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

Judgment reserved on: August 29, 2022

% *Judgment pronounced on: October 19, 2022*

+ W.P.(C) 5227/2012
TRILOKI

..... Petitioner

Through: Mr.Mukul Talwar, Sr.Adv. with
Mr.RajivKapur, Mr.Harsh Jaiswal
and Mr.Rahul Kumar, Advocates

versus

ASHOK HOTEL

..... Respondent

Through: Mr.Namit Suri, Advocate

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J:

Background and Facts:

1. Present writ petition has been filed by the petitioner challenging the order dated 24.03.2012 as it was *inter alia* concluded by the Ld. Labour Court to the effect that the petitioner was an employee of the respondent and the services of the petitioner was terminated illegally/ unjustifiably by the respondent. However, the Ld. Labour Court awarded an amount of Rs. 1,00,000/- as compensation in lieu of reinstatement.
2. The facts in brief are that the management of Ashok Hotel had advertised for the post of cleaner cum attendant in the newspaper for "Sehat", Health Club of Ashok Hotel. Petitioner applied for the post and was selected for the same on 28.11.1996 after giving a formal interview. Consequently, an appointment letter was issued on 12.02.1997 and the consolidated salary of Rs. 2,500 was fixed by the management for a period of 6 months. The management of the respondent hotel on several occasions

extended the contract of the petitioner workman from time to time with an increase in the salary of the petitioner from Rs. 2,500 to Rs. 3,400 per month.

3. In 2008, the management of the Respondent Hotel leased out the “Sehat” (Health Club) to a Private Company i.e M/s Amattra and all the employees working in the health club were deployed to the other department except the Petitioner. As a result, the services of the petitioner workman were terminated w.e.f. 01.08.2003.

4. In view of the termination of the workman, the Union took the matter before the conciliation officer and the matter was then referred to the Labour Court-X, Karkardooma, Delhi. The Ld. Judge *inter alia* held that instead of granting reinstatement with continuity of service and back wages to the Petitioner, a retrenchment compensation of Rs. 1,00,000/- is a more appropriate relief as the Health Club of Ashok Hotel has been given to a private contractor.

Contentions of the Petitioner:

5. Learned counsel for the petitioner submits that the petitioner workman had completed 6 years of service owing to the extension of his contract by the management of the respondent hotel on several occasions. He further submits that the petitioner was enjoying all the benefits namely leaves, bonus, medical reimbursement of a permanent employee.

6. Learned counsel for the petitioner submits that after the “Sehat”(Health Club) was leased out to the Private Company i.e M/s Amattra, all the employees working in the health club were deployed to the other department except the petitioner such as:

- i. Sh. Sanjeev Aron, Manager in House Keeping;
- ii. Sh. Ravinder Singh in front office;
- iii. Sh. Chand Ram, clerk in B&C department; and
- iv. Sh. Surender Singh in front office.

7. Learned counsel for the petitioner further submits that the laundry department was also outsourced to M/s Novix Pvt. Ltd., but the employees were absorbed within the respondent Hotel in the suitable posts. Learned counsel submitted that the respondent has discriminated against the petitioner. Learned counsel has relied upon ***Iron & Metal Traders (P) Ltd. V. M.S. Haskiel, 1984 (1) SCC 304 @305.***

8. Learned counsel for the petitioner submits that the Labour Court had framed two issues in the present case i.e whether the claimant is an employee of the management and whether the services of the claimant have been terminated illegally or unjustifiably by the management. Labour court by the impugned award decided both the above-mentioned issues in favour of the petitioner. He further submits that the Ld. Labour Court has failed to point out any unusual or exceptional circumstances for not awarding the relief of reinstatement with continuity of service.

9. Learned counsel for the petitioner submits that the labour court has failed to appreciate that the retrenched workman was entitled to payment of retrenchment compensation u/s 25 F (b) of the ID Act in addition to the wages u/s 25 F (a) of the Act.

10. Reliance has been placed in ***Anoop Sharma Versus Executive Engineer, Public Health Division No. 1, Panipa (Haryana), 2010 (5) SCC***

497 wherein it has *inter-alia* been held that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F (a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

Contentions of the Respondent:

11. Learned counsel for the respondent submits that where the entire establishment of an employer is not transferred but only a unit or a business of an establishment is transferred which has no functional integrity with other units or businesses, the provisions of Section 25 FF of the Industrial Disputes Act, 1957 gets attracted and in such a case, a workman is entitled to only compensation as provided in Section 25 FF of the said act. Reliance has been placed upon *Management of R.S. Madho Ram and Sons Private Ltd. Vs. Workmen as represented by Madho Ram and Sons Employees' Union, AIR 1964 SC 645*.

12. Learned counsel for the respondent further submits that there has been no discrimination against the petitioner as no person identically or similarly situated to the petitioner was absorbed by the respondent.

13. Learned counsel for the respondent submits that the Industrial Tribunals/ Labour courts have the discretion to award compensation in lieu of reinstatement and there is no hard and fast rule that when the termination order is set aside, reinstatement with full back wages has invariably to be granted.

14. Learned counsel for the respondent further submits that in view of the scheme of Section 25-F, Section 25-FF and Section 25-FFF and the law laid down in this regard by the Supreme Court and this Court, the respondent has not challenged the said award and is ready and willing to pay the compensation awarded by the learned Presiding Officer to the petitioner or deposit the same immediately with the registry of this Hon'ble Court.

