

(2007) 01 DEL CK 0142

In the Delhi High Court

Case No : Writ Petition (C) No. 14932 of 2004

Indian Hydraulic Industries Pvt. Ltd.

APPELLANT

Vs

Kishan Devi and Bhagwati Devi and Others

RESPONDENT

Date of Decision : 03-01-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2007) 94 DRJ 31 : (2007) 1 ILR Delhi 219 : (2007) 3 LLJ 55

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : P.K. Malik, for the Appellant; Manish Malhotra, for R-1 and A.K. Gupta, for R3 and R4, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 24.9.2001 passed by the Labour Court-VIII, Karkardooma, Delhi directing the petitioner to reinstate the respondents with continuity of service and 50% back wages.

2, Briefly the facts are that the respondents Kishan Devi and Bhagwati Devi raised an industrial dispute against the petitioner to the following effect:

Whether the services of Smt. Kishan Devi and Smt. Bhagwati Devi have been terminated illegally and/or unjustifiably by the management, if so, to what relief are they entitled and what directions are necessary in this respect.

3. While the contention of the respondents was that they were working as helpers with the petitioner management at a monthly salary of Rs. 750/- p.m. each, the stand of management was that there was no woman helper in their factory and both the respondents were working as part-time sweepers. They used to come for sweeping the floors only for two hours a day, at the time of opening of factory and after finishing their work used to go. They did not work under supervision of anyone. Both of them stopped coming to the office of their

own. They were not the employees of the petitioner. No appointment letter was issued to them. All employees of the petitioner were covered under EPF & ESI. Regular inspection of the petitioner's factory used to take place by Labour Authorities and regular attendance of all the employees used to be marked. Both the respondents were merely contract employees who were engaged for cleaning of the floors. There was no termination of their services.

4. The Tribunal came to the conclusion that even if the employees were part-time employees and were working as sweepers they were "workmen" within the definition of Section 2(s) of the Industrial Disputes Act. They were not obliged to work for the whole day in order to become a "workman". Their services were terminated without following the procedure u/s 25F, Therefore, the termination was illegal. Assuming the workmen had absented from the duty without any intimation. the management was supposed to conduct a departmental enquiry against the employees. Since, no enquiry was conducted the abandonment of services could not be inferred. The Tribunal, directed reinstatement with 50% back wages.

5. It is now settled law that even if the termination of a person is held illegal, the Labour Court is not supposed to direct reinstatement along with full back wages and the relief can be moulded according to facts and circumstances of each case. The Court has to adopt a pragmatic approach and take into account the allegations made by the work-women, the nature of contribution by the work-women to the industry, the time gap and averments made about the unemployment and proof of unemployment as the relevant factors to be considered in such cases. The Labour Court can allow compensation to a workman instead of reinstatement and back wages. Undisputably, both the work-women were considered as part-time employees by the Tribunal. Both were working for two hours per day for cleaning and sweeping of floors. Obviously, the rest of the time of the day was being utilized by the work-women for similar work at other places. They could not be said to be unemployed in the sense as of a full time worker is rendered unemployed. In *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, , Supreme Court observed as under:

When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.

6. In *Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another*, , the Supreme Court held that in the event of order of dismissal being set aside, reinstatement with full back wages, was a usual result earlier but now with the passage of time, it has come to be realized that industry was being compelled to pay the workman for a period during which he hardly contributed little or nothing at all, for a period that was spent unproductively, and as a result the workman was being compelled to go back to a situation which prevailed many years ago when he was

dismissed. It was necessary to develop a pragmatic approach to the problems dogging industrial relations. In *K.C. Sharma Vs. Delhi Stock Exchange and Others*, , the Supreme Court observed that where there was loss of confidence between employer and employee, compensation in lieu of reinstatement and back wages, shall be a proper relief. In *H.U.D.A. Vs. Jagmal Singh*, , the Supreme Court held that the respondent who was appointed only as a daily wager and not a permanent employee of the appellant, cannot claim any right to the post in question and no right had accrued to him to claim any benefit from the appellant.

7. In the present case looking into the fact that the respondents were part-time employees working only for two hours a day and had absented from duty of their own, I consider it a fit case where compensation should have been awarded by the Labour Court instead of reinstatement and back wages. I consider that a compensation of Rs. 36,000/- to each work-woman shall meet the ends of justice. The writ petition is allowed to this extent and the relief granted by the Labour Court is modified and it is directed that in lieu of reinstatement and back wages, a compensation of Rs. 36,000/- be paid to the each work-woman. This amount has already been paid to the respondents as per record, under the directions of this Court. No order as to costs.