
(2014) 02 DEL CK 0228

In the Delhi High Court

Case No : Writ Petition (C) 2354 of 2012

Association of State Road Transport Undertaking

APPELLANT

Vs

Devender Singh

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A 2(oo)(bb) 25(F) 25F
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2014) 208 DLT 7 : (2014) 2 LLJ 106

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : J.S. Bhasin and Ms. Rashmi Priya, for the Appellant; Atul T.N., for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the Award dated March 02, 2012 in L.I.R. No. 1250/2011 unique case I.D. No. 02402C0047152002 passed by the Presiding Officer, Labour Court IX (East) Karkardooma Courts, Delhi, whereby the Labour Court has held the termination of respondent as illegal, thereby directing his reinstatement with continuity of service and full back wages since the date of his termination. The industrial dispute was referred for adjudication by the Labour Court in terms of the following reference:

Whether the termination of Sh. Devender Singh s/o Sh. Ram Kishan from service w.e.f. 15.06.1996 is illegal and/or unjustified and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/government notifications and to what other relief is he entitled and what directions are necessary in this respect?

2. In the claim petition, it was the stand of the respondent workman that he was engaged with the petitioner since September 01, 1992 as Driver and his last drawn salary was Rs. 4,637/- per month. It was the further stand of the

respondent that he worked honestly to the satisfaction of the petitioner. The petitioner did not provide him any legal facilities such as appointment letter, medical facilities, over-time etc. According to him, in the month of May, 1997, another driver junior to him was regularized in service ignoring his seniority. It is also his stand that he was issued a memorandum dated December 26, 2000 wherein it was mentioned that his services were not required after December 31, 2000. When he reported for duty on January 01, 2001 he was not allowed to join. Thereafter, by the orders of this Court he was allowed to join the petitioner but on May 31, 2001 he was again refused work by the petitioner. It was his case that he remain unemployed since his date of termination as he could not get a job despite his best efforts.

3. The petitioner contested the claim by stating that the respondent was appointed as a Staff Car Driver on daily wage basis with effect from September 02, 1992. According to the petitioner, the respondent was very arrogant and negligent in his services. It is the petitioner's case that various show cause notices were issued to him several times for which he tendered apology time and again. It was asserted that his services with the petitioner were discontinued several times and that he was on a contractual job. It was also asserted that the respondent was paid notice pay in lieu of one month's notice and he was never terminated from services but his services came to an end after expiry of the contractual period.

4. Two issues were framed by the Labour Court: the first one being the issue to be decided as per terms of reference and the second one being the relief.

5. The Labour Court after considering the evidence led by the parties, had on issue No. 1 inter-alia came to the conclusion that the termination of the respondent was without compliance of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). On the basis of such a conclusion on the issue No. 1, the Labour Court granted the relief to the respondent of reinstatement in service with full back wages and continuity of service since the date of his termination.

6. Mr. J.S. Bhasin, learned counsel appearing for the petitioner would contend that the Labour Court has erred in concluding that the termination of the respondent was bad. According to him, the engagement of the respondent as Driver was contractual and for a period of 3 months. He has drawn my attention to the office order dated April 08, 1997 in this regard. On expiry of period of 3 months on December 31, 2000, the services of the respondent were dispensed with. In view of the office order dated April 08, 1997 and memorandum dated December 26, 2000 the period of engagement having come to an end after a period 3 months, the provision of Section 25(F) of the Act would not be applicable. According to him, the provision of Section 2(oo)(bb) shall be applicable. Further, he would state that the respondent had indulged in rash and negligent driving and was also not regular in his duties. He has also drawn my attention to memorandum dated March 30, 1995 (Annexure P-12), memorandum

dated November 16, 1995 (Annexure P-13), office order dated February 28, 1997 (Annexure P-14) and note dated December 19, 2000 (Annexure P-16). According to him, the last document i.e. note dated December 19, 2000 (Annexure P-17), a note which preceded the issuance of memorandum dated December 26, 2000.

