

(2009) 02 DEL CK 0170

In the Delhi High Court

Case No : Writ Petition (C) No. 15786 of 2006

Mehrasons Jewellers Pvt. Ltd.

APPELLANT

Vs

Mr. Jagdish

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2009) 02 DEL CK 0170

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Kirti Uppal, for the Appellant; Nemo, for the Respondent

Judgement

V.K. Shali, J.—The petitioner/management by virtue of the present writ petition has challenged the award dated 15th May, 2006 passed by the learned Labour Court-IX, Karkardooma Courts, Delhi in ID No. 166/2003 titled Workman Sh. Jagdish v. Mehrasons Jewellers. By virtue of the aforesaid award, the learned Labour Court has held the termination of services of the petitioner w.e.f. 7th June, 2002 by the petitioner/management, as illegal and unjustified and accordingly, it has directed the reinstatement of the respondent/workman with full back wages, on the same terms and conditions which were earlier applicable to him at the time of his appointment.

2. Briefly, the facts of the case are that the respondent/ workman started working with the petitioner/management from 1997. He was performing his duties, however the petitioner/management, as alleged, did not pay the respondent/workman the wages for the period 01.04.2002 to 07.06.2002 and terminated his services w.e.f. 7th June, 2002. For this, he not only made a police complaint but also activated the office of Secretary (Labour), Govt. of Delhi which made a reference on 3rd June, 2003 to the learned Labour Court in the following terms:

Whether Sh. Jagdish S/o Sh. Nathu Singh and Sugar Pal S/o Sh. Nathu Singh

have settled their account in full and final or their services have been terminated illegally and/or unjustifiably by the management, and if so, to what relief are they entitled and what directions are necessary in this respect?

3. On the receipt of this reference by the Labour Court, a statement of claim was obtained. Pleadings were completed. Parties adduced their evidence and the learned Labour Court came to conclusion that the termination of the services of the respondent/workman was illegal and unjustified.

4. The stand of the petitioner/management, that the respondent/workman, had actually tendered his resignation on 6th June, 2002 was not accepted by the learned Labour Court.

5. I have heard the learned Counsel for the petitioner. However, no one has been appearing on behalf of the respondent in this matter for the last number of dates. Therefore, I did not have the advantage of hearing the submissions on the side of the respondent.

6. Sh. Kirti Uppal, learned Counsel for the petitioner has contended that he is confining his challenge to the award only on the question that in view of the facts of the case instead of reinstatement and the payment of back wages and the respondent/workman could have been granted compensation u/s 11A of the Act. The reason given for this is that the respondent/workman has not been contesting the writ which clearly shows that he himself is not interested in getting reinstated. Even before the Labour Court, he did not seem to be serious about his reinstatement. The learned Counsel stated that in the statement of claim, the respondent/workman has stated that he was employed with the petitioner/management from the year 1997 while as the workman himself written a document in Hindi and signed by the respondent/workman, which clearly shows that he is admitting that he started working with the petitioner/management only from 15th November, 2001 and not in 1997. Consequently, this documents clearly shows that the respondent/workman has himself admitted that on being transferred to M/s Enchante International Ltd., H-22, Rajouri Garden, New Delhi on 6th June, 2002, the respondent/workman himself had tendered his resignation on 6th June, 2002. Therefore, the learned Counsel contended that there was no illegal or unjustified termination of the respondent/workman, but on the contrary it was a case where the respondent/workman had himself tendered his resignation on account of his transfer to the sister concern of the petitioner.

7. The second submission which is made by the learned Counsel is to the effect that so far as Enchante Intonation Ltd. is concerned, that is a sick company which is under rehabilitation in BIFR and therefore being a sister concern of the petitioner, they have been also put to a great financial strain.

8. On the basis of the aforesaid two submissions, the learned Counsel for the petitioner/management contended that the Court may consider that the facts of this case are fit where instead of ordering reinstatement and the payment of

back wages, the respondent/workman ought to be given, a compensation u/s 11A of the Industrial Disputes Act.

