporation v. V.Venkatesan.

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is



terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.”

14. That from the reading of the Judgment of the Hon'ble Supreme Court in the case of ***Bharat Sanchar Nigam Ltd*** (supra), it is evident that the relief of reinstatement with back wages cannot be granted mechanically. This Court notes that the Respondent was working with the Petitioner/Management as a daily wager. The service of the Respondent was terminated 22 years back in the year 2000. She was not in employment since then. She is getting payment under Section 17-B of the ID Act as per the direction of this Court vide order dated 03.07.2006. Hence considering the totality of the facts and circumstances, this Court is of the considered view that the interest of justice would meet if the Respondent is compensated with Rs.50,000/- in lieu of her reinstatement with full back wages and continuity in service.
15. In view of the discussion herein above, the impugned Award of the learned Tribunal is modified to the above extent. It is further clarified that in view of the law laid down by the Hon'ble Supreme Court in the case of ***Dilip Mani Dubey v. M/s SIEL Limited & Anr.*** reported as **2019 (4) SCC 534**, the payment already made by the Petitioner/Management to the Respondent/Workman under Section 17-B of the ID Act is not to be adjusted/ recovered.



16.The present writ Petition is disposed of in the above terms. No order as to costs.

GAURANG KANTH, J.

AUGUST 17,2022

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