7. In sum and substance, the submission of Mr. J.S. Bhasin is that in view of serious allegations against the respondent, there was no reason he could have been retained in service. He would justify the memorandum dated December 26, 2000 issued relieving him from the service after the expiry of 3 months. He would rely upon the following judgments in support of his contention that the Labour Court has mis-directed itself both on facts and law to hold the termination as illegal and thereby directing the respondent's reinstatement with continuity in service and full back wages:

(a) Rohtas Kumar vs. Delhi Transport Corporation, Civil Writ No. 5103-33/2003 decided on August 21, 2006 by learned Single Judge of this Court.

(b) Bhagwan Das and Others Vs. University of Delhi and Others,

(c) Incharge Officer and Another Vs. Shankar Shetty,

(d) Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another,

(e) Naresh Chand Vs. The Presiding Officer, CGIT,

(f) Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.,

8. Mr. Atul T. Nagarajan, learned counsel appearing for the respondent would submit that the last appointment letter was issued on April 08, 1997. He would submit that even though the engagement, till 1997, was for every 3 months but actually the petitioner was in continuous employment of the petitioner. The respondent's engagement being continuous, provision of Section 2(oo)(bb) has no application. He would state that the petitioner was required to follow the provision of Section 25(F) of the Act which it has failed to follow and the termination of the respondent was rightly held to be illegal. He would further submit that the allegations of rash and negligent driving, and not being punctual in his duties are unfounded as no document relating to those allegations have been proved before the Labour Court. Hence, no cognizance can be taken with regard to the Annexures P-12 to P-16 filed before this Court. He has taken me through the cross examination of the respondent wherein the respondent has on a specific question with regard to the documents now being relied upon by the petitioner had stated that no such memorandums were ever issued to him. He would further submit that if the allegations were the foundation for termination, the petitioner was required to issue him a charge-sheet and conduct a regular inquiry to prove the allegations. His last submission being that the award of the Labour Court must be upheld. He relied upon the following judgments in support of his contentions:

- (a) Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Others,
- (b) Union of India vs. Ramchander & Anr. (2005) 9 SCC 365
- (c) Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari,
- (d) Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others,
- (e) Nicks (India) Tools Vs. Ram Surat and Another,
- (f) Delhi Printing and Publishing Co. Ltd. Vs. Labour Court-VII and Another,
- (g) Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others,
- (h) Municipal Corporation of Delhi Vs. Ram Kumar and Another,
- (i) Ram Narain Vs. Management of Delhi State Civil Supplies Corporation Ltd.,
- (j) Jasbir Singh Vs. Punjab and Sind Bank and Others,

9. Having considered the submissions made on behalf of the parties, on the issue of applicability of Section 2(oo)(bb) of the Act, the petitioner has not filed any office order showing the appointment of the respondent after April 08, 1997 was for every 3 months. The last appointment letter which is on record is of April 08, 1997. In the absence of any engagement letter for a period of 3 months after April 08, 1997, the contention of learned counsel for the respondent has to be accepted inasmuch as the respondent's engagement continued without any break thereafter. In other words, after the year 1997 the respondent continuously worked till December, 2000. It is not the case of the petitioner that the respondent has not worked for 240 days during this period nor any evidence has been placed by the petitioner to contend otherwise. In the given facts, the provision of Section 2(oo)(bb) of the Act has no applicability. In fact, I find from the award the finding of the Labour Court on the non-applicability of Section 2(oo)(bb) of the Act. Relevant para of the Award is reproduced hereunder:

This termination letter has been issued with the premise that the workman was a daily wager though as per the plea of the management he had already attained a temporary status. In view of a judgment in Delhi Cantonment Board (Supra) such termination is illegal. Furthermore, he was not a contractual employee and as such his services could not have been terminated in the manner quoted herein above. The provisions of Section 2(oo)(bb) of the ID Act will have no applicability in the instant case.

10. I agree with the conclusion of the Labour Court that the termination has been effected without following the provision of Section 25(F) of the Act. I find from the award that the respondent who was initially engaged as a daily wager was given temporary status, which surely is a status higher to a daily wager. Section 25(F) of the Act does not make any distinction between a part time worker, casual worker, daily wage worker, temporary worker or a regular worker.

The allegations made against the respondent lost their relevance on the grant of temporary status to the respondent.

