



2023:DHC:7511

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**+ **W.P.(C) 3592/2020 and CM APPL. 12782/2020**

Between: -

N.T.P.C LTD

DADRI, GAUTAM BUDH NAGAR,

U.P.

(THROUGH MR NIKESH KUMAR,

SR. MANAGER)

..... PETITIONER

*(Through: Mr. Puneet Taneja, Mr. Manmohan
Singh Narula and Mr. Amit Yadav, Advocates)***AND****SH.SURAJ PAL SINGH**

S/O SH HANSRAJ,

DISTRICT HAPPUR,

U.P

..... RESPONDENT

*(Through: Mr. Sarfaraz Khan, Mr. Mirza Amir
Baig and Mr. Abdul Wahid, Advocates alongwith
respondent in person.)*+ **W.P.(C) 9539/2020****SURAJPAL SINGH**

S/O SHRI HANSRAJ SINGH

HOUSE NO. 200, VPO GALAND,

DISTRICT HAPUR, UTTAR PRADESH

..... PETITIONER

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By: PURUSHAINDRA
KUMAR KAURAV

(Through: Mr. Sarfaraz Khan, Mr. Mirza Amir Baig and Mr. Abdul Wahid, Advocates alongwith petitioner in person.)

AND

THE GENERAL MANAGER

**NATIONAL THERMAL POWER CORPORATION (NTPC)
DADRI, GAUTAM BUDHA NAGAR,
UTTAR PRADESH**

..... RESPONDENT

(Through: Mr. Puneet Taneja, Mr. Manmohan Singh Narula and Mr. Amit Yadav, Advocates)

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Pronounced on: 12.10.2023

J U D G M E N T

1. The present petitions have been filed by the Management/NTPC Ltd. and the workman-Sh. Surajpal Singh respectively, challenging the award dated 13.08.2019 passed by the Central Government Industrial Tribunal-II (hereinafter referred to as '*the Labour Court*'), whereby, the claim of the workman has been allowed to the extent of directing the Management to pay a sum of Rs.3,00,000/- towards compensation for his illegal termination. The Management has challenged the award on the ground that the Labour Court has erroneously held that the workman was an employee of the Management while the workman has challenged the award on the ground that he has only been granted compensation in lieu of reinstatement with back wages.

2. Learned counsel appearing for the Management submits that the impugned award is perverse in law and has been passed without appreciating the evidence produced by the parties. He submits that there does not exist any employer-employee relationship between the parties as the workman was a contractual workman who was working

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as Operator-cum-Watchman with M/s Alankar Nursery & Farms w.e.f. 01.01.1993 that was awarded the Contract of 'Operation and Maintenance of Water Supply and Sewerage Disposal Pumps' by the Management.

3. Learned counsel for the Management further submits that the onus of proving that an employer-employee relationship existed between the parties lies on the workman and in the present case, he has failed to discharge that burden. He states that the workman has not submitted any evidence to prove that he was appointed by the Management and the manner in which the appointment, if any, was done. Moreover, nothing has been brought on record to show that he was paid any salary by the Management.

4. Learned counsel for the Management has also emphasized the fact that it being a Public Sector Undertaking, it is highly unbelievable that a workman could have been appointed without there being proper documentation of the hiring process or an interview letter. Moreover, the workman had himself admitted during cross-examination that he was never issued any official interview letter or any salary slip throughout his employment period. Therefore, the workman has failed to prove that he completed 240 days of continuous work. Learned counsel has relied upon *Bhavnagar Municipal Corporation v. Jadeja Govubha Chhanubha*¹, and *Manager, Reserve Bank of India, Bangalore v. S. Mani*² to assert that in order to claim that termination has been illegal on account of non-payment of retrenchment compensation, the onus is on the workman to prove that he was in continuous service for 240 days and in the present case, the workman has failed to do so.

¹ (2014) 16 SCC 130

² (2005) 5 SCC 100

5. Learned counsel further submits that the Management had produced documents to prove that the workman had instead been engaged by the contractor and the Management had also produced two witnesses that had deposed that the workman had been appointed by the contractor, which statements went unrefuted and hence, proved. Learned counsel also points out that the workman himself had admitted that he was working through a contractor in the writ petition filed before the Allahabad High Court, which fact has been concealed in the present petition.

