

(2012) 12 DEL CK 0220

In the Delhi High Court

Case No : Writ Petition (C) No. 7802 of 2008

Asha Verma

APPELLANT

Vs

CEAT Ltd.

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 AD 807 : (2013) 196 DLT 287

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Anuj Aggarwal and Mr. M.M. Saquib Ali, for the Appellant; Sandeep Narain and Ms. Shalu Lal, for the Respondent

Final Decision : Disposed Off

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner impugns the award dated 23rd July, 2008 whereby though the termination of the Petitioner was held to be illegal however, she was granted a lump sum compensation of Rs. 1.75 lakhs instead of reinstatement and back wages. Learned counsel for the Petitioner states that the Petitioner had rendered 24 years of service with the Respondent and had categorically stated that she was not gainfully employed after she was terminated despite her best efforts as she attained the age of 45 years. As during the pendency of the proceedings before the learned Trial Court she attained the age of superannuation however, the learned Trial Court only awarded a paltry sum of Rs. 1.75 lakhs instead of back wages. The trial lasted for more than 17 years for no fault of the Petitioner. The case of the Respondent before the Trial Court was of termination simplicitor and thus it cannot state that the alleged misconduct of the Petitioner of habitual absenteeism be taken into consideration for computing the compensation. Reliance is placed on Devender Kumar Vs. Union of India and Others to contend that there is a difference between "misconduct reinstatement" and "illegal termination". Further in view of

the law laid down in *Banarsi and Others Vs. Ram Phal*, in the absence of cross writ petition finding of the labour Court in favour of the workman cannot be disturbed. Relying on *Nar Singh Pal Vs. Union of India and Others*, it is contended that the non-crucial evidence cannot be taken into consideration for any purpose whatsoever. Referring to *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, it is contended that if the workman is unemployed then reinstatement with back wages should be awarded. The learned Trial Court failed to consider the factors laid down for awarding back wages/compensation in *General Manager, Haryana Roadways Vs. Rudhan Singh*. The factors in favour of the Petitioner are that she worked for 24 years, was a regular employee and there is no cross-examination to this fact by the Management, 15 years of service was still left when she was terminated and despite her best efforts it was difficult to get an alternative employment at the age of 45 years. In *Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another*, it was held that the denial of back wages amounts to punishment. This Court in exercise of its supervisory jurisdiction under Article 226 can grant the back wages which have been denied by the learned Trial Court as held in *Novartis India Ltd. Vs. State of West Bengal and Others*, In *Gammon India Limited Vs. Niranjana Dass*, their Lordships held that in case of superannuation, workman is entitled to full back wages, increments, due bonus, interest and cost. Even in cases where charges were held to be proved though trivial and the workman was not on duty for 21 years, the Hon'ble Supreme Court granted a compensation of Rs. 10 lakhs in lieu of the reinstatement in *Management of Management of Aurofood Pvt. Ltd. Vs. S. Rajulu*, All statutory dues were not given at the time of termination and only retrenchment compensation was given. Thus the compensation of Rs. 1.75 lakhs be enhanced to full back wages with increments.

2. Learned counsel for the Respondent on the other hand contends that this was a case of contractual appointment whereby the Petitioner was appointed vide order dated 26th September, 1967. As per the appointment letter, the services of the Petitioner were terminable on one month's notice or salary in lieu thereof. Thus, even if no misconduct is proved the Respondent was within its rights to terminate the services of the Petitioner at any point of time with one month's notice. All statutory dues, that is, one months notice, salary etc. was given at the time of termination. The learned Trial Court in view of the long tenure of the Petitioner and the last drawn salary of Rs. 5,000/- awarded compensation of Rs. 1.75 lakhs. Reliance is placed on *Harjinder Singh Vs. Punjab State Warehousing Corporation*, *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, and *CHD Developers Ltd. Vs. Sh. Rajinder Prasad*, to contend that the scope of interference in a writ petition is very limited to see that there is no illegality or perversity committed by the learned Trial Court. For the last drawn salary of 5,000/-, a compensation of Rs. 1.75 lakhs is adequately sufficient which has been paid to the Petitioner. Reliance is also placed on *Divisional Controller, G.S.R.T.C. Vs. Kadarbhai J. Suthar*, to contend that merely because the

Management did not challenge the order of reinstatement it does not lead to the conclusion that it has accepted any illegality in the departmental proceedings. Hence the writ petition be dismissed.

