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

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Date of Decision: 24.07.2023

+ **LPA 561/2023 & CM APPL. 36730/2023, 36731/2023,**
36732/2023 & 36733/2023

SHASHANK GUPTA

..... Appellant

Through: Mr. Atul T. N, Ms. K. Pallavi, Ms.
Vishal Choubey & Ms. Pragya
Narayan, Advs.

versus

M/S. MIRC ELECTRONICS LIMITED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning the Judgment dated 04.05.2023 (hereafter '**the impugned judgment**') passed by the learned Single Judge. By the impugned judgment, the learned Single Judge has upheld the award dated 03.08.2013 (hereafter '**the impugned award**') passed by the learned Labour Court in an industrial dispute raised by the petitioner (*DID No.84/2010* captioned *Sh. Shashank Gupta v. M/s MIRC Electronics Limited*).

2. In terms of the impugned award, the learned Labour Court had accepted that the appellant was a workman within the meaning of

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By: DUSHYANT

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Signing Date: 03.08.2023

LPA 561/2023



Section 2(s) of the Industrial Disputes Act, 1947 (hereafter '**ID Act**') and his termination from the services of the respondent company (hereafter '**MEL**') was not in compliance with the provisions of the ID Act. Notwithstanding the above conclusion, the learned Labour Court declined the appellant's prayer for being reinstated with full back wages and awarded a lump sum compensation of ₹5,00,000/- in lieu of the said relief.

3. The impugned award was assailed by the appellant workman as well as MEL by filing petitions under Article 226 of the Constitution of India, numbered as W.P.(C) 2410/2015 and W.P.(C) 279/2014 respectively. The said petitions were disposed of by an order dated 20.12.2016 enhancing the compensation awarded by the learned labour court to ₹8,00,000/- from ₹5,00,000/-.

4. The appellant workman appealed the said order dated 20.12.2016 before a Division Bench of this Court (*LPA 531/2018* captioned *Shashank Gupta v. M/s MIRC Electronics Ltd.*), which was disposed of by an order dated 26.02.2019. The Division Bench Court set aside the order dated 20.12.2016 passed by the learned Single Judge and restored the writ petitions filed by the appellant as well as MEL, W.P.(C) 2410/2015 and W.P.(C) 279/2014, for a decision afresh on merits.

5. The said petitions were heard and disposed of on merits by the impugned judgment rejecting both the petitions and upholding the impugned award. The petitioner assails the decision to deny reinstatement with back wages and award of compensation in lieu of the same. In the alternative, it is also contended by the petitioner that award



of ₹5,00,000/- as compensation is meagre and unreasonable considering that the petitioner had served with the MEL and its affiliated entities for a period of sixteen years.

6. Briefly stated the relevant facts are that the appellant was initially appointed as a computer operator with ONIDA Savak Limited with effect from 20.04.1992. He was required to perform typing and clerical services in the corporate taxes department. On 01.09.1998, the appellant was transferred to an affiliated company, Monica Electronics Limited, and he served in the said company till July 2002. ONIDA Savak Limited merged with MEL in the year 2005 and the appellant was absorbed by MEL as its employee. The services of the appellant were terminated on 30.06.2008 on the ground that the same were no longer required.

7. According to MEL, the appellant's services were terminated as it had decided to shift the electronic unit of the company from Noida to Roorkee as a measure of cost cutting, which was necessary due to recessionary conditions. MEL claims that the appellant was offered one month's salary in lieu of the notice in accordance with the terms and conditions of employment but he refused to accept the notice. The notice was, thereafter, sent to him by registered post. He was also requested to accept the dues as a final settlement. But he failed to comply with the same. Consequently, MEL sent him cheques that were payable towards his dues as well as gratuity. The appellant received the amount and encashed the said cheques.



8. The appellant claims that he was on leave from 01.07.2008 to 31.07.2008 and on expiry of his leave, he was not permitted to resume his duties. He claims that his services were terminated orally without providing any reason. The appellant alleged that the Manager (HR) of MEL in a telephonic conversation pressurised him to send his resignation and settle his dues but he did not do so.

