
(2010) 10 DEL CK 0150

In the Delhi High Court

Case No : Writ Petition (C) No. 4309 of 1996

Delhi Development Authority

APPELLANT

Vs

The Presiding Officer, Labour Court No. 1 and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17B, 25F, 25H

Citation : (2011) 1 AD 648 : (2010) 174 DLT 387 : (2011) 128 FLR 250 :
(2011) 3 LLJ 565

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Anusuya Salwan, for the Appellant; Anuj Aggarwal, for the
respondent No. 3, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.—By the present petition under Article 226 of the Constitution of India, the petitioner/ Delhi Development Authority (DDA) challenges the Award dated 22.2.1996 passed by the Labour Court directing reinstatement of the respondent No. 3/workman with continuity of service and back wages except for the period from 1.11.1986 to 19.7.1988.

2. The grant of reinstatement is on the basis of the fact that the workman has served from 15.6.1983 to 14.10.1983, 15.6.1984 to 14.10.1984 and 9.1.1985 to 31.10.1986 and the impugned retrenchment is in violation of Section 25F and 25H of the Industrial Disputes Act, 1947.

3. Much water has flown since the Award was delivered on 22.2.1996. The trend of judicial opinion today is that reinstatement on account of violation of Section 25F, and even for violation of Section 25H is not automatic. Reinstatement has to be seen from the point of view of various factors such as whether the employment was in accordance with the rules or de hors the same, what is the period for which the workman was employed, the nature of employment of the

workman and various other factors. The recent decision of the Supreme Court in the case of Incharge Officer and Another Vs. Shankar Shetty, crystallizes the position in paragraphs 2 and 3 of the said judgment which read as under:

2. The only question to be considered in this appeal by special leave is with regard to the relief of reinstatement granted to the respondent by the Single Judge of the High Court of Karnataka in his judgment and order dated August 13, 2001 and affirmed by the Division Bench vide its judgment and order dated December 9, 2004 in the writ appeal. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25F of the Industrial Disputes Act, 1947 (for short "ID Act")? The course of decisions of this Court in recent years has been uniform on the above question. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court-namely, U.P. State Brassware Corporation Ltd. and Anr. v. Uday Narain Pandey; Uttaranchal Forest Development Corporation v. M.C. Joshi; State of M.P. and Ors. v. Lalit Kumar Verma; Madhya Pradesh Admn v. Tribhuban; Sita Ram and Ors. v. Motil Lal Nehru Farmers Training Institute; Jaipur Development Authority v. Ramasahai and Anr. Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. and Mahboob Deepak v. Nagar Panchayat, Gajraula and Anr. and stated as follows:

It is true that the 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 a 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 of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down 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. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

3. Jagbir Singh has been applied very recently in the case of Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors. Civil Appeal No. 3815 of 2010 decided on April 26, 2010 wherein this Court stated:

In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3

years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.

4. The Supreme Court in the case of Incharge Officer (*supra*) was also dealing with the case of daily wager who was employed in the year 1985. In the present case, this Court is also concerned with a daily wager who was retrenched in the year 1986.

5. In the present case, about 25 years have expired since the retrenchment. The operation of the Award dated 22.2.1996 was stayed by this Court on payment of 50% of the awarded amount on 3.3.1997. In the peculiar facts and circumstances of this case applying the ratio in the case of Incharge Officer (*supra*) the present is a fit case for directing compensation instead of reinstatement to the respondent No. 3/workman.

The factors which persuade this Court to grant compensation instead of retrenchment include the long period of time since the retrenchment and the Award, the fact that the workman worked only for two years where the period exceeded 240 days, no requirement of the petitioner necessarily employing the workman for any minimum number of days and so on and the fact that the workman has not worked with the employer in spite of receiving the pay every month as has been subsequently adverted to. The Supreme Court recently in a catena of judgments reported as Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, Gangadhar Pillai Vs. Siemens Ltd., , State of M.P. and Others Vs. Lalit Kumar Verma, Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, State of Uttaranchal and Another Vs. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad, C.S. Azad Krishi Evam Prodyogiki Vishwavidyalaya Vs. United Trades Congress and Another, and Official Liquidator Vs. Dayanand and Others, held that there cannot be regularization de hors the extant rules. Grant of reinstatement will not directly but can be said in a way tantamount to granting regular employment to a daily wager for the whole period although the original employment is not through a proper selection procedure and there was no requirement of employment for a fixed number of days.