11. Even otherwise the allegations cannot be taken cognizance of as the documents were not proved through a recognized process in law. Moreover, the Labour Court gave a satisfactory finding inter-alia, that the respondent was never confronted with the memorandums in his cross examination. In the absence of the documents having been confronted to the respondent, it could not have been relied upon for establishing the allegations. I may only point out that if the foundation of termination is the memorandums issued to the respondent, that too in the year 1997 or near about the period of termination, could not be the basis of the termination without giving opportunity to the respondent and proving the said allegations against him.

12. During the course of submissions, Mr. J.S. Bhasin had stated that the cheque given to the respondent workman was encashed by him, which precludes the respondent to challenge the termination. The cheque encashed was for an amount of Rs. 4,637/-, which is on monthly pay of the respondent during that time.

13. Encashment of the cheque which is equivalent to one month's salary, without following the provisions of Section 25(F) of the Act for grant of compensation equivalent to 15 days salary for each completed year having not been followed, would not make the termination legal.

14. I agree with the finding of the Labour Court in this respect, which is reproduced hereunder:

The mere fact that the workman encashed the said cheque, as admitted by him in his cross examination would also not non-suit him. In Narpal Singh's case (Supra) the employee had encashed the cheque given to him towards retrenchment compensation. It was held that the encashment of cheque that the appellant was a casual labour who had attained the temporary status after having putting in ten years of service. Like any other employee, he had to sustain himself, or, may be, his family members on the wages he got, the retrenchment compensation which was a meager amount of Rs. 6350/- was utilized by him to sustain himself. This does not mean that he had surrendered all his consequential rights in favour of the respondents. Fundamental rights under the constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of fundamental rights available under the constitution. Similarly, in the instant case, the manner of termination cannot be held to be legal considering the length of service rendered by the workman nor encashment of the cheque alleged to be one month's notice pay would curtail the fundamental rights of the workman.

15. Insofar as the judgments relied upon by Mr. J.S. Bhasin are concerned, I find that in "Rohtas Kumar's" case (supra) the Single Judge of this Court has held that a person does not get right for regularization merely because someone else

was regularized who was also terminated and reinstated during same period. This judgment would be of no help to the petitioner inasmuch as it is not a case of regularization. It is a case of termination of a workman who was working with a temporary status. Further, it is not the case of the respondent that he is entitled to regularization.

Insofar as the judgment in "Bhagwan Das" case (supra) is concerned, the learned Single Judge of this Court has held that when a termination of service of workman is held illegal for non-compliance of Section 25(F) of the Act, it does not entitle the workman to regularization or continuity of service. In the present case, the Labour Court has not given any direction for regularization of the services of the respondent. The position of law is, if a termination is held to be bad for non-compliance of Section 25(F), the workman would be reinstated on the same status on which the termination was effected. Continuity of service is of relevance under different labour law enactments.

Insofar as the judgment in "Shankar Shetty's" case (supra) is concerned, the Supreme Court has held that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice and thus, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable.

Insofar as the judgment in "Jagbir Singh's" case (supra) is concerned, the Supreme Court has held that the relief 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. The court held further that compensation instead of reinstatement has been held to meet the ends of justice. The court has held 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, be automatically passed.

Insofar as the judgment in "Naresh Chand's" case (supra) is concerned, the Division Bench of this Court has held that merely because the workman in the instant case continued to work for about a year after the expiry of the initial period of contract would not, in any manner improve the status of the appellants for the conditions of their appointment never came to be changed or altered in their favor.

Insofar as the judgment in "Madhyamik Shiksha Parishad" case (supra) is concerned, the Supreme Court has held that if posts are filled up on basis of qualifications and seniority as daily wage labourers, then services of person shall not be dispensed with till they were absorbed on a regular basis. The court has stated further that completion of 240 days work does not, under that law import the right to regularization.

16. The judgments relied upon by Mr. J.S. Bhasin are of relevance in the facts, only to the extent, where it is held that reinstatement must not necessarily follow when the termination is held to be bad for not following the procedure. It

can entail compensation.

17. Insofar as the judgments relied upon by Mr. Atul T.N. are concerned, the same are dealt with hereinafter:

Insofar as the judgment in "Delhi Cantonment Board's" case (supra) is concerned, the Division Bench of this Court has held that there is no distinction between permanent employee and a temporary employee and the termination of service of a workman without complying with provisions of Section 25(F) is of illegal nature.

