
(2023) 08 DEL CK 0220

In the Delhi High Court

Case No : Civil Writ Petition No. 2623 Of 2015

Balbir Singh Bisht

APPELLANT

Vs

M/S. A V Workshop Limited And Ors.

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Citation : (2023) 08 DEL CK 0220

Hon'ble Judges : Poonam A. Bamba, J

Bench : Single Bench

Advocate : Vinod Kumar Singh, Gulafsha Kureshi, Abhishek Nair, Mayur Punjabi

Final Decision : Disposed Of

Judgement

Poonam A. Bamba, J

1.0. Vide this petition, the petitioner has challenged the award dated 09.01.2015 passed by Ld. Presiding Officer, Labour Court-XIX, Karkardooma Courts, Delhi in LIR/D No. 136/2012, whereby the petitioner/workman was held to be entitled only to the retrenchment compensation and accordingly was awarded a lump-sum amount of Rs. 2,50,000/-.

2.0. Briefly stating, it is the case of the petitioner/workman that he was appointed as Technician by the management in the year 1988 and his last drawn monthly salary was Rs.24,300/- and he used to perform the duty in the Accounts Department also. He suffered brain hemorrhage in June 2011 and joined back his duties with the management on 01.07.2011 and worked upto 07.07.2011. He again proceeded on leave as his condition became worse. His services were illegally terminated w.e.f. 21.07.2011 vide termination letter dated 30.07.2011 and was paid 21 days" salary in August 2011. It is submitted that the petitioner"s services were terminated by leveling baseless allegations of theft and bungling etc. The petitioner challenged his termination and prayed that he be paid Rs. 40 lacs towards PF, bonus and other benefits. Industrial dispute was raised, which was referred to the Labour Court.

3.0. The aforesaid reference was answered by the Ld. Labour Court vide impugned award dated 09.01.2015, the relevant portion of which reads as under :

".....

15. Thus, it is clear that the services of the workman were illegally terminated on vague and flimsy grounds without assigning any reason to him for terminating his services and also without affording any opportunity to him to answer to the allegations made against him. Hence, this issue is also decided in favour of the workman and against the management.

16. The workman has sought compensation for the deterioration in his physical and mental condition as well as an amount of Rs.40 lacs towards PF, bonus and other benefits which he has not specified. It may be stated that PF and bonus cannot be claimed in an industrial dispute before the Labour Court as there are separate authorities for that purpose. As far as his claim for the reimbursement of his medical expenses are concerned, it may be stated that the workman himself admitted in the cross-examination that there was a medical insurance in his name for which the premium used to be paid by the management during his service tenure. Hence, he could have claimed the reimbursement of his medical expenses if any, directly from the insurance. The workman has further not given details as to how he arrived at an amount of Rs.40 lacs as claimed by him nor any breakup of that amount has been given . Hence, he is not entitled to the said amount, as claimed by him. Accordingly, this issue is decided in favour of the management and against the workman.

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18.The workman has claimed to be unemployed since his termination. However, in his cross-examination he has deposed that he is the only bread earner of his family and was bearing education expenses for his elder children amount to Rs.3,90,000/- per annum apart from other expenses while his annual salary was Rs.2,60,400/-. He deposed that he had been borrowing money from relatives and was also withdrawing money from his PPF account but no supporting document has been filed. It is hard to believe that the relatives of the workman would be lending such huge amounts monthly to him without any hope of repayment which shows that the workman is gainfully employment and as such is not entitled to back wages.

19.As per Ex. RWI/3, the workman received three months' notice pay along with nine days" of salary for the month of July 2021. This document has not been controverted during the cross-examination except a mere suggestion that it was a forged and fabricated document. Hence, the workman is only entitled to retrenchment compensation. Accordingly, he is awarded a lump sum amount of Rs. 2,50,000/- which shall be paid to him within 30 days of the publication of this Award failing which it shall carry an interest @ 9% per annum till the date of actual payment."

4.0. Ld. counsel for the petitioner submitted that the petitioner's challenge to the award is limited to the extent of his reinstatement. It is submitted that although, the Ld. Labour Court found that the services of the petitioner/workman were illegally terminated on flimsy grounds, the relief of reinstatement was not granted observing that the petitioner/workman has not claimed reinstatement either in the statement of claim or in his evidence filed by way of affidavit. It is further submitted that the Ld. Labour Court seriously erred in making these observations as the petitioner did seek reinstatement in his claim as well as in his evidence. Thus, the impugned award be modified to the extent that the petitioner be reinstated with back wages from the date of his termination along with all consequential benefits.

5.0. Per contra, the Ld. counsel for the respondent/management sought dismissal of this petition submitting that the petitioner did not seek reinstatement either vide legal notice or vide his claim petition filed before the Labour Court. In his claim petition, the petitioner only sought "continuity of service" which cannot be read as "reinstatement". Ld. counsel further submitted that the awarded amount of Rs. 2,50,000/- has already been paid to the petitioner by the respondent. The petitioner has accepted the awarded amount in entirety on 19.02.2015. Having received the awarded amount without any protest, the petitioner cannot now claim back wages and reinstatement, more so as the same was not even sought.

5.1. Ld. counsel for the respondent also submitted that "continuity of service" is a discretionary consequential benefit granted to the claimant only when the reinstatement is prayed for and is granted. Reference in this regard was made to the judgement dated 01.02.2007 titled as "J.K. Synthetics Ltd. vs. K.P. Agarwal, Civil Appeal no. 7657/2004". Ld. counsel for the respondent submitted that even if it is assumed for a while that the relief of reinstatement was sought by the petitioner and was not granted by the Ld. Labour Court, the respondent/management who has lost trust and confidence in the petitioner, cannot be compelled to reinstate the petitioner. (Lancer's Convent Senior Secondary School v. Jai Prakash WP (C) 6279/2011 and Francis Klein & Co. Vs. The Workmen, AIR 1971 SC 241)

6.0. Submissions made by both the sides have been duly considered.

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.

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

12.0. The petition is disposed of, accordingly.