9. I have thoughtfully considered the submissions of the learned Counsel and perused the record. Section 11A of the Industrial Disputes Act reads as under:

11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. ? Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may by its award, set aside the order of discharge or dismissal and direct re- instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceedings under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

10. A perusal of Section 11A of the Industrial Disputes Act clearly shows that the Labour Court has ample power in the given facts and circumstances where instead of directing reinstatement and the payment of back wages, it can direct the petitioner/management to pay compensation if it meets the ends of justice. This is especially in cases where there is a long gap between the alleged termination on the one hand and the order of reinstatement having been passed, but the workman not being able to join the duty on account of one reason or the other including the restraint order which might have been imposed by the Court. In all such contingencies, there will be a lack of trust between the employer and the employee and both of them would feel insecure to work with each other. It is in the interest of peaceful industrial relations that there must be ample trust between the workman and the employer; only then there will an optimum productivity so far as the organization is concerned. Otherwise, on account of the absence of the same, it will be retrograde steps, so far as the productivity is concerned.

11. The Courts in a catena of cases has observed that not only the Labour Court u/s 11A of the Act but the High Court can also in exercise of its writ jurisdiction, it exercises the same powers which are exercised by the learned Labour Court, and thus has in an appropriate given case granted compensation in lieu of reinstatement and the payment of back wages order having been passed by learned Labour Court. One of such recent cases is Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, While dealing with Section 11A of the Industrial Disputes Act, the Apex Court observed that grant of relief of reinstatement is a trite and is not automatic, nor is the grant of back wages

automatic and the Industrial Tribunal while exercising powers u/s 11A of the Industrial Disputes Act are required to strike a balance in a situation of this nature where certain relevant factors as regards the nature of service, mode, manner of recruitment, etc. have to be borne in mind. For this purpose, the factum as to whether the industry is sick or not, whether the workman would be a financial burden on the organization or not, the placement of equities between the parties have to be adjusted keeping in view all these factors. In this particular case, the Hon^{ble} Supreme Court had granted a compensation of Rs. 2.00 lakhs instead of directing the reinstatement with full back wages.

12. Similarly, our own High Court in Pal Singh Vs. National Thermal Power Corporation Limited, has also echoed somewhat similar feelings. It has been observed in this case that the grant of compensation has not replaced or substituted the principle of reinstatement with full back wages as enunciated in Case Hindustan Tin Works Pvt. Ltd. 37 FLR 240 (SC) over a quarter of century ago, but all these principles co-exist leaving the choice and the application to the Court's discretion.

13. Keeping the aforesaid legal position, in view in the instant case, admittedly the petitioner/management is a jeweller and assuming that a reinstatement is granted to the respondent/workman but as on date is not attending the Court and thereby does not seem to be interested in pursuing the matter. Further, the reinstatement is not going to work as there will be lack of trust qua him so far as the petitioner/management. In such a contingency where precious items or valuable metal are likely to be handled by the workman, it is bound to create suspicion which will not be conducive to the good industrial relations of the organization. The period of service which the respondent had put in before his termination is also not very long. Further, the respondent/workman's own letter shows that his stand that he was working with the petitioner/management from 1997 is not correct and he started working only some time in 2001 and worked for approximately 6 months till 2002 and again there is a gap of now 6 years in his leaving the job and getting reinstated. This long gap of 6 years further would make it difficult for either of the parties to adjust each other. In these circumstances, I feel that the grant of compensation by the petitioner/management to the respondent/workman in terms of Section 11A of the Industrial Disputes Act would meet the ends of justice.

14. Then the question which arises for consideration is what should be the quantum and the mode of compensation. Though no yardstick in this regard has been laid down but some Courts have observed that the grant of compensation may not be less than what the respondent/workman would have got by way of back wages. Ostensibly, this may sound to be good and reasonable, but in a case where the respondent/workman is not coming forth and attending even the Court, the grant of compensation on that parameter, in my view, would be unrealistic so far as the petitioner/management is concerned. In these circumstances, I feel that 50% of the back wages which were directed to be

deposited by this Court vide order dated 11th October, 2006 which has been stated to the tune of Rs. 1,22,000/- should be sufficient compensation to the respondent/workman u/s 11A of the Industrial Disputes Act to meet the ends of justice. Accordingly, for the reasons mentioned above, I uphold the award dated 15th May, 2006 passed by the learned Labour Court and modify the directions given by the learned Labour Court directing the reinstatement and the payment of back wages to be substituted with payment of compensation which is quantified to the tune of Rs. 1,22,000/- which stands deposited.

15. The award stands accordingly modified in this regard and the writ petition of the petitioner is partially allowed in terms of the aforesaid order.

No order as to costs.

CM No. 12664/2006

Since the petition has been disposed of, no order is called for on this application u/s 17-B of the Industrial Disputes Act, 1947 and the same is as having become infructuous accordingly.