

(2017) 01 KL CK 0074

In the High Court Of Kerala

Case No : W.A. No. 1241 of 2015 In W.P (C).31218 of 2004

M. Elizabeth

APPELLANT

Vs

Mother Superior St.Mary's English Medium School

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Citation : (2017) 1 LLN 738

Hon'ble Judges : Mr. K. Surendra Mohan and Mr. A.M. Babu, JJ.

Bench : Division Bench

Advocate : Sri. T.P. Pradeep and Sri. P.K. Sathees Kumar, Advocates, for the Appellant; Sri. Leo George and Sri. K.S. Ashraf, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K. Surendra Mohan, J.—The 1st respondent in W.P.(C).31218 of 2004 is in appeal challenging the judgment dated 5.1.2015 of the learned Single Judge allowing the writ petition. The writ petition was filed by the 1st respondent herein challenging the award passed by the Labour Court, Kollam in I.D.52/1996, which was produced as Ext.P7 in the writ petition.

2. The appellant was working as an "Ayah" in a school run by the 1st respondent. She raised an industrial dispute alleging that, she had been denied employment w.e.f 15.10.1994, without any justification. Her case was that, she had worked as an "Ayah" from the year 1980 in the school of the 1st respondent. While so, there was a marriage proposal which culminated in her engagement. The said function was conducted during September/October, 1994. The marriage was scheduled to be held on 13.10.1994. However, one week prior to the scheduled date of her marriage, she came to know that the proposed bridegroom was not having a job as represented by him, in Baroda. Since it was revealed that he had not been speaking the truth, the marriage was called off. In the meanwhile, it is stated that an amount of Rs.15,000/- had been received by the father of the appellant as financial assistance from the 1st respondent for the

conduct of the marriage. Ext.P5 is stated to be a copy of the Promissory Note executed by the appellant's father in favour of the 1st respondent. Later on, though the appellant had tried to join duty on 15.10.1994, the Mother Superior did not permit her to do so. It is stated that, the action was precipitated due to a misunderstanding that the 1st respondent had been misled into believing that the appellant was going to get married, by false representations made by her, mainly for the purpose of extracting money. Anyhow, the appellant was denied employment. Therefore, she raised an industrial dispute. The same was referred to the Labour Court, Kollam and numbered as I.D.52/1996. The claim statement of the appellant was produced as Ext.P2 in the writ petition.

3. The Labour Court entered upon the reference and permitted both parties to adduce evidence. Thus, the appellant was examined as WW1 while three witnesses are examined on the side of the 1st respondent as MWs 1 to 3. M1 to M4 documents were also marked.

4. On a consideration of the case pleaded by the respective parties and in the light of the evidence on record, the Labour Court came to the conclusion that the appellant was entitled to be reinstated in service. However, on the question of back wages, the Labour Court found that she was entitled to only 30% back wages. The writ petition was filed by the 1st respondent challenging Ext.P7.

5. The learned Single Judge considered the contentions of the 1st respondent as well as the appellant and found that, the denial of employment to the appellant was without any justification. However, on the question of reinstatement, it was found by the learned Single Judge, relying on the decision of the Apex Court in *Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta* (2009 (16) SCC 562) that, it was not the normal rule to order reinstatement, in all cases where a termination is found to be illegal. In view of the circumstances noticed by the Apex Court in the judgment relied upon, it was found by the learned Single Judge that the relief of reinstatement was discretionary and that the same was dependant on the facts and circumstances of each case. Applying the said dictum, the learned Single Judge found that the order of reinstatement was not justified in view of the strained relationship between the employer and the employee. Therefore, compensation in lieu of reinstatement has been granted. The compensation has been fixed at Rs.50,000/-.

6. Advocate T.P. Pradeep who appears for the appellant vehemently contends that this is a case in which the appellant had been working continuously as an "Ayah" from 1980 onwards. She had a total service of 14 years at the time of termination. She was working on a meagre salary which was Rs.495/- per month at the time of her termination. It is true that, there was a proposal for her marriage which had not fructified. Therefore she had sought for permission to resume duty which was not permitted. The Labour Court had found that denial of employment to her was without any justification. Therefore, reinstatement was ordered. There were absolutely no grounds available for interfering with the relief of reinstatement. According to the learned counsel, the decision relied upon by

the learned Single Judge to justify interference with the award of the Labour Court does not conclude the position of law on the question of reinstatement. The counsel draws out attention to a subsequent decision in Bhuvnesh Kumar Dwivedi v. M/s. Hindalco Industries Ltd. (AIR 2014 SC 2258) where the Apex Court had reiterated that, reinstatement is the normal consequence where a termination is found to be illegal. It is brought to our notice that, in the said case the Apex Court had interfered with the judgment of the High Court setting aside an award for reinstatement and ordering compensation in lieu of reinstatement. For the above reasons, the counsel seeks interference with the judgment of the learned Single Judge. The decision in Tapash Kumar Paul v. BSNL & another (AIR 2015 SC 357) is also relied upon to support the above proposition.