3. I have heard learned counsel for the parties.

4. The Petitioner was appointed with the Respondent on 26th September, 1967 and her services were terminated on 16th August, 1991. The termination letter reads as under:

Regstd. AD & Under Certificate of Posting

16th August, 1991

Mrs. Asha Verma

"B" Division Clerk,

Delhi District

Dear Madam,

Re: Termination of service on grounds of continued ill-health.

From your attendance record, we find that you have been remaining away from work on grounds of ill-health frequently as is evident from the statement below:

The seriousness of your ill-health has been brought to your notice a year ago in our letter to you dated 22nd August, 1990, but there has been no improvement at all thereafter, and you have been remaining absent frequently for short spells and long spells on account of your ill health. It is, therefore, abundantly clear that you are suffering from continued ill-health. It is expected of an employee to remain medically fit always so that his/her utility to the Company is assured. Hence we regret we cannot continue you in our employment any longer as you have ceased to be of use to the Company.

Therefore, we hereby inform you that your services are terminated with immediate effect.

You are offered one months' salary in lieu of notice and this amount is sent to you vide our cheque no. 909592 dated 16.8.1991 for Rs. 5,056.00 (Rupees five thousand fifty six only).

Your legal and other dues are being settled separately.

Yours faithfully

Sd/-

5. Though the case of the Respondent before the Trial Court was that it was a termination simplicitor in view of the contract however, it may be noted that the order of termination was clearly a stigma. No inquiry was conducted prior to the termination regarding the misconduct of absence for short and long spells. The

learned Trial Court came to the conclusion that if the Management has terminated the services of the workman on the ground of continuous absence from duty, the Management ought to have given an opportunity to the workman to explain her absence from duty and a domestic inquiry should have been conducted by the Management prior to the termination of the services of the workman. Neither any charge sheet was issued to the workman nor was any domestic inquiry conducted. Hence the termination was in violation of the principles of natural justice and hence illegal. I find no infirmity in the order to that extent and further this finding of the Trial Court has not been challenged by the Respondent. Reliance of the Respondent on the decision of the Divisional Controller, Gujarat SRTC (supra) is wholly misconceived as in the said case it was noted that the workman admitted the legality and the propriety of the inquiry held against him. Thus the only issue before this Court is whether an adequate compensation has been granted or not to the Petitioner. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, their lordships held:

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.

6. In the present case no retrenchment compensation was paid. Since the Petitioner had rendered 24 years of service she was at least entitled to one year's salary as retrenchment compensation. Further the contention of the learned counsel for the Respondent that she was paid for the period of her absence has also been denied because that was adjusted against the leave of the Petitioner. The contention of the learned counsel for the Respondent before this Court that this was a contractual appointment is wholly erroneous as no such plea has been taken before the learned Trial Court. No doubt that an agreement was entered into between the parties, however, contractual appointment is generally for a specific period and does not continue for 24 years with stipulation that it can be terminated on one month's notice at any time. In the case in hand the Petitioner worked with the Respondent for 24 years and retrenchment compensation was not paid. The misconduct of the Petitioner cannot be a factor to be looked into for computing the compensation as contended by the learned counsel for the Respondent as the misconduct has not been proved by way of a disciplinary inquiry. Considering the length of service and the fact that no inquiry was conducted and no retrenchment compensation was paid, it is an ideal case where the Petitioner is entitled to wages till the date of her superannuation.

7. Learned counsel for the Respondent has strenuously contended that since there is no illegality in the order of the learned Trial Court awarding compensation of Rs. 1.75 lakhs and the reinstatement with back wages not being the thumb rule, this Court will not interfere in the order of the Trial Court. It may be noted that despite noting the length of service, illegal termination and the fact that no retrenchment compensation was given, the learned Trial Court awarded only Rs. 1.75 lakhs as compensation which exercise was not judiciously

performed. Hence this order requires interference. It is, therefore, directed that the Petitioner be paid full back wages from the date of termination till the date of superannuation, that is, from 16th August, 1991 to 27th November, 2007 by the Respondent. The amount be paid within eight weeks failing which it will entail an interest @ 9% per annum till the date of realization. Petition is disposed of.