
(2012) 08 DEL CK 0508

In the Delhi High Court

Case No : Writ Petition (C) 4718 of 1997

MGT M/s. Flood Control and Drainage Div. III

APPELLANT

Vs

Shri Fokal and Another

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2012) 08 DEL CK 0508

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Zubeda Begum with Ms. Sana Ansari, for the Appellant; M. Mohsin Israily, for the Respondent

Final Decision : Disposed Off

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner impugns the award dated 4th July, 1997 whereby it was held that the services of the Respondent were terminated illegally and the Respondent was thus directed to be reinstated in service with back wages payable on the same basis on which he was being paid during the period of his employment with the Management and that too from the date of reference. When the matter came up for hearing on 12th August, 1998 before this Court though the operation of the impugned award with respect to the back wages was stayed however, no stay in respect of reinstatement in service was granted. Thus the Respondent was reinstated in service on 9th October, 1998. During the course of the arguments learned counsel for the Petitioner did not challenge the award to the extent it directed reinstatement as the Respondent has already been reinstated and confined her arguments to the extent the award directs payment of full back wages. Learned counsel for the Petitioner contends that the Petitioner was employed as daily wager on Muster Roll on 16th November, 1984 and he abandoned his work from 15th October, 1985. Thus he worked nearly for a period of 11 months. Belatedly a dispute was raised by the Respondent in the

year 1989 on which a reference was sent vide order dated 19th April, 1990, whereupon the impugned award came to be passed on 4th July, 1997. Relying on *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*, and *HMT vs. Labour Court, Ernakulam and others*, LLR 1994 page 720 it is contended that even if the termination is found to be illegal, the relief of reinstatement with full back wages does not follow automatically. It is further contended that there was delay in raising the dispute of four years and thus the Respondent is not entitled to full back wages.

2. Learned counsel for the Respondent refuted the contention that the Respondent abandoned the job and states that his services were terminated illegally and he was disallowed to join duties by an oral order on 15th October, 1985 as the Respondent refused to attend the domestic work at the house of the then Superintending Engineer. The Respondent approached the department time and again to issue a certificate certifying his employment and the period during which he remained employed and only after great persuasion the certificate was obtained on 29th July, 1987. In October, 1987 the Respondent went to Calcutta to arrange funds to pursue his dispute however, unfortunately he met with an accident causing serious damage to his right leg which was crushed under the wheel of a truck. The Respondent was initially admitted in Howrah Hospital, Kolkata and thereafter continued his treatment at AIIMS. Only after that the Respondent could move around with the help of the stick he approached the labour union which served the notice dated 2nd September, 1989 and thereafter the reference was sent by the Government. Thus there is no deliberate delay on account of the Respondent in filing the claim and all these facts supported by the relevant documents were cited by the Respondent in his supplementary application in the form of an affidavit before the learned Industrial Tribunal. It is contended that there being no delay in raising dispute, hence the order passed by the Tribunal is justified.

3. I have heard learned counsel for the parties.

4. As noted above the only issue raised by the learned counsel for the Petitioner is whether the Respondent is entitled to full back wages. A perusal of the impugned award shows that the Respondent was directed to be reinstated in service with back wages which was to be payable on the same basis on which it was being paid during the period of employment with the Management and that too from the date of reference. Thus the impugned award takes care of the delay in raising the dispute and does not direct the Petitioner to pay full back wages from the date of termination but granted the same from the date of reference only.

5. In *Talwinder Singh, vs. PO, Labour Court*, (2003) 10 SCC 283 the grievance of the workman/Appellant was that though he had put in 240 days of service, his services were terminated without observing the due procedure as provided u/s 25F of the I.D. Act. He raised the industrial dispute. The Labour Court dismissed

the claim made by the workman. The High Court also affirmed the same. The Hon'ble Supreme Court observed that there was no material to show on what ground his services were terminated. Thus, it directed the Respondent/Management to appoint the workman afresh in similar employment and held that the workman would not be entitled to any back wages.

6. In *General Manager, Haryana Roadways Vs. Rudhan Singh*, , it was held-

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

7. In *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, their Lordships observed-

17. Before advertng to the decisions 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.

44. In *Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another*, this Court noticed *P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar*, and *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, but held: (SCC p. 45, para 16)

16. As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement.

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.

8. In *Reetu Marbles Vs. Prabhakant Shukla*, their Lordships held-

11. The only limited issue to be determined by us, in this appeal, is whether the High Court was justified in granting full back wages to the respondent in spite of the denial thereof by the Labour Court. In our opinion the High Court erred in law in not examining the factual situation. The High Court merely stated that it was not the case of the employer that the workman had been gainfully employed elsewhere. Although it noticed the principle that the payment of back wages having a discretionary element involved in it, has to be dealt with in the circumstances of each case and no straitjacket formula can be evolved, yet the award of the Labour Court was modified without any factual basis.

9. The Respondent was working as a daily wager on muster roll. He was employed with the Petitioner for less than one year. The job on which the Respondent was employed is easily available. There is yet another factor i.e. delay in proceedings on the part of the Petitioner. A perusal of the order sheet shows that initially the Petitioner was proceeded ex-parte vide order dated 13th November, 1990 which order was set aside on 26th February, 1991. Thereafter a number of adjournments were sought by the representative of the Petitioner to cross-examine the workman. The Petitioner took further time in producing its witness for cross-examination. Thus it is evident that there has been delay on the part of the Petitioner during trial. In view of the law laid by the Hon'ble Supreme Court and the fact that there was delay on account of the part of the Petitioner, the Respondent being a skilled person would have been gainfully employed for some days if not for the entire period and that the Petitioner had not even worked for one year when his services were terminated, I am of the opinion that the impugned award dated 4th July, 1997 is required to be modified to the extent that the Respondent, who has already been reinstated, will be entitled to 50% back wages payable on the basis being paid to him during the period of his employment with the Management that too from the date of reference. Petition is disposed of accordingly.