6. Learned counsel also submits that the identity card produced by the workman has been issued by the Principal of the Kendriya Vidyalaya and not by the Management and hence, cannot be construed to mean that the workman was employed by the Management. It is further submitted that all the documents submitted by the workman had been disputed by the Management and none of those documents were sufficient to establish the relationship of employer-employee. Learned counsel has relied upon the case of ***Krishna Bhagya Jala Nigam Ltd. vs. Mohammed Rafi***³ to submit that mere affidavits made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year.

7. Learned counsel further submits that the Labour Court has wrongly observed that the documents submitted by the Management to prove the appointment of the workman by the contractor are photocopies and hence, are not proved even when the Management had summoned witnesses to prove the said documents. On the other hand, the documents supplied by the workman, also photocopies, have been accepted by the Labour Court, without leading any evidence.

³ 2009(11)SCC522

8. Lastly, learned counsel for the Management submits that the compensation of Rs.3,00,000/- is excessive considering the duration that the workman states he worked for i.e. approximately 4 years and the claim that his last drawn salary from the contractor was Rs.3500/- per month. Additionally, the Labour Court has failed to provide any computation formula that has been used to arrive at such an amount.

9. Learned counsel appearing for the workman vehemently opposes the submissions made by learned counsel for the Management. He submits that the workman was duly appointed by the Management after clearing an interview conducted by an Interview Board. It is also submitted that the Labour Court perused all the documents submitted by the parties and rightly came to the conclusion that the workman had been appointed by the Management.

10. He further submits that the workman had approached the Allahabad High Court for regularization through a writ petition being W.P. (C) 3919/1993 after he was not being provided facilities by the Management. However, his services were illegally terminated by the Management during the pendency of the writ petition, without providing any notice or compensation in lieu thereof.

11. He further states that when the Labour Court had held that the workman worked for 240 continuous days in a year and that the Management had employed the workman, reinstatement with back wages should have been awarded to the workman. Instead, a lumpsum compensation amount of Rs.3,00,000/- was awarded, which learned counsel for the workman disputes as being too paltry and not the appropriate relief.

12. Learned counsel for the workman relied upon the decision of the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase v.***

Kranti Junior Adhyapak Mahavidyalaya and Ors.⁴, to assert that in the cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

13. Lastly, it is submitted that the workman immediately took steps to agitate his claim against his wrongful termination. The time that has elapsed between the date of reference to the Labour Court and the date of decision taken by the said Labour Court cannot be considered to be a lapse on the part of the workman and hence, ought not to jeopardize his claim while deciding the relief to be granted to the workman. Learned counsel has relied upon the decision of the Hon'ble Supreme Court, in the case of **ONGC Employees Mazdoor Sabha v. Oil & Natural Gas Corporation (India) Ltd.**⁵, to supplement his stand.

14. I have heard learned counsel for the parties and perused the record.

15. The scope of interference by High Courts under Article 227 of the Constitution of India has been delineated by the Hon'ble Supreme Court through a plethora of judgments. The Hon'ble Supreme Court, in the case of **Iswarlal Mohanlal Thakkar vs Paschim Gujarat Vij Company Ltd. & Anr.**⁶, has held as under: -

"15. We find the judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or reappreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere

⁴ (2013) 10 SCC 324

⁵ 2020 SCC OnLine 222

⁶ (2014) 6 SCC 434

with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.”

[Emphasis supplied]

16. The scope of this court's powers under Article 227 of the Constitution of India has also been restricted to cases of grave dereliction of duty and flagrant abuse of power through the decision of the Hon'ble Supreme Court in the case of **DN Banerjee v. P.R. Mukherjee**⁷. In light of the settled legal position, what this court can adjudicate upon is whether the impugned decision in the present case suffers from any material illegality or error apparent on the face of the record.

17. It is seen that a reference dated 22.07.2013 was made to the Labour Court under Section 10(1)(d) and Section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter '*the Act*') for adjudication of the dispute stated hereunder:

"Whether the action of the Management or NTPC in terminating the services of Shri Suraj Pal Singh, Pump Operator w.e.f. 18-4-1993 without complying of provisions of Section 25 F,G,H of Industrial Disputes Act is unjustified & illegal ? To what relief the workman is entitled to ?"