7. Advocate Leo George who appears for the 1st respondent on the other hand contends that, this is a case in which the appellant had left her employment for good, since she was getting married. At that time she was given a proper send off. A substantial amount was collected and given to her which is admitted to be Rs.10,000/- by her. Apart from the above, a further amount of Rs.15,000/- had been given as financial assistance for the conduct of her marriage, which is evidenced by Ext.P5 Promissory Note. According to the learned counsel, the said amount has not been returned yet and proceedings for recovery thereof was also not pursued by the 1st respondent. If, as stated by the appellant, the marriage had not fructified, nothing prevented her from reporting for duty, immediately thereafter. However, she did not do so. It is stated that all attempts to resume duty had commenced only after a period of one year. The allegation of the appellant that, she could not re-join duty for the reason that she was not in a position to pay back the amount of Rs.15,000/- on the strength of Ext.P5 is, according to the learned counsel, a baseless allegation. Since the marriage had been called off, the money had not been spent and therefore, there was no impediment in returning the amount, it is pointed out. From 1995 to 2017 it is stated that, the appellant has been working at some other establishment. According to the learned counsel, she is not out of job as alleged. It was considering all the above aspects that the learned Single Judge had interfered with the order of reinstatement and directed payment of compensation. According to the learned counsel, the relationship between the employee and the management has become stained and in such circumstances, reinstatement is not the normal rule. Therefore it is contended that there are no grounds to interfere with the judgment appealed against.

8. Heard. We have been taken through the records, in detail. It is not in dispute that, the appellant had been working as an Aaya under the 1st respondent since 1980. While so working, there was a proposal for her to get married. She was therefore given a reception or send off at the establishment. The participants at the reception contributed and collected an amount of Rs.10,000/- which also was admittedly given to her. Apart from the above, it is stated that an amount of Rs.15,000/- had been given to her as financial assistance. Ext.P5 indicates that, the understanding was that the amount would be returned. However, according

to the appellant, the marriage did not take place and therefore, she had sought for permission to re-join duty.

9. It is pertinent at this point, to take note of the dates to which reference has been made. According to the appellant, the betrothal ceremony had taken place and the marriage was scheduled to be conducted on 13.10.1994. However, one week before the said date, she came to know that the bridegroom was not having any job at Baroda as represented to her at the time of proposal. Therefore the marriage was called off. It is common knowledge that a lady proceeding to get married to a person working in a far off place like Baroda, would normally have done so leaving her employment. The financial assistance admittedly given to the appellant also supports the case that, the parties were on cordial terms at that time and that all the proceedings had taken place, in an atmosphere of trust. Since the marriage did not take place, according to the appellant, the 1st respondent was under a misunderstanding that the whole episode was a make believe for the purpose of extracting money, from the employer. That was the reason for non-granting of permission to the appellant to re-join duty. However, there is difficulty in accepting the said case in to. This is for the reason that, Ext.P5 Promissory Note on which reliance is placed by both parties is dated 19.10.1994. The marriage was scheduled to be held on 15.10.1994, going by the claim statement of the appellant. Therefore, the Promissory Note appears to have been executed after the date of the proposed marriage. Admittedly, one week prior to the date of marriage, the marriage had been called off. Therefore, one fails to understand why the amount of Rs.15,000/- was received, after executing a promissory note on 19.10.1994. As per the claim statement of the appellant, though she came to the school on 15.10.1994 to join duty, she was not permitted to do so. However, the Promissory Note is seen to have been executed after the said date. There is no clear answer as to the circumstances under which the Promissory Note came to be executed. There is inconsistency in the version pleaded by the appellant. Anyhow, it is not in dispute that the complaint, Ext.P1 was filed only on 18.5.1995. It is also evident from Ext.P6 certificate produced that, the appellant had been working in another establishment. It has been taking into account all the above factors and the attendant circumstances that, the learned Single Judge has interfered with the reinstatement ordered by the Labour Court. According to the learned counsel for the 1st respondent, the Management has lost confidence in the employee and the relationship between the appellant and the 1st respondent has become strained. In such circumstances, compensation in lieu of reinstatement would meet the ends of justice, it is contended.

10. As already noticed above, the appellant has placed reliance on the decisions of the Apex Court in Uttar Pradesh State Electricity Board's case, Tapash Kumar Paul's case and Bhuvnesh Kumar Dwivedi's case (supra). We have gone through the said decisions. The circumstances under which an order substituting reinstatement with an award for compensation could be granted, have been set out by the Apex Court in paragraph 5 of the decision in Tapash Kumar Paul

(supra), which reads as under :

"It is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. Viz (i) where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation."

11. Applying the above principles to the facts of the present case, we find that this is a case in which the relationship between the employee and the management has become stained and an order of reinstatement would not be in the interests of either of the parties. It was taking into account the above aspects that the Labour Court had limited the back wages to only 30% even while ordering reinstatement. The learned Single Judge has, in lieu of the order of reinstatement, directed payment of an amount of Rs.50,000/- as compensation. We confirm the order of the learned Single Judge holding that payment of compensation in lieu of reinstatement would adequately meet the ends of justice, in the present case. However, we note that the quantum of compensation ordered is insufficient and therefore requires to be enhanced to a reasonable amount. The appellant is at present aged more than 50 years. Admittedly she had served the establishment for a total period of 14 years. She has been out of service from 1994 onwards. We also take into account the fact that as evident from Ext.P6, she has been working in another establishment. Considering all the above facts, we enhance the amount of compensation that has been granted and direct the 1st respondent to pay an amount of Rs.2,50,000/- to the appellant as compensation, within a period of one month. The appeal is disposed of as above.