9. On 28.11.2008, the appellant served a legal notice to MEL seeking reinstatement in services. Thereafter, on 24.03.2009, the appellant raised the industrial dispute (DID No.84/2010) and filed a claim before the learned Labour Court alleging that his services were terminated by MEL without following the principles of natural justice and the mandatory provisions of the ID Act.

10. MEL filed a response to the statement of claim contesting the appellant's contention that he was a workman within the meaning of Section 2(s) of the ID Act as well as the other averments made in the statement of claim. However, to avoid further litigation, MEL also offered employment to the appellant at its unit located at Thane. But the appellant declined the said offer.

11. The learned Labour Court, on the basis of pleadings, framed the following issues for consideration:

“1. Whether the present workman is not covered under the definition of ‘workman’ as mentioned u/s 2(s) of the ID Act 1947 and if so, to what effect? OPM

2. Whether the services of workman have been terminated illegally and/or unjustifiably by the management and if so, to what effect? OPM



3. Relief.”

12. After framing of the issues, the parties led their evidences. The appellant examined himself as a witness and furnished an affidavit in the evidence. The impugned award indicates that he was cross-examined at length. The Manager (HR) of MEL was examined as a witness on behalf of the MEL and was cross-examined.

13. The learned Labour Court found that the appellant petitioner was not working in the management cadre. The nature of his duties established that he was covered within the definition of workman under Section 2(s) of the ID Act. The learned Labour Court also found that the appellant's services were terminated without complying with the provisions of the ID Act. The Court held that MEL had violated the provisions of Sections, 25G, 25N and 25O of the ID Act. However, the learned Labour Court held that the ends of justice would be better served in awarding a lump sum compensation in lieu of reinstatement. Accordingly, the learned labour court awarded a sum of ₹5,00,000/- along with interest at the rate of 9% per annum from thirty days after the publication of the impugned award till realisation. The said compensation was in addition to other dues payable to the appellant.

14. MEL filed a petition assailing the conclusion that the appellant was a workman within the definition of Section 2(s) of the ID Act. MEL contended that the appellant was employed in a managerial capacity and was engaged in advising on matters related to taxation and also drawing salary of a manager. MEL contended that the appellant had supervisory powers over the staff working under him and had full access to



information as available to a manager or a senior executive. He also had an access to the separate canteen on the first floor, which was exclusively for the managerial staff. According to MEL, the appellant was entitled to one month's salary in lieu of his notice, in terms of his appointment, and the same was paid by MEL.

15. The learned Single Judge considered the nature of duties performed by the appellant and concurred with the finding of the Labour Court that the appellant was a workman within the meaning of Section 2(s) of the ID Act. The learned Single Judge found no fault with the finding of the learned Labour Court that MEL had not followed the principles of natural justice in terminating the services of the appellant. Further MEL had failed to establish that the appellant's termination was on account of recession in the business as the same was not supported by MEL's financial statements. The learned Single Judge also found no fault with the finding of the learned Labour Court that the appellant had been discriminated against and had violated the provisions of Section 25G of the ID Act.

16. The learned Single Judge also examined the decision of the learned Labour Court to award compensation of a sum of ₹5,00,000/- and found the same to be just and proper. Accordingly, the learned Single Judge had upheld the impugned award.

17. The petitioner had assailed the impugned award and the impugned judgment to the extent that the learned Labour Court and the learned Single Judge have found the compensation of ₹5,00,000/- to be a reasonable compensation in lieu of reinstatement and back wages. It was



contended by the learned counsel for the appellant that the appellant was entitled to be reinstated in services with full back wages and award of compensation in lieu of the reinstatement was permissible only in cases where reinstatement was not feasible or there were other factors that rendered it inapposite. He submitted that merely because the proceedings extended for several years was not a good ground to reject the petitioner's claim for reinstatement with back wages.

