

(2000) 05 DEL CK 0004

In the Delhi High Court

Case No : CWP. No. 5754 of 1998

Nehru Yuva Kendra Sangathan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 4 AD 709 : (2000) 86 FLR 450 : (2001) 1 LLJ 191

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : R.R. Singh and Mr. Sanjay Parikh, for the Appellant;

Judgement

A.K. Sikri, J.—This writ petition is filed by Nehru Yuva Kendra Sangathan (NYKS, for short), registered under the Societies Registration Act, 1860. This Petition is directed against Award dated 2.3.98 passed by Central Government Industrial Tribunal, New Delhi in I.D. No. 26/1992. The main question to be decided is as to whether Nehru Yuva Kendra Sangathan is an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The factual background which has led to the aforesaid issue may be narrated first:

2. Shri Murari Lal Sharma, respondent No. 4 worked with the petitioner as Peon from 28.8.80 to 5.2.87 and as Peoncum-Watch and Ward from 6.2.87 till March, 1988. While working in the aforesaid capacity he applied for the post of Accounts Clerk with the petitioner and was duly selected. Accordingly, he was appointed as Accounts Clerk w.e.f. 4.4.88 and he worked as Accounts Clerk till 30.11.88 when his services were terminated. He raised Industrial Disputes challenging his termination which was referred to Central Government Industrial Tribunal (for short "CGIT") with the following terms of reference:

Whether the Regional Coordinator, Nehru Yuva Kendra Sangathan, 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?

3. On receipt of reference, notices were issued to both the parties. Workman filed his statement of claim in which he mentioned having worked in aforesaid capacities and submitted that his services were illegally terminated w.e.f. 1.12.98 in violation of Section 25F of the Industrial Disputes Act, 1947 as he was not paid retrenchment compensation and one month notice or pay in lieu thereof. In the written statement filed by the petitioner it was stated that workman worked from 28.11.80 to 31.7.86 as Peoncum-Watch and Ward at Nehru Yuva Kendra, Mathura (U.P.) where he abandoned his job and disappeared. He again applied for Peon-cum-Watch & Ward at Nehru Yuva Kendra, Agra on 28.1.1987 in response to an advertisement in the Daily Amar Ujala. He was selected as Peoncum Watch & Ward and joined service on 9.2.1987. Later on he applied for the post of Accounts Clerk at Nehru Yuva Kendra-Agra and pursuant to his application dated 21.3.1988 to this effect was offered appointment for the post of Accounts Clerk purely on ad hoc basis at a monthly consolidated remuneration of Rs. 800/- per month vide appointment letter dated 30.3.88 wherein it was specifically mentioned that petitioner could terminate his services without serving any notice and also without assigning any reason whatsoever during the period of ad hoc appointment. He joined Nehru Yuva Kendra-Agra on 4.4.1988 and worked up to 30.11.1988. Petitioner did not deny that workman's services were terminated w.e.f. 1.12.1988 and that no retrenchment compensation and one month notice in lieu thereof is given to the workman at the time of his termination. However, it was pleaded that petitioner being not an "Industry" provisions of Disputes Act, 1947 were not applicable. Evidence was recorded and arguments were heard by CGIT which led to passing of the impugned Award dated 2.3.1988. CGIT held petitioner to be an "Industry" and thus provisions of Industrial Disputes Act applicable to it. On merits, it was held that since workman had worked for over 240 days during preceding 12 consecutive months, counting backwards from 30.11.1988 to 4.4.1988 his termination was bad, as provisions of Section 25F of the I.D. Act were not complied with. The plea of the petitioner is that termination of services of the workman was actuated by his mis-behaviour with the superiors or that his work was not satisfactory, was not accepted as no disciplinary action has been taken against him. Accordingly, it was held that workman is entitled to rein-statement with full back wages and all other benefits which would have accrued. In the present writ petition petitioner has assailed the Award of the CGIT on both counts, namely., against the decision of the CGIT holding the petitioner as "Industry" and also holding termination of workman's services as illegal and relief of reinstatement with back wages given to him by CGIT. I will deal with both the aspects in the same order:

4. Whether Nehru Yuva Kendra is "Industry":

It is the submission of the petitioner that the petitioner is a registered society in the name of Nehru Yuva Kendra Sangathan (NYKS) under the Societies Registration Act, 1860. This Sangathan started in 1972 under the Ministry of Human Resource Development, Department of Youth Affairs & Sports,

