
(2007) 05 DEL CK 0008

In the Delhi High Court

Case No : Writ Petition (C) No. 4175 of 1998

Haryana Roadways Depot

APPELLANT

Vs

Gopi Chand and Others

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2007) 2 ILR Delhi 920

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : G.S. Chouhan, for the Appellant; Nidhi Bisaria, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The present petition is directed against the award dated 3rd September, 1996 passed by the Presiding Officer, Labour Court whereunder it was held that the termination of services of the respondent workman by the petitioner management was illegal and unjustified being in contravention of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") as neither any notice was served on the respondent workman, nor any retrenchment compensation was paid to him, and Therefore, the workman was held to be entitled to reinstatement with full back wages and continuity of service.

2. Before proceeding with the case on merits, it is appropriate to record the facts of the case in brief. The respondent workman was appointed as a Helper/ Chowkidar by the petitioner management at its Delhi depot on 9th July, 1982 and continued to work at such post for a period of about five years, when his services were terminated by the petitioner management on 10th September, 1987. The respondent workman raised an industrial dispute against the termination of his services and filed his statement of claim before the Labour Court. In reply, the petitioner management stated that the respondent workman was appointed only in the year 1985, and since he had started absenting himself from work, his

services were not extended beyond 10th September, 1987. On the basis of the material placed on record and the pleadings of the parties, the learned Presiding Officer came to the conclusion that there was no abandonment of job by the respondent workman and since it was found that he had worked with the petitioner management for 240 days continuously in the year preceding the date of termination of his services, the petitioner management could not have terminated his services without complying with the provisions of Section 25-F of the Act. By the impugned award, the termination was held to be illegal for such non-compliance and the respondent workman was directed to be reinstated with full back wages and continuity of service.

3. It is pertinent to mention at the very outset that although the petitioner management had filed an interim application seeking stay of the operation of the impugned award, vide order dated 16th December, 1999, operation of the award was stayed only so far as it related to back wages, but not with regard to reinstatement. As a result, the respondent workman was reinstated by the petitioner management in the year 1999, during the pendency of the present writ petition. Therefore, as on date, challenge to the impugned award is limited to the extent of the grant of full back wages to the respondent workman. It may also be noted that during the pendency of the present proceedings, the respondent workman expired in the year 2004 leaving behind his widow, who has been impleaded as his legal representative.

4. Learned Counsel for the petitioner management stated that the present trend of judgments has been that back wages is not a necessary consequence of a termination order being found to be illegal or unjustified. It was stated that since the workman was merely a daily wager, his appointment not being according to the constitutional scheme of appointments and he having served the petitioner management for a short period only, he does not deserve to be paid full back wages. Reliance in this regard was placed on the judgments rendered by the Supreme Court in the following cases:

- (i) General Manager, Haryana Roadways Vs. Rudhan Singh,
- (ii) U.P.S.R.T.C. Vs. Mitthu Singh,

5. On the other hand, learned Counsel for the respondent workman supported the impugned award and stated that there was no such illegality or infirmity in the award which merits interference by this Court. It was stated that since the termination of the workman itself was held to be illegal, there was nothing wrong with the relief of reinstatement with full back wages, as granted in the present case.

6. Counsel for the respondent workman countered the grounds taken in the petition wherein reliance was placed on the judgment rendered by the Supreme Court in the case of Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors. reported as 1997 5 AD SC 196, by stating that the said judgment is not applicable to the facts of the present case, as unlike in said case, the respondent

workman in the present case was never appointed for need based work. In support of her contention that the respondent workman is entitled to receive full back wages, counsel for the respondent workman referred to the following judgments:

(i) Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another,

(ii) Mohan Lal Vs. Management of Bharat Electronics Ltd.,

7. I have heard the counsels for both the parties and have perused the pleadings and the material placed on record. As has been mentioned above, the respondent workman was reinstated in the year 1999 by the petitioner management pursuant to the directions passed in the impugned award. Therefore, the only issue which arises for determination is limited to the extent of back wages that ought to be granted to the respondent workman.

8. As a discretionary element is involved in the payment of back wages, it has to be dealt with depending upon the facts and circumstances of each case and no straight-jacket formula can be evolved. Much water has flown since the time when the courts as a usual norm granted full back wages upon reinstatement. It is no longer rest integra that back wages are neither the natural consequence, nor the automatic relief on the grant of reinstatement. Reliance in this regard can be placed on the judgment of the Apex Court in the case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , wherein it has been observed as under:

Para 12: Before advertng to the decisions relied upon by the esteemed counsels for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/ or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

9. Similar view was taken by the Supreme Court in the case of Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, the relevant extract of which is being reproduced as under:

We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary

for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

10. The court also draws support from the judgment of the Supreme Court in the case of General Manager, Haryana Roadways (*supra*), wherein while dealing with the question of back wages to be granted to a daily wager in case his services were terminated in violation of the provisions of Section 25-F of the Act, the Supreme Court held as below:

Para 8: There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.

11. In the present case also, considering that the nature of job being performed by the respondent workman was that of a Helper/Chowkidar, it is difficult to perceive that he must have been sitting idle from the date of the termination of his services till the date of his reinstatement. It is to be kept in mind that the respondent workman was appointed with the petitioner management merely as a daily wager, and his appointment was not in accordance with the constitutional scheme of appointments and also that he had contributed nothing to the petitioner management from the date of his termination till the date of his reinstatement in service, i.e. for almost 12 years. However, what can also not be lost sight of is the fact that the termination itself was per se illegal and unjustified, being in violation of the provisions of Section 25-F of the Act, and that the service of the respondent workman was terminated for no fault of his.

12. Thus, having regard to facts and circumstances of the present case and arriving at a golden mean, it is found just, fit and appropriate to limit the back wages payable to the respondent workman to the extent of 70%, from the date

of retrenchment, i.e. with effect from 10th September, 1987, to the date of his reinstatement. The petitioner management is directed to pay the said amount to the respondent within 4 weeks from today. Accordingly, the award is modified and the writ petition is allowed to the aforesaid extent. No order as to costs.