

(2014) 01 DEL CK 0396
In the Delhi High Court
Case No : Writ Petition (C) 8495 of 2011

Maheshwar Singh

APPELLANT

Vs

The Management of M/s. Indomag Steel Technology Ltd.

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 12 226

Industrial Disputes Act, 1947 — Section 11-A 2(s) 25 25F 25-F

Citation : (2014) 207 DLT 702 : (2014) 141 FLR 437 : (2014) LLR 294

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : A.K. Bajpai and Mr. M.F. Khan, for the Appellant; Lalit Bhasin, Ms. Ratna D. Dhingra and Ms. Bhavna Dhami, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The issue which arises in this writ petition is whether the petitioner is entitled to a compensation of Rs. 10,00,000/- instead of Rs. 1,50,000/- as allowed by the Labour Court-IX, Karkardooma Courts, Delhi in I.D. No. 172/99 (old), 309/10 (new) in the award dated August 26, 2011, deciding a reference made by the appropriate government on March 08, 1999, inter alia, as to whether the services of Sh. Maheshwar Singh have been terminated illegally and unjustifiably by the Management and if so, what relief is he entitled to. The brief facts are that the petitioner in his statement of claim, stated that he was regularly working with the respondent since August 26, 1996 on the post of "Draftsman" drawing a salary in the sum of Rs. 6090/- per month. He worked honestly and sincerely when on August 03, 1998, some officials of the respondent company had forcibly took his signatures on some typed and planned papers under threat and also insisted for his resignation which was refused by him and as such, his services were terminated without any written orders in violation of Section 25-F of the Industrial Disputes Act, 1947 (in short, the "Act") retaining persons junior to him. Since it was his case that he was unemployed since the date of his illegal termination, he sent a demand notice dated August

04, 1998 but the respondent-Management did not take him back in his services. He prayed in the claim petition, reinstatement with back wages and consequential benefits as per law.

2. The respondent in this reply to the claim petition contested the fact the petitioner was their workman within the meaning of Section 2(s) of the Act. According to the respondent, the petitioner was doing engineering drawings based on his individual skills. He was not working under direct control and supervision of any person, but performed his jobs independently. They admit that he was drawing a salary of Rs. 6100/- per month. Regarding his termination, it is their case the services of the petitioner was effected as per the terms and conditions of his Appointment Letter as the respondent had lost confidence in the working ability of the petitioner. According to them, they had given three months' notice pay along with other outstanding dues which the petitioner refused to accept. Lastly, they sought the dismissal of the claim petition.

3. Three issues were framed by the Labour Court inasmuch as whether the petitioner was workman; whether the services of the claimant were terminated illegally/unjustifiably; and the relief.

4. Insofar as the first issue is concerned, the Labour Court comes to a conclusion that the petitioner is a workman. Insofar as the two remaining issues are concerned, the Labour Court was of the following view:

28. As revealed from judicial file, the management did not pay retrenchment compensation to the workman herein before terminating his services nor complied with other terms and conditions of the provisions of Section 25F of I.D. Act before terminating his services of the workman herein as the same were necessary before terminating his services in the peculiar facts and circumstances of this case. In other words, the management has clearly not complied with the provisions of Section 25F of I.D. Act before terminating the services of the workman herein.

29. In view of the above mentioned discussion coupled with entire material on record, I am of the considered opinion that the workman has been successful to satisfy this court that his services were terminated illegally and unjustifiably by the management and more particularly in violation of Section 25F of I.D. Act.

30. The main contention of the management side was there was a clause of removal of service of the workman by the management after giving three months' notice. However, I do not find any substance in this submission of the management because in the peculiar facts and circumstances of the present case where the workman had completed 240 days of continuous service with the management during the preceding 12 months from his alleged date of termination, he was entitled for retrenchment compensation and the management was bound to pay the same to the workman as well as to comply with other terms and conditions of Section 25F of I.D. Act before terminating his services which are found lacking on the part of the management in this matter.

Further, the management has not put any cogent evidence on record, either oral or documentary, to satisfy this court that it was authorised by standing orders of the management to remove the workman in such life situation without complying with conditions of S. 25F of I.D. Act. Hence, the workman has proved this issue in his favour by way of cogent evidence to the effect that his services were terminated by the management illegally and unjustifiably without complying with provisions of Section 25F of I.D. Act. Hence, this issue is decided accordingly against the management and in favour of the workman.

