

(2016) 11 DEL CK 0101

In the Delhi High Court

Case No : CM No. 8004 of 2016 in W.P.(C) 6181 of 2013

Delhi Transport Corporation

APPELLANT

Vs

Jagdish Prasad

RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2017) 1 ADDelhi 73

Hon'ble Judges : Ms. Sunita Gupta, J.

Bench : Single Bench

Advocate : Ms. Latika Choudhary, Advocate, for the Petitioner; Mr. Rupesh Tyagi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ms. Sunita Gupta, J. - CM No.8004/2016

Vide this application, the applicant / respondent ? workman seeks clarification of the order dated 23.12.2015 inter alia on the ground that the petitioner corporation filed this writ petition challenging the award dated 30.04.2013 passed in DID No.475/2009 by the Presiding Officer Labour Court, Karkardooma Courts, Delhi whereby the respondent - workman was granted the relief of back wages with effect from the date of termination of service i.e. 06.12.2006 till the date of his superannuation along with continuity of service and consequential benefits. The writ petition was disposed of by this Court vide judgment and order dated 23.12.2015 whereby the findings of the Labour Court regarding holding the termination of the W.P.(C) 6181/2013 Page 2 of 8 respondent ? workman illegal was upheld. However, the award was modified by granting lumpsum compensation of Rs.5 lacs to the applicant ? workman instead of full back-wages. The applicant ? workman approached the officials of the petitioner corporation for repayment of awarded compensation as well as pension and other post-retirement benefits. The respondent / applicant was advised to fill up the relevant form for processing the pension in the concerned depot and a letter

dated 11.02.2016 to this effect was sent to the applicant ? workman by the Depot Manager of the petitioner corporation. An amount of Rs.5 lac was also transferred in the account of the respondent ? applicant on 19.02.2016. However, subsequently, when the respondent ? applicant contacted the concerned depot for submitting the relevant form for processing the pension, the officials of the petitioner corporation refused to process the same on the ground that the lumpsum compensation of Rs.5 lacs has been granted by the Court in lieu of full and final settlement of all the claims of the respondent ? workman inclusive of statutory post-retirement benefit of bonus, gratuity, etc. It is submitted that the respondent ? workman is statutorily entitled to post-retirement benefits and the petitioner corporation has no right to deny the same to the respondent ? workman. Hence the judgment and order dated 23.12.2015 requires clarification.

2. According to the non-applicant/corporation, the workman was initially out of service from 1994 to 2003 and thereafter from 2006 till the date of his superannuation i.e. more than 18 years and had taken more than Rs.5,50,246/- as back-wages in the year 2003. The Court had granted a lump-sum amount of Rs.5 lac on the ground that awarding of full wages with all consequential benefits would tantamount to unjust enrichment without contributing anything to the petitioner corporation as such the respondent ? workman is not entitled for other benefits.

3. Learned counsel appearing for the applicant ? respondent ? workman submits that the workman joined the petitioner corporation in the year 1974 on temporary basis and was made permanent on 25.05.1977. The incident in question leading to present proceedings took place on 20.06.1994. However, till that date already a period of 17 years of active service was completed in addition to 3 years of service on temporary basis. The respondent ? workman was out of service for around eight and a half years from October, 1994 till 06.03.2003 on account of illegal termination which was subsequently held to be illegal and he was reinstated. Thereafter, from 06.03.2003 till 06.07.2006, he was again in active service till he was terminated on 06.12.2006 till superannuation. As such, the workman was in active service for a period of 21 years in addition to 3 years on temporary basis. He was out of service for approximately 12 and a half years on account of previous and present illegal termination. The workman could not be granted reinstatement in service since he had already attained the age of superannuation in November, 2010. The Labour Court granted full back-wages for the intervening period i.e. 06.12.2006 till superannuation in November, 2010 which was modified to compensation of Rs.5 lacs by this Court. However, the award of this amount does not disentitle the applicant ? workman to the statutory retirement benefits i.e. pension for 10 years of active service and gratuity for 5 years of service which was already completed in 1987 much before either of the alleged incident. Reliance is placed on *Mahavir Prasad v. Delhi Transport Corporation*, (2014) 212 Delhi Law Times 503 (DB).

4. During the course of arguments, learned counsel for the petitioner corporation submitted that the corporation is ready and willing to pay gratuity amount to the workman, however, he is not entitled to any other benefits including the pension.

5. Vide award dated 30.04.2013, learned Presiding Officer, Labour Court held the termination from service of the respondent ? workman to be illegal. During the pendency of the proceedings, the workman had attained the age of superannuation. Accordingly, the Labour Court granted the relief of back-wages with effect from the date of termination of service of the workman i.e. 06.12.2006 till the date of his superannuation along with continuity of service for the said period along with consequential benefits as on the date of his superannuation. This award was only modified by this Court to the extent that instead of relief of back-wages a total sum of Rs.5 lacs was ordered to be paid to the workman.

6. The question for consideration is whether the payment of Rs.5 lacs will disentitle the workman to his statutory entitlements viz. gratuity, pension etc.

7. It is an accepted and admitted position that gratuity and pension are not bounties and an employee earns these benefits by dint of his long and continuous service. It is thus a hard-earned benefit which accrues to an employee and is in the nature of a "property". This right of property cannot be taken away without due process of law as per the provisions of Article 300A of the Constitution of India. A person cannot be deprived of his pension without following the law which is constitutionally mandated and enshrined in Article 300A of the Constitution as held in *D.S. Nakar and Ors. v. Union of India*, (1983) 1 SCC 305, *State of Jharkhand & Ors. v. Jitendra Kumar Srivastava and Anr*, AIR 2013 SC 3383. This issue also came up for consideration in *Mahavir Prasad (supra)* wherein the question was whether an employee reinstated to its position is entitled to pension and terminal benefits. The Division Bench of this Court relied upon the rule in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED)*, and others, (2013) 10 SCC 324 where it was observed and held as under:

"33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a

statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award fullback wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an

advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to herein above and cannot be treated as good law.

This part of the judgment is also against the very concept of reinstatement of an employee/workman."

Relying upon this decision, it was held that the directions to grant continuity in service mean that the petitioner was entitled for pension, gratuity etc. besides the other reliefs as claimed in that case.

8. So far as grant of gratuity is concerned, counsel for the petitioner ? non applicant had agreed to pay the same during the course of arguments. The only resistance was regarding the pension. However, in view of the discussion made above since the respondent ? workman was granted benefit of continuity of service and consequential benefits which part of the order was not modified by this Court while awarding a sum of Rs.5 lacs to the respondent ? workman, it is clarified that the applicant ? workman is entitled to post-retirement benefits in accordance with law.

9. The application is accordingly allowed.