

(2001) 12 DEL CK 0095

In the Delhi High Court

Case No : Letters Patent Appeal No. 422 of 2000 and C.M. No. 1271 of 2000

Murari Lal Sharma

APPELLANT

Vs

Nehru Yuva Kendra Sangathan

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 — Regulation 9
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2002) 96 DLT 412 : (2002) 63 DRJ 776 : (2002) 93 FLR 919

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : Sanjay Parikh and R.R. Chandrachud, for the Appellant; Rana Ranjit Singh and Rohit Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, J.—This is a Letter Patent Appeal directed against the judgment and order of the learned Single Judge in CWP No. 5754/98 dated May 26, 2000 whereby the award of the Labour Court in I.D. No. 26/1992 dated March 2, 1998 was modified. Briefly stated the facts giving rise to the aforesaid appeal are as follows:-

The appellant joined the Nehru Yuva Kendra Sangathan as Peon. He worked in that capacity till February 5, 1987. While working a Peon he applied for the post of Accounts Clerk with the respondent. On April 4, 1988 he was appointed as Accounts Clerk at Nehru Yuva Kendra Sangathan, Agra. On November 30, 1988 his services were terminated. Aggrieved by the order of termination he sought a reference to the Industrial Tribunal. The Central Government referred the following dispute to the Industrial Tribunal :-

"Whether the Regional Coordinator, Nehru Yuva Kendra Sengthan, Agra, is justified in terminating the services of Sh. Murari Lal Sharma, Accounts Clerk, w.e.f. 1.12.1988? If not, what relief he is entitled to?"

2. The Industrial Tribunal vide its award dated March 1988 held that the Regional Coordinator, Agar, was not justified in terminating the services of the workman. It came to the conclusion that the provisions of Section 25F of the Industrial Disputes Act, 1947 were not complied with by the respondent inasmuch as the appellant had not been paid by retrenchment compensation nor was he given one month's notice or pay in lieu thereof. Consequently, the Tribunal directed reinstatement of the workman with full back wages and other benefits which would have accrued to him had he been in service. The Industrial Tribunal while passing the aforesaid direction also rejected the plea of the respondent that Nehru Yuva Kendra Sangathan was not an industry within the meaning of Section 2(j) of the Industrial Disputes Act.

3. The respondent dissatisfied with the award filed a writ petition. Though the learned Single Judge agreed with the Industrial Tribunal that the termination of the appellant's service was bad in law, at the same time it was not considered proper to grant the relief of reinstatement with full back wages to the appellant. While taking this view the learned Single Judge observed as under:-

"4. It took 10 years after termination when the case was decided by CGIT. Award was rendered on 2.3.1988. Present petition was filed in September, 1988. One and half year have been passed since the filing of the writ petition and twelve years since the date of Award.

The aforesaid facts would reveal that the workman worked barely for 240 days as Account Clerk. That too on ad hoc basis. The petitioner decided not to regularise his services because of his work and conduct and for this reason his services were terminated. One has also to keep in mind that although petitioner may be "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, one cannot lose sight of the fact that it is not carrying out any commercial venture and earning any profits. The objectives for which the petitioner was constituted are the social and philanthropic. Moreover, almost 12 years have passed since the termination of the workman. Keeping in mind these considerations, it would not be appropriate to grant the relief of reinstatement with full back wages merely because there was technical flaw in not paying the compensation as per Section 25F of the Industrial Disputes Act, more so, when the petitioner was at least having bonafide view that such provisions are not applicable to it as it is not "industry" within the meaning of Industrial Disputes Act."

4. Having observed as above, the learned Single Judge modified the award of the Tribunal and directed the respondent to pay sum of Rs. 60,000/- to the appellant in lieu of reinstatement and back wages. In addition, the learned Single Judge directed the respondent to pay a further sum of Rs. 10,000/- to the appellant towards litigation expenses.

5. The appellant being aggrieved by the order of the learned Single Judge has filed the instant appeal.

6. We have heard learned counsel for the parties. It was urged by the learned counsel for the appellant that in case of unlawful termination of services of a workman, a claim for reinstatement cannot be defeated merely by awarding compensation. Learned counsel canvassed that normally a workman who has been retrenched is entitled to reinstatement with back wages. He submitted that this principle still holds the field in view of the various decisions of the Supreme Court and the view of taken by the learned Single Judge is not tenable.

7. Learned counsel for the respondent on the other hand, submitted that in the facts and circumstances of the present case the learned Single Judge was right in refusing reinstatement of the appellant with back wages. He also submitted that the view taken by the learned Single Judge was in conformity with the decision of a Division Bench of this Court in *Delhi Transport Corporation v. Presiding Officer and Anr.*, 2000 LLR 136, and the decisions of the Supreme Court in *Gujarat State Road Transport Corpn.*, and another *Vs. Mulu Amra*, , and *Rattan Singh v. Union of India*, (1997) 11 SCC 396

8. We have considered the submissions of the learned counsel for the parties. The only question which needs to be decided is whether the learned Single Judge was legally justified in modifying the award of the Tribunal by directing the respondents to pay a sum of Rs. 60,000/- to the appellant in lieu of reinstatement and back wages. It appears to us that the view taken by the learned Single Judge is supported not only by a decision of the Division Bench of this Court in *Delhi Transport Corporation v. Presiding Officer and Anr.* (supra), but also by the decisions of the Supreme Court in *Rolston John v. Central Government Industrial Tribunal-cum-Labour Court and Ors.* (supra) and *Rattan Singh v. Union of India and Anr.* (supra).