18. The workman filed his statement of claim stating that after an interview was conducted by the Interview Board of the Management on 03.07.1989, he started working at the Kendriya Vidyalaya of NTPC, Dadri from 10.07.1989. It is his case that he worked continuously till 18.04.1993, when his services were illegally terminated during the pendency of the writ petition that he had filed before the Allahabad High Court for the relief of regularisation. The workman stated that he received no notice or compensation in lieu of notice, therefore the termination is in violation of Section 25-F of the Act and he is entitled to a relief of reinstatement. He also stated that he had completed 240 days of service in a calendar year.

⁷ AIR 1953 SC 58

19. The Management, in its written statement categorically denied that the workman was employed by it, rather he was employed by a contractor that worked for the Management and hence there existed no employer-employee relationship.

20. The Labour Court, thereafter, framed the following three issues for adjudication:

"1) Whether the action of the Management of NTPC, Dadri, in termination the services of Shri Suraj Pal Singh, Pump Operator w.e.f. 18/04/1993 without complying of provisions of Section 25 F,G AND H of Industrial Disputes Act, 1947 is unjustified and illegal? If so, its effect ?

2) Whether relationship of employer and employee exists between respondent and workman ? If so, its effect ?

3) To what relief the workman is entitled to ?"

21. The Labour Court first adjudicated on the issue of whether an employer-employee relationship existed between the parties. The court below has perused the documents submitted by the workman to prove his status of employment by the Management such as copies of the logbook register, Identity Card issued by the Principal of Kendriya Vidyalaya, NTPC, Dadri, copy of leave application addressed to Supervisor, NTPC etc. The Labour Court also considered the fact that the cross-examination of the workman did not yield anything incriminatory.

22. In paragraph 14 of the impugned order, the Labour Court has also considered the evidence submitted by the Management and after consideration, deemed it insufficient to prove its stand that the workman was not an employee. Paragraph 14 reads as under:

"14- Affidavit Ex.MW2/A filed by MW2 Nikesh Kumar, Senior Manager (HR) of NTPC is in consonance with the contents of the written statement. This witness had also filed additional affidavit Ex.MW2/B. In cross examination he clarified that NTPC issues identity cards to its permanent employees only. Showing his ignorance that the workman had worked for NTPC from 10/17/89 till his termination, he volunteered that he might have been engaged through contractor working for NTPC. He explained that only signed records are verified by him, he could not say if in the year 1989-90, the workman was employed by NTPC."

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KUMAR KAURAV

NTPC had issued Identity Cards to 27 persons and a list in this regard was prepared. He also could not say if persons junior to the workman/claimant as per list were made regular, ignoring the seniority of the workman.”

23. Further, the Labour Court noted that despite an application being filed by the workman for the production of documents, the Management failed to produce the record of the log books, Identity Cards etc. to disprove the claim of the workman. Hence, it was held that an adverse inference could be drawn against the Management and an employer-employee relationship was sufficiently established.

24. It is well settled that the initial onus to prove that the workman has worked for 240 days in the calendar year prior to his retrenchment, rests on the claimant. The burden stands discharged when oral and documentary evidence, proving appointment and payment of salary is produced. However, in the case of contractual employees or daily wagers, usually, there is no proof of appointment or a salary slip. In that case, an adverse inference can be drawn against the Management upon non-production of documents to prove the contrary.

25. The Hon'ble Supreme Court, in a decision in the case of ***R.M. Yellatti v. The Asst. Executive Engineer***⁸ has held as under:

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.”

⁸ (2006) 1 SCC 106

above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the Management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case."

26. The Apex Court, in the case of ***M.P. Electricity Board v. Hariram***⁹ had observed as under:

*"11. A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. **Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis.** The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds."*

27. In the present case, the workman has admitted that there was no official appointment letter or salary slip that was ever issued to him. However, the Labour Court has considered the fact that he was not a permanent employee and hence may not have been issued the necessary documents. The Labour Court proceeded on the basis of the evidence produced by the workman, which included entries made against the signatures of the workman in the copy of the log book register, Identity Card, performance certificates etc. On the other hand, the Management failed to produce the said records, when the workman had applied for production for the same, simply on the ground that they were not in possession of any of the documents. The Management also failed to produce the originals of the documents that

⁹ 2004 (8) SCC 246

it had submitted copies of, to prove that the workman was employed elsewhere.