Findings:

15. The employer/management has not challenged the Award. Thus, the finding of the Labour Court to the effect that the petitioner was a workman and has been retrenched in violation of the provisions of the Industrial Disputes Act is unassailed and unchallenged. This court is only required to see whether the Labour court has rightly awarded the compensation or should have granted the relief of reinstatement. The plea of the petitioner is that he had worked continuously for more than six years and was treated as regular/permanent employee, and therefore, the relief of reinstatement in service should have been granted along with back wages and consequential benefits. The point to be examined is that whether the petitioner should also have been absorbed in any other department in the event of Health Club being non-operational. The petitioner has also pleaded that since he has been discriminated, therefore, in view of ***Iron& Metal Traders (P) Ltd. Versus M.S Haskiel, 1984 (1) SCC 304***, the relief of reinstatement was proper relief instead of compensation.

16. The latest legal trend is award of compensation in place of reinstatement. In the case of ***BSNL vs. Man Singh: (2012) 1 SCC 558***, the Apex Court held that when the termination is set aside because of violation

of 25F of the ID Act, it is not necessary that the relief of reinstatement be given as a matter of right.

17. In **Incharge Officer vs. Shankar Shetty: (2010) 9 SCC 126**, it was *inter alia* held that in those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

18. In **Shankar Shetty** (supra), the Apex Court reiterated the trend by referring to the various judgments and *inter alia* held as under:-

“2. Should an order of reinstatement automatically follow in a case where the engagement of a *daily wager* has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short “the ID Act”)? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In *Jagbir Singh v. Haryana State Agriculture Mktg..Board*, delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, *U.P.State Brassware Corpn. Ltd. V. Uday Narain Pandey*, *Uttaranchal Forest Development Corpn. V. M.C. Joshi*, *State of M.P. v. Lalit Kumar Verma*, *M.P.Admnv.Tribhuban*, *Sita Ram v.Moti Lal Nehru Farmers Training Institute*[8], *Jaipur Development Authority v. Ramsahai*, *GDA v. Ashok Kumar and Mahboob Deepak v.NagarPanchyat*, *Gajraula* and stated as follows: (*Jagbir Singh case*, SCC pp.330 & 335 paras 7 & 14).

“7. It is true that the earlier view of this Court articulated in many decision 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.

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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, 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.”

4. Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal, wherein this Court stated: (SCC p.777, para 11)

“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.”

19. It is pertinent to mention that in **BSNL vs. Bhurumal**(supra), the Supreme Court added a caveat as under;

“35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz.

while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

20. This Court in **Ashok Kumar vs. Hindustan Vegetable Oil Co.**: 2017 SCC Online Del 9516, noting the shift of trend *inter alia* held as under:

"13 Subsequently, however, the view of the Supreme Court has sharply swung from the theory of "reinstatement with back wages (in whole or in part)" to the theory of "lump sum compensation". This swing of judicial thought has been definitively captured in the following passages from the judgment in Senior Superintendent Telegraph (Traffic) v Santosh Kumar Seal, (2010) 6 SCC 773:

"9. In the 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. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] , Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , Sita Ram v. Moti Lal Nehru Farmers Training Institute [(2008) 5 SCC 75

: (2008) 2 SCC (L&S) 71] , Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , GDA v. Ashok Kumar [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] .)

21. The Apex Court in a plethora of cases has directed compensation in lieu of reinstatement. Reliance is placed on ***Mahboob Deepak vs. Nagar Panchayat, Gajraula***: (2008) 1 SCC 575, ***M.P. Admn. V. Tribhuban***, (2008) 1 SCC (L&S) 264, ***Sita Ram vs. Moti Lal Nehru Farmers Training Institute***: (2008) 5 SCC 75, ***GDA vs. Ashok Kumar***: (2008) 4 SCC 261.

22. This Court in ***Jagbir Singh vs. Haryana State Agriculture Marketing Board***: (2009) 15 SCC 327 held that while awarding compensation in lieu of reinstatement, a host of factors should be kept in mind, i.e., manner and method of appointment, nature of employment and length of service. It is pertinent to mention that each case will depend upon its own facts and circumstances.

23. The plea taken by the respondent is that the present case is covered under Section 25FF of the I.D. Act and, therefore, petitioner is only entitled to compensation. In the present case, it is not in dispute that the petitioner had rendered service for a period of 240 days during the period of 12 calendar months and has actually worked under the employer/respondent.

24. The perusal of the above judgments makes it clear that new established trend is grant of compensation in lieu of reinstatement. The order of reinstatement can be granted only in exceptional cases. The discretion of reinstatement may be exercised in cases where the employee has joined the service after going through the entire selection process against

a sanctioned post and has remained employed for a sufficient long period. It may be difficult to define “sufficient long period” but it has to be substantial, i.e, 10/15/20 years. The order of reinstatement in case of daily wager or contractual employee may be a difficult proposition. The Courts have also to see the time lapse between the cessation of employment and the final order. Though workman/employee may not be punished for the delay but the Courts have to take a pragmatic view. If the order of reinstatement is made after 15-20 years, it would be impractical and unworkable for both employer and employee. The work culture and atmosphere at working place totally changes. The job requirements also changes. An employee who might be suitable for a job around 15-20 years may not be suitable now. The dynamics of functioning have totally changed.

25. In the present case, the cessation took place in 2003. Thus, around 20 years have lapsed. I consider that order for re-instatement may not be passed in such a case. However, the compensation awarded by the Court is to the lower side. I consider it needs to be enhanced substantially. Thus, this Court awards compensation in the sum of Rs.10 lakhs to be paid to the respondent/workman within 8 weeks, failing which the amount shall be paid with an interest @ 12% per annum. In view of the discussion made hereinabove the award stands modified accordingly.

26. Accordingly, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

OCTOBER 19, 2022
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