
(2006) 02 DEL CK 0116
In the Delhi High Court
Case No : LPA 1647 of 2005

Lords Homeopathic Laborites Pvt. Ltd. APPELLANT
Vs
Ms. Lissy Unnikunju and Others RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Citation : (2006) 88 DRJ 243

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Rajesh K. Gogna and Afzal Ahmed, for the Appellant; H.K. Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 05.05.2005.

2. Heard learned counsel for the parties and perused the record.

3. The facts have been set out in detail in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The Respondent / workmen (writ petitioners) had filed the writ petition challenging the award of the Labour Court dated 21.11.2002 whereby the learned Court awarded a sum of Rs.5,000/- per year aggregating Rs.25,000/- to each of the petitioners in lieu of reinstatement and back wages.

5. The petitioners were working with the respondent and their services were terminated with effect from 17.1.1997. They raised an industrial dispute which was referred to the Labour Court. The Labour Court held that the termination was illegal and granted compensation to the workmen.

6. Aggrieved, three of the workmen concerned filed the writ petition which was allowed by the learned Single Judge, and hence this Writ Appeal.

7. The petitioners in the writ petition alleged that when the termination order is set aside, the normal rule is to grant reinstatement with full back wages. However, it is alleged, the Labour Court has departed from this rule and granted only compensation and not reinstatement to the workmen vide Annexure P1 to the writ petition.

8. The management alleged in the written statement before the Labour Court that the workmen had absented from duty without intimation and without applying for leave although notices were sent through registered A. D. post on 20.7.1997, 12.7.1997 and 20.8.1997, whereby they were called upon to join their duties failing which it would be presumed that they were no longer interested in their job and the management would be at liberty to terminate their services without further notice.

9. It was further alleged that in spite of these notices, the management took a lenient view and did not terminate their services and the workmen were given further opportunities to respond to the notices. However, they avoided service of these notices and also did not join duty. All these notices were returned by the post office as "Undelivered". It was also alleged that the conciliation officer was also requested in writing to direct the workmen to join their duties. The workmen allegedly came to the place of work in the afternoon of 6.8.97, but they did not report for duty on the next day and thereafter on any other day.

10. Five workmen settled their disputes with the management, and now there are only three contesting workmen.

11. A perusal of the award of the Labour court shows that the case of the workmen was that their services were illegally terminated, and the case of the management was that the workmen were duly informed but were not responding to the notices sent to them. Surprisingly, instead of deciding this controversy, the Labour Court held that it cannot go into the question whether the workmen had themselves remained absent from duty, and it had to be presumed that the services of the workmen were terminated in view of the reference order. Having said so, the learned Single Judge held that the termination order was illegal.

12. To say the least, it was a dissatisfactory way of deciding the dispute. The Labour Court should have applied its mind to the controversy and not avoided it. As stated by the management, the workmen remained absent and did not join their duties despite several notices sent by the management. It appears that the workmen had gone on strike and had not reported for duty despite several call letters to them. No doubt, the workmen disputed the receipt of the notices, but there is no adjudication by the Labour Court on this controversy, and instead it proceeded to hold that the termination was illegal.

13. Be that as it may, we are of the opinion that it was open to the Labour Court to award compensation instead of reinstatement on the facts of the case.

14. There is no hard and fast rule that when the termination order is set aside,

reinstatement with full back wages has invariably to be granted. It all depends on the facts of the case.

15. In a large number of cases, this Court has granted compensation instead of reinstatement vide *Model School for Mentally Deficient Child v. Mukh Ram Prasad Maurya and Ors.* 109 (2004) DLT 292; *Suraj Pal Singh and Ors. v. P. O. Labour Court and Anr.* 2002 v. AD (Delhi) 706 ; *M/s Harsha Tractors Ltd. Vs. Secretary, (Labour) and Others,* ; *Pal Singh Vs. National Thermal Power Corporation Limited,* ; *Sain Steel Products v. Naipal Singh and Ors.* 2001 LLR 566; *R. Mugum and Ors. v. The P. O. Labour Court and Anr.* 2000 VI AD (Delhi) and *State Bank of India v. J. R. Surma* 2002 VII AD (Delhi) 325.

16. Whether compensation should be awarded or reinstatement is in the Tribunal's discretion vide *United Commercial Bank Ltd. Vs. Secretary, U.P. Bank Employees Union and Others,* . Various factors have to be seen as to whether reinstatement or compensation should be granted vide *The Management of Bharat Kala Kendra v. R. K. Baveja* 1980 (40) FLR 244 (Delhi).

17. In *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others,* , the Supreme Court observed (vide paragraph 14):-

The Tribunal, however, has the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional.

18. This view was followed by a Division Bench of this Court in *Jagat Singh Vs. The Estate Officer, Delhi Cantonment Board and Delhi Cantonment Board, Delhi Cantt.,* . The same view was taken in *Gujarat State Road Transport Corpn., and another Vs. Mulu Amra,* ; *DTC v. Presiding Officer* 2000 LLR 136 ; *Nehru Yuva Kendra Sangathan Vs. Union of India and Others,* ; *Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others,* , etc.

19. In *Employers, Management of Central P and D Inst. Ltd. Vs. Union of India (UOI) and Another,* , the Supreme Court observed that it is not always mandatory to order reinstatement after holding the termination illegal, and instead compensation can be granted. The same view was taken by a Division Bench of Delhi High Court in *Pramod Kumar and Another Vs. The Presiding Officer and Another,* .

20. In the present case, the Labour Court on the facts of the case has exercised its discretion and directed the grant of compensation instead of reinstatement.

21. We are of the opinion that the learned Single Judge in writ jurisdiction should not have interfered with the discretion of the Labour Court on the facts of the case.

22. In view of the above facts, this writ Appeal is allowed and the impugned judgment of the learned Single Judge is set aside.