5. Based on the aforesaid conclusion, the Labour Court was of the view that lump sum compensation in lieu of reinstatement with back wages would meet the ends of justice, and accordingly, compensation in the sum of Rs. 1,50,000/- was paid to the petitioner.

6. Mr. A.K. Bajpai, learned counsel appearing for the petitioner would submit that the compensation given by the Labour Court is not justified inasmuch as the petitioner was in employment between the period 1996 and 1998. He remained unemployed between 1998 till 2005 when in January 2006, he ultimately got an employment in a private concern in Faridabad, Haryana at a salary of Rs. 14,000/- per month. Mr. Bajpai also states that the Labour Court while determining the compensation has not followed the criteria applied by the Supreme Court in the case of O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , wherein the Supreme Court has awarded a compensation to an employee equivalent to 3.33 years' salary.

7. On the other hand, Mr. Lalit Bhasin, learned counsel appearing for the respondent would justify the compensation granted by the Labour Court to the petitioner herein. He would state that the petitioner had only worked for a period little less than two years and the compensation of Rs. 1,50,000/- is more than appropriate. He would rely upon the judgment of the Supreme Court in the cases reported as Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, K.H. Pandhi Vs. The Presiding Officer, Addl. Labour Court and The Management of Holtecs Engineers Ltd., 2006 (1) LLN 254 Pramod Kumar and Another Vs. Presiding officer and Another and lastly, the judgment of the Single Judge of this Court in W.P. (C) 16670/2006 decided on January 06, 2011, Ramesh Singh Rajput Vs. Ms. Castrol India Ltd. and Anr. in support of his contention that compensation in lieu of reinstatement and back wages, that too, as granted by the Labour Court in the facts of this case, are justified.

8. I have considered the rival submissions made on behalf of the parties. Before I deal with the rival submissions of the learned counsel for the parties, the position of law is well settled. The Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, had laid down the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 of the Constitution of India and held as under:

7. The question about the limits of the jurisdiction of High Courts in issuing a writ

of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, *Nagandra Nath Bora v. Commissioner of Hills Division* and *Appeals Assam and Kaushalya Devi v. Bachittar Singh*

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of

the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

9. It is also settled position of law in terms of the judgment of the Supreme Court in the case of Senior Superintendent Telegraph (Traffic), Bhopal (supra) wherein the Supreme Court has held that the relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedures, and that monetary compensation in lieu of reinstatement with back wages in cases of such nature may be appropriate. In the case in hand, it is seen that the petitioner had worked from August 26, 1996 to August 03, 1998 as a Draftsman on a salary of Rs. 6100/- per month. Even after termination, he could not get any employment till January 2006 when he got an employment for Rs. 14,000/-. In all, he remained unemployed for a period of roughly 7 years. The Tribunal justified the grant of compensation of Rs. 1,50,000/- based on the judgment of the Supreme Court, this Court and various other Courts. It is also noted that the judgment relied upon by the petitioner in O.P. Bhandari's case (supra) was not relied upon before the Tribunal.

10. Be that as it may, in O.P. Bhandari's case (supra), the facts reveal that Mr. O.P. Bhandari was an employee of ITDC holding the post of Manager of Hotel Ranjit, New Delhi and at the time of his termination, he was paid a sum of Rs. 7950/- as three months' pay in lieu of notice. The termination of Mr. Bhandari was held to be bad. The question which came up for consideration before the Court was whether it is obligatory to direct reinstatement when the rule under which Mr. Bhandari was terminated held to be void. The Supreme Court, while interpreting the sphere of employer-employee relationship in public sector undertakings to which Article 12 of the Constitution is attracted, has held that "it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workman and white collar employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. In so far as the high

level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective a large perspective which must take into account the demands of national interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life-aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings.

11. The Supreme Court in O.P. Bhandari's case (supra) did not order the reinstatement. Even the argument of full salary and allowances as compensation till the date of superannuation was also not agreed to. What compensation was granted by the Supreme Court was the following:

II-The respondent Corporation shall pay to the appellant:-

(1) Salary including usual allowances for the period commencing from the date of termination of his service under the impugned order till the date of payment of compensation equivalent to 3.33 years' salary including usual allowances to him.

(2) Provident Fund amount payable to the appellant and retirement benefits computed as on the date of payment as per Cl. 1 shall be paid to him within 3 months from the said date.

