
(1995) 06 MP CK 0009
In the Madhya Pradesh High Court
Case No : M.P. No. 965 of 1991

Dinesh Kumar Nigam

APPELLANT

Vs

J.C. Mills Ltd. and Others

RESPONDENT

Date of Decision : 19-06-1995

Acts Referred:

Citation : (1996) 3 LLJ 120

Hon'ble Judges : Shacheendra Dwivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sacheendra Dwivedi, J.—This petition has been preferred by employee. Dinesh Kumar against the action of respondent No. 1 of terminating his service. After termination, the petitioner had approached the Labour Court and the Court found that the order of discharge dated March 25, 1980 was illegal and void, but at the same time, the learned Labour Court found vide order Annexure P/122 that as the petitioner had filed criminal cases against the Senior Officers of respondent No 1 which ended in their acquittal, he had lost the confidence of respondent No. 1. Therefore, instead of being reinstated in service, he be paid a lump sum of Rs. 35,000 as compensation. An option was also given by the Court to the employer. J.C Mills Limited that if they do not like to pay the compensation, the petitioner be reinstated with 25% of the back wages.

2. Against the order of the Labour Court, the petitioner as also employer-respondent No. I had preferred appeals before the Industrial Court against the part orders and both the appeals were decided under common order Annexure P/23, The Industrial Court thereby dismissed the appeal filed by petitioner, Dincsh Kumar but granted the part relief to the employer respondent J.C. Mills Limited, reducing the amount of compensation to Rs 20,000 from Rs. 35.000 as was ordered by the Labour Court.

3. Petitioner Dinesh Kumar as also respondent J.C. Mills Limited have preferred

separate petitions challenging the orders of the Labour Court and the Industrial Court. Petition filed by employee, Dinesh Kumar is numbered as M.P. No. 965/91 and that of ; J.C. Mills limited as 1075/91. This order shall govern the disposal of both the petitions.

4. Both the Courts below have found that the respondent's order of discharge from service i Annexure P/I, while he was taking treatment at Employees' State Insurance Hospital, with intimation to respondent was illegal and unjust. His services could not be terminated without following the due procedure and, therefore, the order has been set aside, but on facts, it was found by both the Courts below that from the action and conduct of the petitioner, who had filed the criminal cases against the Senior Officers of the employer, J.C. Mills Limited; It could be taken that he had lost the confidence of his employer. As such, instead of reinstatement, a lump sum amount was awarded.

5. The Labour Court had awarded the amount of Rs. 35,000 as compensation with an option to the employer, J.C. Mills Limited that if they wished to choose not to pay the compensation, they may reinstate the employee-petitioner Dinesh Kumar with 25% of the back wages. The Industrial Court did not concur with this part of the order and also with the compensation amount of Rs. 35,000. Holding that as the confidence was lost by the employer of the employee, his reinstatement could not be ordered and also since no reasons were assigned by the Labour Court for awarding an amount of Rs. 35,000 as lump sum compensation, petitioner Dinesh Kumar could be awarded only Rs. 20,000.

6. For awarding Rs. 20,000 as lump sum compensation the learned Industrial Court placed reliance on an authority of this Court In Shiv Mohan Singh v Sugar Factory : MP No. 685/78 wherein Rs.5,000 were awarded to the employee as lump sum compensation in lieu of his reinstatement. The Industrial Court on the ground that since the year 1978, when the said order was passed by this Court, there has been considerable price rise in the essential commodities. On the principle laid down by this Court found that amount of compensation of Rs. 20,000 to be just and reasonable and awarded the same to the petitioner instead of Rs. 35,000.

7. There is no illegality or perversity in the order passed by the Industrial Court. The Court below has found that due to the long absence from duty, the petitioner who was a permanent employee and was taking treatment at E.S.I. Hospital with intimation to employer, his services could not be terminated without holding an inquiry as absence from duty at the most could amount to misconduct. Admittedly, the petitioner was a permanent employee of respondent-employer J C Mills Limited, since the year 1968. He could not be removed from service without the required inquiry. The petitioner could have controverted the allegations if evidence was led. Industrial Court found that even if the order of discharge be taken as an order of retrenchment, as the provisions of Section 25F of the I. D. Act were not followed, the termination order could not be upheld being illegal.

8. Now, the only question that remains for consideration is whether the petitioner ought to have been reinstated or the amount awarded as lump sum compensation in lieu of his reinstatement is just and proper and according to law.

9. It is well settled that where an employee has lost the faith and confidence of the employer, his reinstatement cannot be directed by the Court. An employer cannot be compelled to take work from an employee where his job involves the confidence of the employer. The petitioner had filed the criminal cases against the Senior Officers of the employer and those cases were found by Courts to be unsustainable. With this conduct, the petitioner has rightly been taken by the two Courts below to have lost confidence of his employer. For the determination of the loss of confidence each individual case would depend on its own facts. In such a situation, both the Courts below have rightly found the petitioner to be entitled to lump sum compensation in lieu of his reinstatement. The reasoning adopted by Industrial Court in fixing the compensation amount at Rs. 20,000 it has exercised the discretion legally and reasonably. The order of the Industrial Court does not call for any interference from this Court on the writ side.

10. On the foregoing discussion, both the petitions MR Nos. 965/91 and 1075/91 fail being without substance and are accordingly dismissed. However, in the peculiar facts and circumstances of the case, the employer J.C. Mills Limited petitioner of M.P. No. 1075/91 is saddled with the cost of the petitioner, which is quantified at Rs. 1,000.

Ordered accordingly.