Insofar as the judgment in "Ramchander's" case (supra) is concerned, the Supreme Court has held that sufficient work was available with the employer and had there been no termination on completion of 89 days, the labourers would have completed 240 days of continuous employment and, therefore, the labourers be re-employed with 50% back wages from the date of termination till re-employment.

In "Ghemarbhai Harjibhai Rabari's" case (supra), the Supreme Court has held that the onus and degree of proof being in employment lies on person who claims to be a workman. In the present matter the workman had no letter of appointment, and the employer failed to rebut that the workman has worked for more than 240 days in a year, and thus, the workman is entitled to reinstatement with back wages.

In "Deepali Gundu Surwase's" case (supra), the Supreme Court has held that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule.

Insofar as the judgment in "Nicks (India) Tools" case (supra) is concerned, the Supreme Court has held that the burden of proving that the workman voluntarily left the services is upon the management. The court has stated that it is not an inevitable conclusion that every time a reinstatement is ordered, full back wages was the only consequence and in cases where full back wages are legally due, the superior courts are not precluded from doing so merely because the Labour Court has on an erroneous ground has reduced such back wages. It was held further that in reducing back wages, it is not enough to generally observe that alternative job opportunities must have been available.

Insofar as the judgment in "Delhi Printing & Publishing Co. Ltd." case (supra) is concerned, the Single Judge of this Court has held that termination of service on account of non-renewal of contract of service is improper.

In "Hindustan Tin Works Pvt. Ltd." case (supra), the Supreme Court has held that full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. The Tribunal at this stage should exercise its discretion keeping in view all the relevant circumstances, but the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the

face of the record and the same should not be arbitrary, vague and fanciful but legal and regular.

Insofar as the judgment in "Ram Kumar"s" case (supra) is concerned, the Division Bench of this Court has held that nothing has been brought on record by the management to show that during that period the workman remained out of service, or was gainfully employed or had any means of subsistence and thus dismissed the petition.

In "Ram Narain"s" case (supra), the Single Judge of this Court has held that it is settled law that there is no distinction in industrial law between a permanent employee and a temporary employee. the court has stated that the workman in his evidence before Labour Court had made a categorical statement on affidavit that he remained unemployed after his services were terminated and on other hand, the management was not in possession of any material or document to show that workman was gainfully employed elsewhere and in such a view workman is directed to be reinstated in service with full back wages.

In "Jasbir Singh"s" case (supra), the Supreme Court has held that the workman was treated unfairly and unreasonably and directed to reinstate the workman with back wages, continuity of service and other consequential benefits.

18. The question which now falls for consideration is whether in the given facts the Labour Court was justified in giving reinstatement to the respondent with full back wages and continuity of service. The normal rule being reinstatement with back wages, there can be a departure from the said rule for certain good reasons. The Supreme Court in the case of Senior Superintendent Traffic, Bhopal vs. Santosh Kumar Seal & Ors. inter-alia held that the relief by way of reinstatement with full back wages is not automatic even if termination of an employee is found to be illegal or any contravention of the prescribed procedure and with monetary compensation in lieu of reinstatement and back wages in cases of such nature may be proper. The Court in the said case had granted compensation of Rs. 40,000/- to each of the workman.

19. In its latest opinion reported as Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, the Supreme Court after considering its earlier judgment had granted compensation of Rs. 1,00,000/- to the workman where the workman had worked for a period between November 01, 1984 and February 17, 1986 and who had raised industrial dispute after 6 years. The relevant portion of the judgment is reproduced hereunder:

9. In L. Robert D"souza Vs. Executive Engineer, Southern Railway and Another, this Court in para 27 held as under: (SCC p. 664)

27. ... Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25(F) of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted

categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with preconditions to valid retrenchment, the order of termination would be illegal and invalid.

What has been held by this Court in *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*,] is that Section 25(F) of the ID Act is applicable to a daily-rated worker. We do not think that there is any dispute on this proposition.

10. In *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, this Court in para 54 of the Report held as under: (SCC p. 120)

54. Mr. Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and back wages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The industrial adjudicator cannot be held to be bound to grant some relief only because it will be lawful to do so.