In this regard, I am also guided by the fact that there is nothing on record filed by the respondent No. 3/workman as to what was his status during this period of 25 years since passing of the impugned Award, whether he is presently in employment, what is his present scale of pay and so on inasmuch as no affidavit could be called from the workman as the learned Counsel for the respondent No. 3 states that he has not been able to contact his client and he has no phone number of respondent No. 3/workman where the workman could be contacted. It seems to be quite clear that since the respondent No. 3/workman was retrenched way back in the year 1986, and being in that strata where he could not have afforded to sit at home, surely, therefore the respondent No. 3/workman may/could have been employed gainfully for this period of 25 years. It is possible that he may be gainfully employed on much better terms and to which

no light is thrown on account of the workman not contacting his Advocate - a peculiar aspect because otherwise he is receiving payment every month from the petitioner u/s 17B.

6. If the respondent No. 3/ workman was given compensation u/s 25F in the year 1986, considering that he was a daily wager, the retrenchment compensation would have worked out to about Rs. 1,000/- only. This compensation is worked out on the basis of 15 days of pay for each year since 1983 till 1986 and also pay for 30 days. Ms. Salwan, appearing for the petitioner has stated that charges payable to a daily wager by the petitioner was approximately Rs. 17/- in the year 1988. Thus 15 days wage would be about Rs. 255/-. The workman worked for just two years for the full period of 240 days and thus for two years the amount of compensation would be Rs. 510/-. To this if we add 30 days notice pay of Rs. 255/- the same would come to Rs. 765/-. Even at the very best considering the days worked in earlier years prior to 1985 and other aspects the compensation at best would only be Rs. 1,000/- calculated as per the requirement of Section 25F.

Taking into account the inflation and the return of money which the workman would have got if he would have received compensation of Rs. 1,000/- in the year 1986 and today we are in 2010, I find that the present is a fit case where considering that the money multiplies to about double every 7 to 10 years, compensation alongwith penal compensation (so to say) can at best work out to a sum of Rs. 60,000/- when multiplied from the regular payable compensation u/s 25F of Rs. 1,000/-.

7. Accordingly, in the facts and circumstances of the present case and considering the ratio of the judgment of the Supreme Court in the case of Incharge Officer (supra) the impugned Award is modified by granting a sum of Rs. 60,000/- to the respondent No. 3/workman instead of relief of reinstatement and back wages as have been granted in the impugned Award. I however make it clear that, subject to what is stated below, this sum of Rs. 60,000/- will be in addition to the amount of 50% of the Award which has already been granted to respondent No. 3/workman under the order of this Court dated 3.3.1997.

8. At this stage, It is brought to the notice of the Court that the petitioner has been complying with the provision of Section 17B of the Industrial Disputes Act, 1947 after passing of the impugned Award and monies have been regularly paid every month to the respondent No. 3/workman. Respondent No. 3/workman has been receiving approximately Rs. 621/- per month since December, 1996. Thus the workman would have already received about Rs. 1,80,000/- till date. Accordingly, there is no need for payment of any further compensation to the respondent No. 3/workman, since the workman has received in excess of Rs. 60,000/- and 50% of the Award amount, the compensation which I have awarded above. However, the compensation is treated as the amount which has been paid by the petitioner to the respondent No. 3/workman in compliance with the provision of Section 17B because in law ordinarily no recovery can be made if

the amount is paid to the workman in compliance of an order u/s 17B. No recovery will therefore be affected by the petitioner from the respondent No. 3/workman for the amount in excess of Rs. 60,000/- and 50% of the Award amount already paid. The recovery will not be effected however subject to the condition that the respondent No. 3/workman files an affidavit in this Court within a period of four weeks from today that from the year 1986 when he was retrenched, he has not been in employment of any other employer and not been receiving any salary from any other employer from that date till the date of passing of the present order. In case, the said affidavit is not filed within four weeks, then, the compensation amount will be restricted to a sum of Rs. 60,000/- plus 50% of the Award amount already paid only and the petitioner will be free to recover the excess amount paid to the respondent No. 3 because it cannot be the intention of law that workman can keep on receiving payment u/s 17B although he is also gainfully employed and receiving salary elsewhere.

9. With the aforesaid observations, the writ petition stands disposed of, leaving the parties to bear their own costs.