

(2013) 09 DEL CK 0382

In the Delhi High Court

Case No : Writ Petition (C) 1929 of 2000

Gujarat State Export Corporation Ltd.

APPELLANT

Vs

Mukesh Tyagi and Another

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

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

Citation : (2013) 09 DEL CK 0382

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Suryakant Singla, for the Appellant;

Final Decision : Disposed Off

Judgement

A.K. Pathak, J.—By this writ petition under Article 226 of the Constitution of India, petitioner has challenged the Award dated 12th November, 1999 passed by the Industrial Tribunal, II, Tis Hazari, Delhi whereby petitioner has been directed to reinstate respondent no. 1 with full back wages as per the Minimum Wages Act, 1948 applicable to the respondent and fixed by the Government from time to time. Petitioner was also directed to pay the wages within three months failing which to pay interest @ 12% per annum on the accumulated wages. Respondent no. 1 claimed that he was engaged by the petitioner as a Typist on 8th September, 1987. He continued to work with the petitioner for a period of one and a half year when his services were illegally terminated on 16th April, 1989. His last drawn wages were Rs. 900/- per month. His services were terminated when he demanded his legal entitlements, i.e., wages for weekly holidays and other gazetted holidays as well as over time for the period 15th March, 1988 to 30th September, 1988. Demand notice dated 15th May, 1989 served by respondent no. 1 on the petitioner, did not bring any fruitful results, thus, respondent no. 1 approached the Labour Department, Govt. of NCT of Delhi for redressal of his grievances which resulted in reference of disputes by the

Secretary (Labour) to Industrial Tribunal in the following terms:-

Whether the termination of services of Shri Mukesh Tyagi is illegal and/or unjustified and if so, to what relief is he entitled and what directions are entitled and what directions are necessary in this respect?

2. Petitioner filed written statement and opposed the claim of respondent no. 1. Petitioner claimed that respondent no. 1 was engaged as a casual worker for a specific period on 8th September, 1987 on daily wages. He was engaged as a Typist. Services of respondent no. 1 were terminable at any time or on the expiry of specified period. Representative of petitioner at Delhi could have recruited the staff only on casual and ad hoc basis. Petitioner was having a pavilion for exhibition in Pragati Maidan, New Delhi wherein under the various schemes of Government, exhibitions used to be held for public from time to time. Office of the petitioner at Delhi was purely a temporary office and the staff was deputed on temporary posts on daily wages. Whenever the exhibition used to be over the services of the temporary staff used to be automatically terminated. Respondent no. 1 was also engaged in connection with the exhibition work. Respondent no. 1 joined as a regular B.Com student in a college affiliated with Delhi University, therefore, used to come late in the office. He also used to work unauthorizedly, with Karnataka Government Pavilion at Pragati Maidan against payment of wages. In any case, when the work of the petitioner was over respondent no. 1 was informed in the first week of March, 1989 that his services would not be required after 15th April, 1989. Delhi branch of the petitioner was practically closed down as it decided to operate from Gujarat Office only.

3. Issues were framed on 27th May, 1992. Thereafter, parties were afforded opportunity to lead evidence. Upon scrutiny of evidence led by the parties Industrial Adjudicator has, inter alia, returned a categorical finding that services of respondent no. 1 were terminated illegally. It was also held that respondent no. 1 had succeeded in proving that he had continuously worked with the petitioner for more than 240 days in a year preceding his termination. Industrial Adjudicator was of the view that since the services of respondent no. 1 were terminated without complying the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, hereinafter referred to as "the Act") termination was void ab initio. Judicial notice of the fact that petitioner had closed down its activities at Pragati Maidan, New Delhi was also taken but it was observed that documents placed on record indicated that closure of Gujarat Pavilion was on 12th February, 1996 but services of respondent were terminated in the month of April, 1989; meaning thereby that petitioner had not closed down his activities at the time of termination of services of respondent no. 1. Industrial Adjudicator concluded that since provisions of Section 25F of the Act were not complied with, the termination was bad in law and respondent no. 1 was entitled to be reinstated with full back wages.

4. Industrial Adjudicator has returned the finding of facts upon scrutiny of evidence led by the parties and, in my view, the same cannot be interfered with

by this Court in exercise of its powers of judicial review under Article 226 of the Constitution of India on re-appreciation of evidence. It is not the case that findings are based on no evidence. If findings are based on some evidence the same cannot be interfered with. During the course of hearing learned counsel for the petitioner has failed to point out any manifest error of law or jurisdiction in the findings of facts returned by the Industrial Adjudicator.

5. However, I find force in the contention of learned counsel that reinstatement with back wages is not an automatic consequence wherever termination is held illegal on the ground of non-compliance of Section 25F of the Act or otherwise. Grant of such relief depends on facts of each case. Lump sum compensation in certain cases depending upon the length of service and other incidental circumstances is an appropriate relief which can be accorded to the workman. In this case petitioner was having its office at Pragati Maidan, New Delhi for holding exhibitions, which obviously was not a permanent feature. Respondent no. 1 was engaged as a casual worker and worked only for one and a half year. The Award was passed in the year 1999, i.e., after 9 years of termination. In these circumstances, in my view, the compensation would have been the appropriate relief to meet the ends of justice more so when judicial notice of the fact has been taken by the Industrial Adjudicator about closure of Delhi office.

6. In *Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh*, , Supreme Court has taken the similar view and held that reinstatement of workman with continuity of service and 25% of back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000/- (Rupees Fifty Thousand Only) shall meet the ends of justice. In the said case, workman had worked for about eight months. The Supreme Court referred to several judgments for taking a view that reinstatement was not automatic, merely because the termination was found to be illegal or in contravention of Section 25F of the Act. In *Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar*, Supreme Court held thus, "grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic". A Single Judge of this Court in *Sub Divisional Officer Vs. Babu Lal and Others* held that reinstatement of workman with 25% of back wages, who had worked for three years was not justified and awarded compensation of Rs. 1 lac in lieu of reinstatement and back wages.

7. In *Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others*, Apex Court held thus, "In the last few years it has been consistently held by the Supreme Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate." In the said case, keeping in mind that workmen were engaged as daily wagers about 25 years back and they worked hardly for two or three years, relief of reinstatement with back wages was not found justifiable and instead

monetary compensation for Rs. 40,000/- (Rupees Forty Thousand Only) was considered sufficient to meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, Supreme Court held thus, "that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F 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." In the said case, Supreme Court awarded Rs. 50,000/- (Rupees Fifty Thousand Only) as compensation keeping in mind the total length of service rendered by the workman was short and intermittent. In the light of above discussions, impugned Award is modified to the extent that petitioner shall pay Rs. 60,000/- to the respondent towards compensation. Writ petition is disposed of in the above terms.