9. In *Delhi Transport Corporation v. Presiding Officer and Anr.* (supra) the Division Bench was dealing with the case of a workman who at the time of the termination of his services by the Delhi Transport Corporation was working as a conductor on probation for one year. The probation period was extended till October 31, 1968. Three days before the expiry of the extended period of probation, on October 29, 1968 his services were terminated by the Delhi Transport Corporation in exercise of the power conferred by regulation 9(a)(i) of the Delhi Road Transport Authority (Conditions and Appointment of Service) Regulations, 1952 without assigning any reasons therefore. The workman aggrieved by the order of termination raised an industrial dispute. The appropriate government referred the dispute to the Industrial Tribunal. The Industrial Tribunal answered the reference by holding that termination of the workman's services were proper and valid and he was not entitled to any relief. The award was thereafter challenged by the workman by means of a writ petition. The learned Single Judge allowed the writ petition holding that the termination of the services of the workman was void ab initio and inoperative. While holding so, the learned Single Judge directed the reinstatement of the workman with back wages. Thereupon, the Delhi Transport Corporation filed a

Letters Patent Appeal. The Division Bench in Letters Patent Appeal did not disturb the finding of the learned Single Judge that the termination of services of the workman was contrary to Section 25F of the Industrial Disputes Act, but it did not endorse the direction of the learned Single Judge to continue him in service with full back wages. The Division Bench on review of a large number of authorities and the facts of the case awarded compensation in lieu of reinstatement and back wages to the workman. The reasoning of the Division Bench for declining reinstatement of the workman is as follows :-

"27. We find from the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decision rendered in the 1990s, including the decision of the Constitution Bench in *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh*, 1990 (4) SLR 154 seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since we are bound to follow the decision of the Constitution Bench, we, Therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

28. Considering the facts of this case, we are persuaded to award compensation in lieu of reinstatement and back wages to the workman. The reasons are that if the workman is to be reinstated than it has to be as a Conductor on probation. Since his services were terminated in October, 1968, it would be impossible for anybody to hazard a guess what his career profile would have been over the last 31 years. By directing his reinstatement, we may be inviting a host of hypothetical questions such as seniority, promotions, etc. Moreover, the reason for the termination of the services of the workman was that the appellant was not satisfied with his work. Under these circumstances, we feel that it may be unfair to the appellant if the workman is thrust upon it, especially when the workman can be given adequate compensation."

10. In *Rattan Singh v. Union of India and Anr.* (supra), where termination of services of the workman was made without complying with the provisions of Section 25F of the Industrial Disputes Act, the Supreme Court instead ordered payment of Rs. 25,000/- in lieu of reinstatement and back wages. In this regard the Supreme Court observed as follows :-

"3. We find merit in the said submission of Shri Ashri. From the date mentioned in the judgment of the first appellate court dated 22-1-1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25-F of the Act and the said protection could not be denied to him on the ground that he was a daily-rated worker. It is not the case of the respondents that the provisions of Section 25-F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were

terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs. 25,000 be paid to the appellant in lieu of compensation for back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant. The said amount shall be paid within two months. The appeal is disposed of accordingly. No costs."

11. As is evident, the Supreme Court did not consider it appropriate to direct reinstatement of the workman with back wages after a gap of 20 years.

12. Again in Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, the Supreme Court set aside the order of the High Court directing reinstatement in service of a workman with full back wages and instead directed the employer to pay a sum of Rs. 75,000/- to the workman in lieu of reinstatement and back wages in full and final satisfaction of his claims. This view of the Supreme Court was based on the fact that the workman was dismissed way back on November 17, 1967 and in the year 1992, when the appeal was decided by the Supreme Court, about 24 year had gone by.

13. In the instant case, the appellant had barely worked in the establishment of the respondent as an Account Clerk for a period of about 240 days when his services were terminated in the year 1988. Between the date of termination and as of now about 13 years have gone by. The same considerations as are detailed in para 28 of the decision of this Court in Delhi Transport Corporation v. Presiding Officer and Anr. (supra) are applicable to the instant case. The learned Single Judge was, Therefore, entirely right in directing payment of compensation instead of reinstatement with back wages.

14. The learned counsel for the appellant relied on the decisions of the Supreme Court in Municipal Corporation of Delhi Vs. Prem Chand Gupta, (2000) 10 SCC 115 Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another, Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, ; where the workmen whose services had been illegally terminated were held entitled to reinstatement and back wages. The view taken by the Supreme Court in those cases was based upon fact situations which were different from the fact situation of the instant case. The learned Single Judge has also pointed out that the appellant manipulated the appointment of his wife and mother-in-law as part time instructors at Vidya Nagar, Agra, and at village Achhnera centres of the respondent respectively. It was also noticed that the respondent was not carrying on any commercial enterprises for the purpose of making profit. That apart, in view of the work and conduct of the appellant as an ad-hoc employee, his services were not regularised. Keeping in view the peculiar circumstances of the case we are not persuaded to take a different view than the one taken by the learned Single Judge.

15. For the foregoing reasons, the appeal fails and is hereby dismissed.