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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 02.11.2023

% LPA 730/2023 and C.M. APPL. 56552-54/2023

A. V. WORKSHOP LIMITED Appellant

Through: Mr. Gulafsha Kureshi, Advocate.

versus

BALBIR SINGH BISHT Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present LPA is arising out of judgment dated 31.08.2023 passed in W.P.(C.) No. 2623/2015 titled ***Balbair Singh Bisht V. M/s A.V. Workshop Limited & ORS*** whereby the Learned Single Judge enhanced the retrenchment compensation payable to the Respondent by the Appellant from INR 2,50,000/- to INR 4,00,000/- (the '**Impugned Order**').

2. The facts of the case reveal that the Respondent was appointed by the Appellant Company as a technician in 1988. Thereafter, in June 2011, the Respondent suffered a brain hemorrhage and proceeded on leave for a month until 01.07.2011. The Respondent continued to work for a week



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thereafter. However, his condition deteriorated and hence, the Respondent went back on leave. Subsequently, the services of the Respondent were abruptly terminated *vide* order dated 30.07.2011 with effect from 21.07.2011, and he was paid nine days' salary for the month of July, 2011.

3. Aggrieved by the actions of the Appellant Company, the Respondent raised an industrial dispute under Section 10(4A) of the Industrial Disputes Act, 1947 ('IDA'), and claimed continuity of service and INR 40,00,000/- towards Provident Fund, Bonus and other benefits.

4. A statement of claim was filed by the Respondent and the Appellant Company also preferred a reply in the mater. Accordingly, three issues were framed before the Labour Court which are as follows:

- i. *"Whether the services of the claimant were terminated illegally and / or unjustifiably by the management? Onus on Parties.*
- ii. *Whether the claimant is not a workman within its definition U/S Section 2(s) of the ID Act?*
- iii. *Whether the claimant is entitled to the monetary relief as claimed? OPW.*
- iv. *Relief."*

5. *Vide* award dated 09.01.2015, the Labour Court held that the Respondent was illegally terminated on vague grounds without affording him a right to hearing and without following the statutory provisions as contained under Section 25F (a) & (b) of the IDA. Based on this finding, the Labour Court awarded the Respondent a lump sum of INR 2,50,000 towards retrenchment compensation. The Labour Court held that the Provident Fund, bonus and other benefits could not be claimed in a labour dispute. On the



question of reinstatement, the Labour Court held that the Respondent had not prayed for reinstatement in his statement of claim and never led evidence to that effect and hence could not be granted *suo motu*.

6. Being aggrieved by the Award passed by the Labour Court, the Respondent preferred the underlying writ petition praying for reinstatement. The Learned Single Judge rejected the claim of the Respondent and held that a mere finding of illegal termination does not result in automatic reinstatement. However, in consideration of the long duration of service provided by the Respondent and to meet the ends of justice, the Ld. Single Judge enhanced the retrenchment compensation from INR 2,50,000 to INR 4,00,000/-. The operative paragraphs of the Impugned Order as contained under Paragraph Nos. 7 to 12 read as under:

“7.0. It is seen that in his claim petition before the Ld. Labour Court, the petitioner inter alia, submitted that he was illegally terminated from service and sought continuity of service besides other reliefs of provident fund, bonus etc. Thus, in effect, the petitioner sought his reinstatement.

8.0. Suffice it to state that finding of illegal termination does not mean reinstatement has to follow automatically. There has been a shift in the legal position. The Hon’ble Supreme Court in catena of cases has consistently taken the view that the relief by way of reinstatement with back wages is not automatic and may rather be wholly inoperative in a given fact/situation, even though, termination of an employee is in contravention of the prescribed procedure. Apex Court has observed that compensation instead of reinstatement in such situation would rather meet the ends of justice. In Uttaranchal Forest Development Corpn. Vs. M.C. Joshi (2007) 9 SCC 353, the Hon’ble Supreme Court held that :



“9. It is now well- settled by reason of a catena of decisions of this Court that, the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

17. While awarding compensation, a host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances.”

9.0. In a recent case of „Ranbir Singh vs. Executive Eng. P.W.D. (Civil Appeal No. 4483/2010, decided on September 2, 2021), the Hon“ble Apex Court reiterated the above view observing as under :

“6. In other words, we find that reinstatement cannot be automatic, and the transgression of Section 25F being established, suitable compensation would be the appropriate remedy.”

10.0. Thus, mere finding of illegal termination by the Ld. Labour Court did not entitle the petitioner to reinstatement. Moreso, in the light of the respondent“s plea of loss of trust and confidence. However, considering the facts and circumstances in the instant case in entirety i.e. the petitioner worked as a technician with the respondent since 1998 till July 2011, when his services were terminated, the salary he drew etc., this court is of the considered opinion that retrenchment compensation in the lump sum amount of Rs. Four lacs shall meet the ends of justice.

11.0. The impugned award is accordingly modified. Lump sum retrenchment compensation amount is enhanced from Rs. 2,50,000/- (Rs. Two Lacs & Fifty Thousand only) to Rs.



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4,00,000/- (Rs. Four Lacs only).

12.0. The petition is disposed of, accordingly.”

7. It is pertinent to note that the Appellant Company has not preferred any appeal against the award passed by the Labour Court. In the present LPA, the Appellant Company challenges the Impugned Order only to the limited extent of the enhancement of the retrenchment compensation payable to the Respondent.

