
(2009) 03 DEL CK 0029
In the Delhi High Court
Case No : Writ Petition (C) No. 20109 of 2005

Dina Nath

APPELLANT

Vs

New Punjab Motor and Tractor Works and Another

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2009) 03 DEL CK 0029

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Roopali Beriwal, for the Appellant; Rajesh Katyal, for the Respondent

Judgement

V.K. Shali, J.—The petitioner has challenged the award dated 13th August, 2003 passed by the learned Labour Court No. IV in ID No. 25/1985 in the case titled Sh. Dina Nath v. Management of New Punjab Motor & Tractor Works. By the impugned award, it was held that the termination of services of the petitioner/workman by the respondents/management was illegal and unjustifiable as he had rendered more than 240 days service in a year and provisions of Section 25(F) of the Industrial Disputes Act, 1947 were not complied with. Accordingly, he was granted compensation of only Rs. 25,000/- by way of lump sum amount keeping in view the judgment of the Apex Court Scooters India Ltd. v. M. Mohammad Yaqub and Anr. 2001 LAB. I.C. 71. The learned Counsel for the petitioner/workman has contended that although the termination of the services of the petitioner/workman by the respondents/management was held to be illegal and unjustifiable but the order regarding the reinstatement was not passed by the learned Labour Court on account of the fact that during the pendency of the reference before the learned Labour Court itself, the respondents/management has reinstated the petitioner /workman back into service on 1st August, 1999.

2. The grievance of the petitioner/workman in the instant petition is that there is no dispute about the fact that the services of the petitioner/workman were

terminated illegally and unjustifiably on 1st September, 1984 and the award was passed on 13rd August, 2003 holding his termination to be illegal and unjustifiable and although he was reinstated w.e.f. 1st August, 1999 yet the quantum of compensation of Rs. 25,000/- granted to the petitioner/workman from the period 1984 to 1999 for almost 15 years of his service was grossly unjust, unfair and unreasonable. The learned Counsel for the petitioner/workman has drawn my attention to the averments made in the petition wherein it has been stated that at the time when the services of the petitioner/workman were terminated he was drawing wages of Rs. 900/- per month and even if the said amount, without any increment is taken to be as a base amount his total back wages at that rate for a period of 15 years would have been an amount of Rs. 1,62,000/-. In addition to this, it was urged that the petitioner/workman would have also earned bonus and other incremental benefits which he is not taking into consideration. The learned Counsel for the petitioner/workman also pointed out that even in the year 1999 at the time of reinstatement of the petitioner the wages of the petitioner/workman were Rs. 3,469/- approximately, which was almost nearly four times then the last drawn wages which he was getting at the time when his termination had taken place.

3. On the basis of the aforesaid facts, it was contended by the learned Counsel for the petitioner/workman that the amount of compensation which has been awarded by the learned Labour Court is grossly inadequate without any basis and reasons and thus suffers from perversity. It is further urged that even the judgment which the learned Labour Court has relied upon has not dealt with the question of payment of compensation in lieu of reinstatement nor has any formula been purportedly prescribed in the said judgment on the basis of which the aforesaid amount has been arrived.

4. The learned Counsel for the respondents/management has contended that the learned Labour Court has rightly in its discretion fixed the compensation of Rs. 25,000/- because the onus was on the petitioner/workman to show that he was not employed in any establishment during the pendency of the matter before the learned Labour Court. The learned Counsel for the respondents/management further relied upon the two judgments of the learned Single Judge of this Court in the case titled Management of Asiatic Air Conditioning and Refrigeration Pvt. Ltd. v. Presiding Officer, Labour Court-X and Anr. 2004 LLR 1153 and Tara Kant Mishra v. P.O.L.C. No. IX and Ors. 2005 LLR 272. On both these judgments, the learned Counsel for the respondents/management has contended that as the petitioner/workman was out of service for the last 15 years, therefore, he would have not remained unemployed for such a long time and onus was on him to show that he was unemployed which he has failed to discharge, and accordingly, the amount of compensation which has been paid by the learned Labour Court is reasonable.