12. On the perusal of the judgment in O.P. Bhandari's case (supra), he was granted compensation, the salary and allowances he would have drawn for a period of 3.33 years. Basis for the Supreme Court to compute the compensation for 3.33 years is primarily for the reason of the facts of that case. It is also noted that Mr. Bhandari was working on a Managerial post. Given the position of law as held by the Supreme Court in the later judgments, moreso, with respect to the workman falling within the definition of Section 2(s) of the Act, the ratio of the judgment of the Supreme Court in O.P. Bhandari's case (supra) may not be of any benefit to the petitioner. I note Mr. O.P. Bhandari was working in a government company, a "State" under Article 12 of the Constitution of India. His termination was set aside because the clause which contemplates the termination by giving three months' notice was held as unconstitutional and void. In the case in hand, the petitioner was working as a Draftsman, a workman within the definition of Section 2(s) of the Act. His services were terminated for not following the procedure u/s 25 of the Act. The O.P. Bhandari's case (supra) was considered by the Single Judge of this Court in K.H. Pandhi's case (supra). The Single Judge in K.H. Pandhi's case (supra) was of the view that if the principle laid down in O.P. Bhandari's case (supra) is made applicable, then the compensation which would be received by the petitioner in that case would be much less. The Court opted the formula laid down by the Single Judge of this Court in the case of Virender Singh Vs. General Manager, Fruit and Vegetable Project and Another, wherein the Court has granted a compensation of Rs. 4,00,000/- instead of reinstatement taking into account the salary of Rs. 5800/-

per month being drawn by the petitioner in that case. The judgments of the Supreme Court in O.P. Bhandari's case (supra) and K.H. Pandhi's case (supra) were considered by the Division Bench in Pramod Kumar and Another's case (supra). The Division Bench, in para 13 held as under:

13. Regarding the quantum of compensation, the learned single Judge after having examined the above facts and also noticing that the two appellants herein had worked for 581 and 569 days awarded compensation of Rs. 50,000/- each to both of them. Keeping in view the facts stated above, we feel that quantum of compensation awarded is reasonable. The question of computation of compensation in such cases has been examined by the Supreme Court in the case of Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, In the said judgment, after referring to another decision of the Supreme Court in the case of O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , certain broad parameters have been laid down for computation and payment of compensation in lieu of reinstatement and back wages. On examining the said judgment we find that the Hon'ble Supreme Court had also taken into consideration interest payable on the compensation which was made payable from the date of the Order passed by the appellate Court. We, therefore, following the said judgment feel that in the present case equity and justice demands that the respondent No. 2 should pay interest on Rs. 50,000/- at the rate of 8% per annum from the date of the award i.e. 1.12.1994 till the sum of Rs. 50,000/- was paid to the appellants. The respondent Corporation is therefore directed to compute the said interest from the date of the award i.e. 1.12.1994 till the date of Rs. 50,000/- was paid to the appellant-workmen and pay the same within a period of two months from the date of this order.

13. Further, in the case of Senior Superintendent Telegraph (Traffic), Bhopal (supra), the Supreme Court, taking into account the fact that the daily wagers who worked hardly for two or three years and that too, 25 years back, granted a monetary compensation of Rs. 40,000/- to subserve the ends of justice. Even in its latest opinion reported as Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, , after summing up the position of law in para 8 to 16, the Supreme Court granted daily wagers who had worked for eight months, a compensation of Rs. 50,000/-. I reproduce the said paras herein under:

8. In Tulsidas Paul Vs. The Second Labour Court, W.B. and Others, this Court relied upon Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, and held as under: Tulsidas Paul Vs. The Second Labour Court, W.B. and Others,

9. In Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others,] we recently held, after considering the previous case law, that though the normal rule, in cases where dismissal or removal from service is found to be unjustified, is reinstatement, Industrial Tribunals have the discretion to award compensation in unusual or exceptional circumstances where the Tribunal considers, on consideration of the conflicting claims of the employer on the one hand and of the workmen on the other, reinstatement inexpedient or not desirable. We also

held that no hard-and-fast rule as to which circumstances would constitute an exception to the general rule can be laid down as the tribunal in each case must, in a spirit of fairness and justice and in keeping with the objectives of industrial adjudication, decide whether it should, in the interest of justice, depart from the general rule.

9. In *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, this Court in para 27 held as under: (SCC p. 664)

27. ... Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with preconditions to valid retrenchment, the order of termination would be illegal and invalid.

