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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12642/2023**

Date of Decision: **25.09.2023**

IN THE MATTER OF:

M/S KAMAX CORPORATION
THROUGH ITS PARTNER SHRI RAJAT AGGARWAL
B-192 OKHLA INDUSTRIAL AREA PHASE-I
NEW DELHI-110020

..... Petitioner

Through: Mr. M.A. Khan, Advocate

Versus

RAJ KISHOR
S/O SH.JAGDISH PRASAD SINGH
R/O H.NO. 1753 JJ COLONY
MADANPUR KHADAR PHASE – III,
NEW DELHI-110076

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

CM APPL 49846/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The applications stands disposed of.

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By: PURUSHAINDRA
KUMAR KAURAV



W.P.(C) 12642/2023 & CM APPL 49845/2023 (Stay)

1. The instant writ petition is directed against the impugned award dated 28.01.2023 passed by the Labour Court, whereby, the claim of the respondent-workman has been allowed to the extent of directing the petitioner-management to pay a sum of Rs.3,00,000/- towards compensation for his illegal termination.
2. Learned counsel appearing on behalf of the petitioner-management submits that the respondent-workman himself had resigned from the services, therefore, there is no question of any illegal termination. He also submits that even in the cross examination of the respondent-workman it has come on record that he was running flour mill (*Atta Chakki*) at his residence. He, therefore, contends that the awarded compensation for a sum of Rs.3,00,000/- is on the higher side and under the facts of the present case, the respondent-workman is not entitled for any relief.
3. I have considered the submissions made by learned counsel for the petitioner and have perused the record.
4. The facts of the case would show that the respondent-workman was employed by the petitioner-management as an *Operator (Fiber Glass)* on the wages of Rs.5,250/- per month in the year 1993. It has come on record in the evidence of the petitioner-management itself that the respondent-workman was operating machines in the company. ESI card showing the employment under the petitioner-management was produced on record.
5. In paragraph no.15 of the impugned award, the Labour Court has considered the aspect of illegal termination of the services of respondent-



workman and has recorded its conclusion that the services of the respondent-workman was terminated illegally and, therefore, the same was found to be bad in law. Paragraph no.15 of the said decision reads as under:-

“15. ISSUE No.3:

Whether the services of the workman have been illegally terminated by the management?”

15.1. Onus to prove this issue was upon the workman. To discharge this onus, the workman testified that upon return from leave taken by him w.e.f. 01.07.2008 to 22.07.2008, he was taken on and allowed to perform his duty on 23.07.2008. But on 24.07.2008, when he demanded his wages for June, 2008, he was physically prevented from performing his duty and his services were illegally terminated in violation of provisions of Industrial Dispute Act. The management took the plea that the workman had voluntarily resigned from his services and took his full and final dues on 30.01.2003 and thereafter never worked for the management. However, as already pointed out, it is admitted by the management, through its partner, before the Labour Inspector, as reflected from Ex. WW1/C as well as during cross examination of the workman, in form of suggestion, that the workman was working with the management even after alleged resignation/ settlement on 30.01.2003, though it is claimed that the workman had rejoined as a contractual or casual labour. As already discussed above in issues no.1 and 2, the management failed to substantiate its plea of voluntary resignation or full and final settlement with the workman. Even otherwise, for the sake of argument, if claim of the management regarding voluntary resignation or full and final settlement with the workman and his subsequent rejoining of the services as contract/ casual labour were presumed to be true, then also, the management was required to comply with the mandatory provisions of Section 25F & 25G of the I.D. Act, 1947. It was required to give either one month notice or to tender one months notice pay and retrenchment compensation to the workman. It was further required to follow the rule of first come last go. Neither it is the case of the management that statutory requirements as mentioned above were followed nor any evidence was lead in this regard. For this reason, termination of service of workman by the management is bad in law and this issue is decided in favour of workman and against management”.

6. It is, thus, seen that even going by the argument made by learned counsel for the petitioner that the respondent-workman has rendered services



only between 02.02.1993 to 30.01.2003, the award of compensation of a sum of Rs.3,00,000/- cannot be said to be excessive or unreasonable.

7. The Hon'ble Supreme Court in the cases of ***BSNL v Man Singh***¹ has held that in all cases when the court finds the termination to be illegal and improper, the reinstatement may not be necessary as a matter of right.

8. The Hon'ble Supreme Court in ***U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey***², ***Uttaranchal Forest Development Corpn. v. M.C. Joshi***³, ***State of M.P. v. Lalit Kumar Verma***⁴, ***M.P. Admn v. Tribhuban***⁵, ***Sita Ram v. Moti Lal Nehru Farmers Training Institute***⁶, ***Jaipur Development Authority v. Ramsahai***⁷, ***GDA v. Ashok Kumar***⁸ and ***Mahboob Deepak v. Nagar Panchyat, Gajraula***⁹, held that the relief of reinstatement and back wages to the workmen is not justified in all cases and instead monetary compensation would subserve the ends of justice.

9. The Hon'ble Supreme Court in the case of ***In charge Officer v. Shankar Shetty***¹⁰, *inter alia* held that in those cases where the workman had worked on daily wage basis and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

10. Further, while placing reliance on the decision in the case of ***Jagbir***

¹ (2012) 1 SCC 558

² (2006) 1 SCC 479

³ (2007) 9 SCC 353

⁴ (2007) 1 SCC 575

⁵ (2007) 9 SCC 748

⁶ (2008) 5 SCC 75

⁷ (2006) 11 SCC 684

⁸ (2008) 4 SCC 261

⁹ (2008) 1 SCC 575



*Singh v. Haryana State Agriculture Mktg. Board*¹¹, the Apex Court reiterated the trend 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.”

11. In the instant case, admittedly, the respondent-workman has discharged services for about 10 years. In the year 2023, if a compensation for a sum of Rs.3,00,000/- is awarded to the respondent-workman, holding his services to have been illegally terminated, the same cannot be said to be a patent illegality or lack of jurisdiction warranting interference under Article 226/227 of the Constitution of India.

¹⁰ (2010) 9 SCC 126

¹¹ (2009) 15 SCC 327



12. Accordingly, the instant petition is dismissed along with pending application.

PURUSHAINdra KUMAR KAURAV, J

SEPTEMBER 25, 2023

p'ma/vg/rs

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By: PURUSHAINdra
KUMAR KAURAV