
(2009) 11 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No. 7395 of 2009 (Arising out of SLP (C) No. 30550 of 2008)

Ashok Kumar Sharma

APPELLANT

Vs

Oberoï Flight Services

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : AIR 2010 SC 502 : (2009) 4 AWC 3993 Supp : (2009) 14 JT 3 : (2009) 4 LLJ 732 : (2009) 8 MLJ 1161 : (2009) 4 PLJR 191 : (2009) 13 SCALE 602 : (2010) 1 SCC 142 : (2010) 1 SCC(L&S) 20 : (2009) 15 SCR 602 : (2009) 6 SLR 448 : (2009) 10 UJ 4745

Hon'ble Judges : Tarun Chatterjee, J;R. M. Lodha, J

Bench : Division Bench

Advocate : Amitabh Chaturvedi, Nikhil Srivastav and Vipin Gupta, for the Appellant; Nikhil Goel and Marsook Bajak for Sheela Goel, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—Delay condoned. Leave granted.

2. In this appeal by special leave, the workman has challenged the judgment and order passed by the Division Bench of Delhi High Court on March 18, 2008 whereby monetary compensation of Rs. 60,000/- has been ordered to be paid by the Management to him in lieu of reinstatement and back wages.

3. The Appellant (for short "workman") was employed by Oberoi Flight Services-Respondent (for short "Management") as a loader on March 10, 1980. Allegedly on August 31, 1986 while returning from duty, the workman was found carrying 30 KLM soup spoons illegally in his shoe. The workman is said to have admitted his guilt in writing on August 31, 1986 itself and then again on the next day i.e. September 1, 1986. The Management acting on the said admission of guilt by the workman, vide order dated September 3, 1986 dismissed him from service. Having been unsuccessful in his representation and legal notice to the

Management, the workman raised industrial dispute before the appropriate Government which was referred for adjudication to the Labour Court, Delhi on June 19, 1987.

4. The workman in his statement of claim before the Labour Court set out that being a union leader, the Management hatched a conspiracy against him for his removal and obtained confession letters under threat and coercion. He also set up the plea that without holding any inquiry and in breach of the principles of the natural justice, the order of dismissal was passed by the Management. In the written statement, the Management, on the other hand, narrated the circumstances in which the workman had stolen 30 KLM soup spoons by carrying them in his shoe. The parties led evidence in support of their respective stand. The Labour Court, after hearing the parties, vide his award dated January 31, 1996 held that order of dismissal passed by the Management was contrary to law but at the same time it also held that the dismissal of the workman from the service of the Management was not unjustified. The Labour Court, however, awarded full back wages to the workman from the date of his dismissal until the date of award.

5. The workman challenged the award of the Labour Court by filing Writ Petition which was heard by the Single Judge. The Single Judge held that workman has failed to make out any ground for interference with the impugned award and, consequently, dismissed the Writ Petition on July 30, 2007.

6. Not satisfied with the order of the Single Judge, the workman preferred Letters Patent Appeal. The Division Bench held that it was difficult to believe the contention of the Management that 30 KLM soup spoons could be put in a shoe and that workman walked with the said spoons in his shoe from the work area to the security check area. The Division Bench also noticed that Management having not conducted any enquiry, the dismissal of workman without issuing him charge- sheet or a show cause notice was unsustainable. However, the Division Bench vide his judgment dated March 18, 2008 did not deem it proper to order reinstatement of the workman and instead directed the Management to pay him Rs. 60,000/- in full and final settlement of the claim. It is this part of the order which is under challenge in this appeal.

7. This Court in U.P. State Brassware Corporation Ltd. V. Uday Narain Pandey JT2005(10)SC344 held thus:

41. The Industrial Courts while adjudicating on disputes between the Management and the workman, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.

8. In the case of *Sita Ram V. Moti Lal Nehru Farmers Training Institute* JT 2008 (3)SC62 this Court considered the matter thus:

21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors there for were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. See *Jaipur Development Authority v. Ramsahai* [(2006) 11 SCC 684] ; *M.P. Admn. v. Tribhuban* [(2007) 9 SCC 748] and *Uttaranchal Forest Development Corpn. v. M.C. Joshi* [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of *Jagbir Singh V. Haryana State Agriculture Marketing Board* JT 2009(9)SCC396 albeit in the context of retrenchment of a daily wager in violation of Section 25F of Industrial Disputes Act who had worked for more than 240 days in a year and we observed thus:

7. It is true that 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 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 to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

10. It is not necessary to multiply the decisions of this Court wherein award of compensation in lieu of reinstatement and back wages has been held to be adequate and in the interest of justice.

11. In light of the aforesaid legal position, the view of the High Court that monetary compensation in lieu of reinstatement of the workman would be proper cannot be said to be unjustified. However, we find that the compensation in the sum of Rs. 60,000/- awarded by the Division Bench is grossly inadequate. Regard being had to all relevant facts and circumstances, including the nature of employment and the fact that he was a confirmed employee, in our considered view compensation of Rs. 2 lacs to the appellant by the Respondent shall meet the ends of justice. We order accordingly. Such payment should be made, after deducting the amount already paid, within six weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum on unpaid amount.

12. Appeal is allowed in part to the aforesaid extent with no order as to costs.