18. We are unable to accept the appellant's contention that since his termination was found to be in contravention of Section 25F of the ID Act, it was necessary for him to be reinstated with back wages; monetary compensation in lieu of reinstatement and back wages was impermissible. The Supreme Court has in a number of decisions held that the relief of reinstatement with back wages is not automatic and the question whether the relief of reinstatement ought to be granted would depend upon the facts and circumstances of each case.

19. In *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Others: (2010) 6 SCC 773* the Supreme Court found that termination of services of the workman was illegal for want of compliance of Section 25 of the ID Act; however, the Supreme Court accepted the contention that reinstatement with back wages was not justified. The relevant extract of the said judgment is as under:

“8. Lastly, the learned Senior Counsel submitted that even if the order dated 10-2-1987 amounts to illegal termination for want of compliance of Section 25-F of ID Act, in the facts and circumstances of the case, reinstatement and back wages was not justified and at best monetary compensation to the workmen could have been awarded.



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; Uttaranchal Forest Development Corpn. v. M.C. Joshi; State of M.P. v. Lalit Kumar Verma; M.P. Admin. v. Tribhuban; Sita Ram v. Moti Lal Nehru Farmers Training Institute; Jaipur Development Authority v. Ramsahai; GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula*).

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 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 annum.”

20. The learned Labour Court has considerable discretion in examining the facts of each case and determining an apposite relief in a case where termination of the workman is found to be illegal and in contravention of the provisions of Section 25F of the ID Act. In ***Bharat Sanchar Nigam Limited v. Mohd. Jamey & Another: (2016) 14 SCC 666***, the Supreme Court declined to interfere with the decision of reinstating a workman albeit without back wages considering that the workman was engaged as a Driver. In ***Bharat Sanchar Nigam Limited and Others v. Kailash Narayan Sharma: (2014) 16 SCC 440***, the Supreme Court set aside the order of reinstating the workman whose



services were terminated in violation of Section 25F of the ID Act. The Supreme Court noted that since the termination of the workman was effected long time back, monetary compensation would meet the ends of justice.

21. The learned Single Judge has also referred to a recent decision of the Supreme Court in ***Ranbir Singh v. Executive Engineer, P.W.D.: (2021) 14 SCC 815*** wherein the Supreme Court reiterated the principle that it was not mandatory that the workman whose employment was terminated without complying with the provisions of Section 25F of the ID Act was necessarily required to be reinstated. In that case, the learned Labour Court had directed reinstatement of the workman with 25% back wages on the ground that his service was terminated without complying with the provisions of Section 25F of the ID Act. The said award was set aside by the High Court. In an appeal preferred by the workman, the Supreme Court rejected the contention that the appellant was required to be reinstated but partly allowed the appeal by enhancing the compensation.

22. In the facts of the present case, the services of the appellant were terminated in the year 2008, that is, twenty-five years ago. It is not disputed that MEL had also closed down its unit / reduced its operations in NOIDA. Thus, the appellant could not be reinstated at the place of his employment which was in NOIDA, Uttar Pradesh. The appellant was offered employment by MEL at its unit at Thane, Maharashtra but the appellant declined the same. Given these circumstances, we find no infirmity with the decision of the learned Single Judge in declining the relief of reinstatement with back wages to the appellant.



23. Insofar as the quantum of compensation is concerned, the learned Single Judge examined the compensation that would have been payable to the appellant in the event his employment was terminated by following the requirements of Section 25F of the ID Act. The learned Single Judge found that he would be entitled to payment of ₹1,96,461/-. Considering the above and other circumstances including the nature of employment and salary drawn by the appellant, the learned Single Judge found that payment of ₹5,00,000/- was adequate compensation.

24. We find no flaw with the reasoning of the learned Single Judge in finding that the amount of compensation awarded was fair and reasonable.

25. We find no ground to interfere with the impugned judgment. The appeal is, accordingly, dismissed. All pending applications also stand disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 24, 2023

RK/gsr