11. In *Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others*, , this Court, while dealing with the non-compliance with the provisions of Section 6N (which is in pari materia with Section 25F) of the U.P. Industrial Disputes Act held that the grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workmen would not automatically follow or as a matter of course. Instead, this Court modified the award of reinstatement with compensation of Rs. 30,000 per workman. In *Municipal Council, Sujampur Vs. Surinder Kumar*, this Court after having accepted the finding that there was violation of Section 25F of the ID Act, set aside the award of reinstatement with back wages and directed the workman to be paid monetary compensation in the sum of Rs. 50,000. In *Haryana State Electronics Development Corporation Ltd. Vs. Mamni*,] this Court modified the award of reinstatement passed by the Labour Court, though the termination of the workman was in violation of Section 25F of the ID Act, by directing that the workman should be compensated by payment of a sum of Rs. 25,000.

12. In *Regional Manager, SBI Vs. Mahatma Mishra*, this Court observed that: (SCC p. 734, para 12)

12. ... It [was] one thing to say that services of a workman [were] terminated in violation of mandatory provisions of law but it [was] another thing to say that relief of reinstatement in service with full back wages would be granted

automatically.

13. In Haryana Urban Development Authority Vs. Om Pal, this Court in paras 7 and 8 of the Report held as under: (SCC p. 745)

7. Moreover, it is also now well settled that despite a wide discretionary power conferred upon the Industrial Courts u/s 11A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

8. The respondent worked for a very short period. He only worked, as noticed hereinbefore, in 1994-1995. The Industrial Tribunal-cum-Labour Court, therefore, in our opinion committed an illegality, while passing an award in the year 2003, directing the reinstatement of the respondent with full back wages. Although we are of the opinion that the respondent was not entitled to any relief, whatsoever, we direct the appellant to pay him a sum of Rs. 25,000.

14. In Uttaranchal Forest Development Corporation Vs. M.C. Joshi,], this Court was concerned with a daily wager who had worked with Uttaranchal Forest Development Corpn. from 1-8-1989 to 24-11-1991 and whose services were held to be terminated in violation of Section 6N of the U.P. Industrial Disputes Act. The Labour Court had directed the reinstatement of the workman with 50% back wages from the date the industrial dispute was raised. Setting aside the order of reinstatement and back wages, this Court awarded compensation in a sum of Rs. 75,000 in favour of the workman keeping in view the nature and period of service rendered by the workman and the fact that industrial dispute was raised after six years.

15. In Madhya Pradesh Administration Vs. Tribhuban,] this Court upheld the order of the Industrial Court passed in its jurisdiction u/s 11A of the ID Act awarding compensation and set aside the judgment of the Single Judge and the Division Bench that ordered the reinstatement of the workman with full back wages. This Court in para 12 of the Report held as under: (SCC p. 755)

12. In this case, the Industrial Court exercised its discretionary jurisdiction u/s 11A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein."

16. In Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another,] this Court

stated that an order of retrenchment passed in violation of Section 6N of the U.P. Industrial Disputes Act may be set aside but an order of reinstatement should not however be automatically passed. This Court observed in paras 11 and 12 of the Report as follows: (SCC p. 578)

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See *Madhya Pradesh Administration Vs. Tribhuban*,

20. In the present case, the respondent had worked for 8 years between 1992 to 2000 and has raised the industrial dispute immediately thereafter. The reference was made in the year 2002, which ultimately culminated in the impugned award in the year 2012. It is an admitted position that the date on which he was terminated, he was drawing a salary of Rs. 4,637/-. The parties being involved in the litigation for almost 22 years wherein allegations made surely led to mistrust between them, and the respondent being 46 years of age, I am of the view that the award insofar as reinstatement with full back wages and continuity of service need to be modified by granting a lumpsum compensation to the respondent which I feel would be an amount of Rs. 2,00,000/-, to be paid by the petitioner to the respondent. I order accordingly. The petitioner shall pay to the respondent an amount of Rs. 2,00,000/- within a period of 2 months from the date of receipt of copy of this order, failing which interest @ 9% per annum would accrue on the same.

21. The writ petition is accordingly disposed of. No costs.