What has been held by this Court in *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*,] is that Section 25-F of the ID Act is applicable to a daily-rated worker. We do not think that there is any dispute on this proposition.

10. In *Manager, R.B.I., Bangalore Vs. S. Mani and Others*,

54. Mr. Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and back wages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The industrial adjudicator cannot be held to be bound to grant some relief only because it will be lawful to do so.

11. In *Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others*, , this Court, while dealing with the non-compliance with the provisions of Section 6-N (which is in pari materia with Section 25-F) of the U.P. Industrial Disputes Act held that the grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workmen would not automatically follow or as a matter of course. Instead, this Court modified the award of reinstatement with compensation of Rs. 30,000 per workman. In *Municipal Council, Sujampur Vs. Surinder Kumar*,] this Court after having accepted the finding that there was violation of Section 25-F of the ID Act, set aside the award of reinstatement with back wages and directed the workman to be paid monetary compensation in the sum of Rs. 50,000. In *Haryana State Electronics*

Development Corporation Ltd. Vs. Mamni,] this Court modified the award of reinstatement passed by the Labour Court, though the termination of the workman was in violation of Section 25-F of the ID Act, by directing that the workman should be compensated by payment of a sum of Rs. 25,000.

12. In Regional Manager, SBI Vs. Mahatma Mishra, this Court observed that: (SCC p. 734, para 12)

12. ... It [was] one thing to say that services of a workman [were] terminated in violation of mandatory provisions of law but it [was] another thing to say that relief of reinstatement in service with full back wages would be granted automatically.

13. In Haryana Urban Development Authority Vs. Om Pal, this Court in paras 7 and 8 of the Report held as under: (SCC p. 745)

7. Moreover, it is also now well settled that despite a wide discretionary power conferred upon the Industrial Courts u/s 11-A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

8. The respondent worked for a very short period. He only worked, as noticed hereinbefore, in 1994-1995. The Industrial Tribunal-cum-Labour Court, therefore, in our opinion committed an illegality, while passing an award in the year 2003, directing the reinstatement of the respondent with full back wages. Although we are of the opinion that the respondent was not entitled to any relief, whatsoever, we direct the appellant to pay him a sum of Rs. 25,000.

14. In Uttaranchal Forest Development Corporation Vs. M.C. Joshi, this Court was concerned with a daily wager who had worked with Uttaranchal Forest Development Corpn. from 1-8-1989 to 24-11-1991 and whose services were held to be terminated in violation of Section 6-N of the U.P. Industrial Disputes Act. The Labour Court had directed the reinstatement of the workman with 50% back wages from the date the industrial dispute was raised. Setting aside the order of reinstatement and back wages, this Court awarded compensation in a sum of Rs. 75,000 in favour of the workman keeping in view the nature and period of service rendered by the workman and the fact that industrial dispute was raised after six years.

15. In Madhya Pradesh Administration Vs. Tribhuban,] this Court upheld the order of the Industrial Court passed in its jurisdiction u/s 11-A of the ID Act awarding compensation and set aside the judgment of the Single Judge and the Division Bench that ordered the reinstatement of the workman with full back wages. This Court in para 12 of the Report held as under: (SCC p.755)

12. In this case, the Industrial Court exercised its discretionary jurisdiction u/s

11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.

16. In *Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another*,] this Court stated that an order of retrenchment passed in violation of Section 6-N of the U.P. Industrial Disputes Act may be set aside but an order of reinstatement should not however be automatically passed. This Court observed in paras 11 and 12 of the Report as follows: (SCC p. 578)

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See *Madhya Pradesh Administration Vs. Tribhuban*,

14. In the case in hand, it is noted that the petitioner was earning a fixed salary of Rs. 6100/- with allowances. He worked for a little less than two years. He remained unemployed for almost 7 years during the pendency of the reference before the Labour Court. If the procedures u/s 25-F of the Act was to be followed at the time of termination, he would have been entitled to Rs. 12,200/- being notice pay and 15 days' salary for each completed year. Assuming the respondent was entitled to full salary for the period he was unemployed, it would roughly come to Rs. 64,050/-. Given the fact that the Labour Court has awarded him Rs. 1,50,000/-, the same is reasonable. Moreover, the power of the Labour Court u/s 11-A being discretionary and the discretion having been exercised by awarding the petitioner Rs. 1,50,000/-, this Court in exercise of power under Article 226 of the Constitution of India, would not interfere with the grant of such compensation to him. The writ petition is accordingly dismissed. No costs.