
(2008) 04 DEL CK 0191

In the Delhi High Court

Case No : Writ Petition (C) No. 1400 of 2008

Kamla and Others

APPELLANT

Vs

Director of Social Welfare

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25F, 33C

Citation : (2008) 3 LLJ 535 : (2009) 2 SLR 302

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : H.R. Kapur, for the Appellant; Manpreet Kaur, for V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—Smt. Kamla, the petitioner in this case was appointed as House Aunt w.e.f. June 3, 1996 with the respondent/management. Her services were terminated by the respondent on December 13, 2001. The petitioner approached the Labour Court. The Labour Court vide its order dated May 7, 2007, awarded a compensation in the sum of Rs. 24,650 in lieu of reinstatement of the job, continuity of service and back-wages as claimed by the petitioner. Consequently, the petitioner filed the instant petition with the prayers that the order of the Labour Court be set aside, the petitioner be ordered to be reinstated and the respondent be directed to pay back-wages to her.

2. I have heard the counsel for the petitioner at the admission stage. Learned Counsel for the petitioner vehemently argued that the services of the petitioner were illegally terminated. He has also drawn my attention towards cases in Lachman Das and Anr. v. Indian Express Newspapers (Bombay) Pvt. Ltd and Anr. 1977 Lab IC 823 and the order passed by the Division Bench of this Court in case Department of Social Welfare and Ors. v. Smt. Maya and Ors. in WP(C) No. 6687/2002 decided on July 19, 2006. The last authority was also cited before the

learned Labour Court. The said authority was discussed, and relied upon by the Labour Court. There was hardly any need to cite this authority before this Court. In the first authority in *Lachman Das and Anr. v. Indian Express Newspapers (Bombay) Pvt. Ltd. and Anr.* (supra) it was held:

8. The next question is whether the petitioners can be allowed to take up this stand in the writ petition. There are two objections to their doing so. Firstly, the relief sought by the petitioners is in the nature of certiorari. It has to be based on the record of the Additional Labour Court. Since the question of retrenchment did not figure in the said record, it would be unfair to the Additional Labour Court that its award, should be quashed on a ground which had not been raised before it. Secondly the learned Counsel for the petitioners before us prays that the termination should not only be quashed but the petitioners should also be, reinstated with entitlement to receive back-wages from the date of the termination. They thus want to be paid their wages for more than four years though during, that period they did not work for the employer. Their position in this respect is similar to those petitioners who approach this Court under Article 226 too late without justification for delay. Such a delay on the part of a Civil servant has been held by the Supreme Court to be fatal to the success of his writ petition because of his attempt to get arrears of salary for the period for which he has not worked for the employer; *Kamini Kumar Das Choudhury Vs. State of West Bengal and Others*, . The delay on the part of the petitioners to raise the question of retrenchment from 1972 to 1976 cannot be condoned because they are thereby seeking to get an unfair advantage of being paid for four years without having done any work for the employer.

9. If the petitioners wanted that the termination of their services was an illegal retrenchment then they should have taken up that stand. If the Additional Labour Court had upheld that stand then there would have been some justification for saddling the employer with the wages for the period for which they did not work. *The State Bank of India Vs. Shri N. Sundara Money*, Alternatively the petitioners could have simply applied u/s 33-C of the Industrial Disputes Act, 1947 for payment of retrenchment compensation calculated in accordance with Section 25-F(b) of the said Act. Unfortunately they did not pursue these proper remedies but took up a wrong course of action. We cannot help them if they fail in it. Even now the petitioners may apply for payment of retrenchment compensation u/s 33-C and succeed in getting it if they can satisfy the appropriate authority that the delay in making such application was due to the time which they have spent in getting the industrial disputes referred for adjudication and then the time spent in adjudication proceedings and in filing the writ petition to this Court and this was sufficient cause for the condonation of delay.

3. Instead of touching the heart of the problem, the learned defence counsel just skirted it. The above said authority rather supports the case of opposite party. The Labour Court observed:

15. In the present case undisputedly the workman was employed with the management. She has claimed that she was employed with the management with effect from June 3, 1996 and this fact is not specifically denied in the written statement and shall be deemed as admitted. The termination of the services of the workman on December 13, 2001 is also admitted. Therefore, undisputedly the workman has completed more than 240 days of service preceding the date of termination of her services. The management has levelled¹ allegation of misconduct against the workman but undisputedly no show cause notice or charge-sheet was issued to her nor any domestic inquiry was got conducted against her before termination of her services nor the management has claimed any opportunity to prove charges of misconduct against the workman here before this Tribunal. Therefore, it is a case of retrenchment as defined in Section 2(oo) of the Act and not the case of a punitive action taken by the management against the workman. There is no dispute between the parties that provisions of Section 25-F of the Act are not complied by the management rendering the termination of services of the workman by the management illegal as the workman had already completed more than one year's continuous service with the management as on the date of termination of her services." The above said finding supports the petitioner.

4. The Labour Court also relied upon the celebrated authority in U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, where the Apex Court made the following observations at p. 499 of LLJ:

17. Before advertng to the decision relied upon by the learned Counsel 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 realising 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.

5. The Labour Court also relied upon Division Bench judgment of this Court in Lords Homeopathic Laboratories Private Ltd. v. Ms. Lissi Unnikuhju and Ors. 2006 IV AD (Delhi) 739 .

6. Similar view is taken by the Apex Court in Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, ; Rattan Singh v. Union of India, (1997) 11 SCC 396; Haryana State Electronics Development Corporation Ltd. Vs. Mamni, and Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. Civil Appeal No. 1322/2008 (arising from SLP (C) No. 17711 of 2004) decided on February 15, 2008.

It must be borne in mind that there is a delay of six years in raising the above said industrial dispute. The authority cited by the petitioner as already discussed

above does not create propitious conditions for her. It appears that the Labour Court has got sympathy for the petitioner, who is a widow lady and granted the above said compensation which rather appears to be on the higher side.

7. In the light of the above discussion, I find no force in the writ petition, the same is therefore dismissed in limine.