5. I have carefully considered the submissions advanced by the respective sides and gone through the judgments. At the outside, the two judgments which have

been relied upon by the learned Counsel for the respondents/management in Management of Asiatic Air Conditioning and Refrigeration Pvt. Ltd. and Tara Kant Mishra (supra) the facts of the case are totally different. No doubt, there is no disputes about the proposition laid down in these two authorities that if a workman has been in litigation with the management before the learned Labour Court for a long period of time normally he would not have remained unemployed specially, in case, he is a skilled worker as was found to be in one of the cases, therefore, It was imperative that onus was put on the petitioner/workman to show that he is unemployed even for that long period of pendency of the matter before the learned Labour Court, which would entitle him for any back wages or one time lump sum compensation in lieu thereof. But the facts of the present case are slightly distinguishable. In the instant case, the services of the petitioner were allegedly terminated on 1st September, 1984 which has been held to be illegal and unjustifiable by the learned Labour Court. The reference was made by the appropriate government to the learned Labour Court on 15th April, 1985 and it was during the pendency of the reference before the learned Labour Court that on 1st August, 1999 the respondents/management took the petitioner/workman back into service. The very fact that the petitioner/workman accepted the offer to resume the duty with the respondents/management during the pendency of the matter before the learned Labour Court is indicative of the fact that the petitioner/workman was not employed anywhere. Had the petitioner/workman been employed somewhere else during the pendency of the matter before the learned Labour Court from 1984 to 1999 certainly either he would have refused the offer of the respondents/management to resume the duty or he would have been unable to accept the offer and given some excuses for the same not joining back with the petitioner/management. Prima facie, this is a clinching factor which distinguishes the facts of the present case so far as the reported cases are concerned, and accordingly, the onus had to be on the respondents/management to show that the petitioner/workman was employed in some establishment gainfully which would have disentitled to him for any back wages or one time lump sum compensation in lieu thereof. Accordingly, this submission of the learned Counsel for the respondents/management does have any merit.

6. So far as the quantum of compensation which has been given by the learned Labour Court to the tune of Rs. 25,000/- is concerned, that not only prima facie shows that the same is unjust, unfair and unreasonable but the same also suffers from perversity in as much as no reasons has been given as to how the learned Labour Court has arrived at a figure of Rs. 25,000/- to be given to the petitioner/workman. Therefore, in my view the amount of quantum of compensation fixed by the learned Labour Court is being without any reasons, the award suffers from perversity to that extent.

7. The question which accordingly now arises is the formula which ought to have been followed for the purpose of either giving him of back wages or the lump sum compensation to the petitioner/workman. I am of the view that the formula

which has been given by the petitioner/workman in para B of the petition is one way of looking at the problem. The petitioner/workman's last drawn wages were Rs. 900/-. Accepting that as a base wage without any increment or other benefit the total amount of wages which would have accrued to him on account of the fact that his termination has been held up illegally and unjustifiably. If done so the amount of Rs. 900/- will have to be multiplied firstly by 12, that will give us the total of money which he would have earned in a year and then further multiply the same by a figure of 15 being the number of years for which he remained out of service. The calculation which has been arrived at by the petitioner/workman by this formula comes to roughly Rs. 1,62,000/-. The petitioner/workman has not taken into consideration the other benefits like payment of bonus or the increments which he would have earned had he continued in the actual service for the period of 15 years. When the petitioner/workman was reinstated his salary was almost four times then the salary which he was earning at the time when his services were illegally terminated.

8. It has been contended by the learned Counsel for the respondent/management that the unit is lying closed.

9. Thus, taking the overall view of the matter the total amount of wages which the petitioner/workman would have earned for these 15 years even when he would have been given the increments etc. would have been roughly around Rs. 2 lakh taking that as a base, I feel that 50% of the amount should be just, fair and reasonable compensation which ought to be given to the petitioner/workman.

10. For the foregoing reasons mentioned above, I modify the award dated 13th August, 2003 passed by learned Labour Court No. IV to that extent that the one-time lump sum compensation which has been granted to the petitioner/workman is totally perverse and without any reason and calculation and enhance the said compensation amount to a sum of Rs. 1,00,000/-. The aforesaid amount shall be paid to the petitioner within a period of six weeks from today failing which it shall carry of interest the 7% per annum. With this modification, the award of the learned Labour Court stands modified and the writ petition is disposed of.