28. Having considered the aforesaid circumstances and the settled position of law, this court is of the opinion that the Labour Court carefully considered the evidence on record and in the absence of any documents submitted by the Management to disprove the stand of the workman, rightly held that an employer-employee relationship existed between the parties.

29. The second issue that the Labour Court adjudicated upon was whether the termination of the workman was illegal and if so, the relief that the workman was entitled to.

30. The court below considered the fact that no evidence had been adduced by the Management to prove that any notice or compensation in lieu of notice had been given to the workman and in view of the same, in paragraph 19 of the impugned order, it held that the termination of the workman was illegal, which reads as under:

"19- Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, such action of the Management in terminating the services of the workman w.e.f. 18/4/1993 is held to be illegal and void."

31. Section 25-F of the Act reads as under:

"25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

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32. It is well settled that the conditions enumerated in Section 25-F of the Act are mandatory and if an employer fails to comply with the requirements of the provisions, the termination is deemed to be illegal and liable for action. In the present case, as a natural corollary of the fact that the workman was an employee of the Management and was not served any notice, his termination was rightly held to be illegal by the Labour Court.

33. The Labour Court has also considered the fact that the workman was not a permanent employee of the Management and that a period of almost 10 years had lapsed between the termination of the workman and the reference received by the Labour Court. Based on the aforesaid grounds and the prevailing judicial trend, the court below deemed it appropriate to award Rs.3,00,000/- in compensation to the workman, in lieu of reinstatement.

34. The Hon'ble Supreme Court, in various decisions, has held that in cases of illegal termination, reinstatement is not the automatic relief. The relief that is to be granted is influenced by several factors, including the nature of work done by the workman and the time period for which it is done.

35. The Hon'ble Supreme Court, in one of its earlier decisions in the case of *Ruby General Insurance Co. Ltd. v. P.P. Chopra*¹⁰, while relying upon one of its previous decisions, had observed the following:

“6. xxxxxx

In Workman of Charottar Gramodhar Sahakari Mandal Ltd. v. Charottar Gramodhar Sahakari Mandal Ltd. [CA 382 of 1966, decided on August 14, 1967] this Court refused to interfere with the order of the Tribunal declining reinstatement though the order of dismissal on the ground that the concerned workman had resorted to illegal strike was set aside as the disciplinary enquiry was not held properly and considered compensation equivalent to 7½ months' salary sufficient. These decisions clearly show that

¹⁰ (1969) 3 SCC 653

though industrial adjudication may not regard a wrongful dismissal as amounting to termination of service resulting only in a right to damages as under the law of master and servant and would ordinarily order reinstatement, it can refuse to order such reinstatement where such a course, in the circumstances of the case, is not fair or proper. The Tribunal has to examine, therefore, the circumstances of each case to see whether reinstatement of the dismissed employee is not inexpedient or improper.”

[Emphasis supplied]

36. The factors to be considered for granting relief were discussed by a three-judge Bench of the Hon’ble Supreme Court in the case of ***G.M., Haryana Roadways v. Rudhan Singh***¹¹. The relevant paragraph reads as under:

*“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A **regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.**”*

[Emphasis supplied]

¹¹ (2005) 5 SCC 591

37. Further, in its decision in the case of **Jagbir Singh v. Haryana State Agriculture Mktg. Board**¹², the Apex Court has reiterated the practice of awarding compensation and has held as under:

“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, 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.”

[Emphasis supplied]

38. In view of the aforesaid legal position and the fact that the workman was a contractual employee, who was terminated more than 20 years ago, this court is of the considered opinion that the Labour Court was correct in holding that the relief of reinstatement was not merited and instead compensation was the appropriate relief.

39. The amount deposited by the Management in terms of the interim order dated 18.06.2020 i.e. Rs.1,00,000/-, be released in favour of the workman alongwith the accrued interest, within two weeks from the date of receipt of this decision, on due verification.

40. The remaining amount of Rs.2,00,000/- be paid to the workman by the Management, in accordance with the impugned award dated

¹² (2009) 15 SCC 327

13.08.2019, within three months from the date of passing of this decision.

41. Accordingly, both the petitions are dismissed alongwith the pending application(s).

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 12, 2023