8. Learned Counsel for the Appellant Company has argued before this Court that pursuant to the award passed by the Labour Court, a sum of INR 2,52,000 has been paid to the Respondent through a cheque bearing No. 265762 on 13.02.2015. Learned Counsel argues that as the Respondent accepted the compensation without any protest, the underlying writ petition should have been dismissed by the Ld. Single Judge at the outset.

9. Learned Counsel for the Appellant Company also argues that the proprietor of the Appellant Company i.e., Mr. Arul Harris became unwell in the year 2017, and on account of his illness, the turnover of the company in the financial year 2020-21 and 2021-22 was nil. It has further been stated that Mr. Harris expired on 06.10.2022 and his wife is not in a position to pay the enhanced amount to the Respondent and, therefore, the order passed by the Learned Single Judge deserves to be set aside.

10. Learned Counsel has also argued before this Court that the Learned Single Judge could not have modified the Award by enhancing the retrenchment compensation as it was not prayed for by the Respondent in the underlying writ petition. Reliance has been placed upon the judgment



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delivered by the Supreme Court in the case of *Bacchaj Nehar vs. Nilima Mandal & Ors.*, AIR 2009 SC.

11. Heard Learned Counsel for the Appellant Company and perused the record. With the consent of the party, the appeal is being disposed of at the motion hearing stage.

12. As the fulcrum of the dispute concerns the enhancement of the retrenchment compensation payable to the Respondent, it is imperative to contextualize the circumstances under which such enhancement was granted by the Ld. Single Judge.

13. At the first instance, before the Labour Court, the Respondent was denied reinstatement based on a finding that the Respondent had not claimed reinstatement. Even before the Ld. Single Judge, the Appellant Company reiterated that the Respondent could not be granted reinstatement as he had merely claimed 'continuity of service' which could not be read as 'reinstatement.' However, in the Impugned Order, the Ld. Single Judge, on an examination of the record, rejected this finding of the Labour Court and categorically held that by seeking continuity of service along with reliefs of provident fund, bonus etc, the Respondent was effectively seeking reinstatement. Therefore, the Ld. Single Judge accepted the contention of the Respondent but denied the claim of reinstatement in consideration of settled position of law concerning automatic reinstatement. Thereafter, in the interest of justice and considering the totality of circumstances including the fact of illegal termination; fact that the Respondent had claimed reinstatement even before the Labour Court; the longevity of the



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Respondent's services and the salary drawn by the Respondent during service, the Ld. Single Judge thought it appropriate to enhance the compensation payable to the Respondent to an amount of INR 4,00,000/- in lieu of reinstatement.

14. Learned Counsel for the Appellant Company has argued that the Ld. Single Judge could not have enhanced compensation as this relief was not prayed for by the Respondent. He places reliance on the case of **Bacchaj Nehar** (supra) wherein the Supreme Court held that Courts cannot grant a relief which is not prayed for; and where no pleadings exist to support that relief; and where the defendant did not get an opportunity to oppose the relief. The High Court therein had rejected the plea of title claimed by the plaintiffs over the subject property and instead granted them the relief of injunction on grounds that they had easementary rights over the subject property. The Supreme Court set aside this judgement of the High Court as the plaintiffs had never pleaded that they were entitled to easementary rights and as the facts to be pleaded and proved for establishing title are distinct from the facts to be pleaded and proved for making out an easementary right.

15. In the considered opinion of this Court, the reliance placed by the Appellant Company on **Bacchaj Nehar** (supra) is misplaced as the present case is not one wherein the relief granted is unsupported by the pleadings on record. As highlighted by the Ld. Single Judge in the Impugned Order, there has been a shift in relief provided by Courts in cases of illegal termination due to a violation of Section 25F of the IDA wherein, Courts have held that reinstatement is not a natural corollary and instead have resorted to payment



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of compensation in lieu of reinstatement. The Supreme Court in *BSNL v. Bhurumal*, (2014) 7 SCC 177 held as under:

“33. 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 mala fide 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 a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that 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...”

16. It is evident that the relief of retrenchment compensation is granted *as an alternative remedy to reinstatement* in cases where reinstatement is not justified. Thus, although compensation or enhancement of compensation is not specifically pleaded by the Respondent, as it is founded on the same pleadings which relate to reinstatement, it cannot be said that the Appellant Company did not get an opportunity to oppose it. Therefore, the Ld. Single Judge is not barred from enhancing the compensation payable to the Respondent, in the interest of justice.

17. The second prong of the Appellant Company's case is that it lacks the financial resources to pay the enhanced compensation to the Respondent. In the considered opinion of this Court, once there is a finding of wrongdoing on behalf of the Appellant Company and this finding has not been



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challenged by the Appellant Company, a lack of funds cannot be used as an excuse by the Appellant Company to evade the obligations that arise as a consequence of this wrongdoing.

18. In light of the aforesaid, this Court does not find any reason to interfere with the Impugned Order passed by the Learned Single Judge. Accordingly, the present LPA stands disposed of.

SATISH CHANDRA SHARMA, CJ

TUSHAR RAO GEDELA, J.

NOVEMBER 02,2023

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