Government of India. The main objects of the NYKS are social transformation in rural area, and in preserving, promoting and developing concept of unity and national integration, discipline, self help and secularism, democracy, scientific tempore, cultural and heritage, functional literacy, building awareness among the rural youths and in providing avenues to the Youth to strive towards excellence in all spare of activities. The programmes are proposed by HRD Ministry/Ministry of Youth Affairs & Sports and the same is completely funded by the Ministry for the training programmes, social service programme, sports, games, physical education and adult literacy etc. It was further submitted that NYKS is an organisation and the same is dedicated to implement the different projects of the Ministry of HRD and has been working under the guide lines of the Government of India. Therefore, an activity of Govt. of India undertaken through the NYKS herein cannot be regarded as "Industry" because the same is done in discharge of its sovereign functions. The petitioner herein is engaged in discharging of its sovereign function for the public welfare and hence the same does not fall under the definition of "Industry" as defined u/s 2(j) of Industrial Disputes Act, 1947. In support of his submissions, learned counsel relied upon the judgment of Supreme Court in the case of Physical Research Laboratory Vs. K.G. Sharma, . It was also submitted that the petitioner herein is engaged in Public Welfare functions and discharging the directive principles of the State Policy. It is also carrying on different projects to promote the national integration, developing critical awareness among the Youth of country of their environments and social service programmes. The Hon'ble Supreme Court has also held in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, that the activity undertaken by the State and when the same are governed by the separate rules and constitutional provisions such as Articles 310 and 311 should strictly speaking be excluded from the sphere of Industry by necessary implications. The main objects of NYKS are to provide social services to the Public at large and the same are done without expecting any return in the form of monetary or in any other form and it is further submitted that social evolution is a process of constant growth and the State cannot afford to stand still without taking adequate measures through different organisations and hence the services provided by NYKS cannot be defined as Industry. The Hon'ble Supreme Court has also held that the word industry can reasonably mean only activity which results in goods made and manufactured or service rendered which are capable of being converted into saleable ones. They must be capable of entering the world of "res commercium" although they may be kept out of the market for some reason. It is not the motive of an activity in making goods or running a service but the possibility of making them marketable if one who makes goods or renders service so desires, that should determine whether the activity lies within the domain or circle of industry. In the petitioner's Sangathan the employees/volunteers do the services to the community at large without any profit motive and the petitioners' activity are completely in the name of sovereign function.

5. On the other hand Mr. Sanjay Parikh, learned counsel appearing for the

workman submitted that the petitioner was an "Industry" within the meaning of Section 2(j) of the I.D. Act and this aspect was clearly answered by Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . He submitted that the said judgment holds the field till date and in fact whenever the another Bench of Supreme Court took contrary view it was specifically overruled by the Larger Bench of the Supreme Court relying upon Bangalore Water Supply case (supra) To substantiate this, he submitted that the Supreme Court in two judgments, namely, Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, and in Bombay Telephone Canteen Employees" Association, Prabhadevi Telephone Exchange Vs. Union of India and another, had distinguished Bangalore Water Supply case (Supra) and had held that the establishments therein were not covered by the definition of industry. These two judgments were overruled by a Bench of 3 Judges in General Manager, Telecom Vs. A. Srinivasa Rao and Others, where it was held that Bangalore Water Supply case (supra) holds the field. Thereafter in Coir Board, Ernakulam, Cochin and Another Vs. Indira Devi P.S. and Others, the Supreme Court had cited Physical Research Laboratory case (Supra) and also other cases mentioned above, in paras 17 & 18 of its judgment, and had decided to refer the decision in Bangalore Water Supply case (supra) for reconsideration by a Larger Bench. Subsequently, three Judges of the Supreme Court held by its order dated 10th November, 1998 in Coir Board case (supra) held that Bangalore Water Supply case (supra) does not require any reconsideration. Learned counsel relied upon Paras 126, 140, 141, 142 and 143 of the judgment of Supreme Court in the case of Bangalore Water Supply case (supra) and submitted that in these paras it has been categorically held that a cooperative societies and other societies are industries. The activity of the petitioner is a systematic activity organized by cooperation by employer and employee and it is meant for services to satisfy human wants and wishes. The profit motive is immaterial; philanthropy is immaterial and the decisive test is to see the nature of activity with special emphasise on employer-employee relationship. If one looks at the resolution, Nehru Yuva Kendra Sangathan (Service Regulations 1987 and the Rules of Nehru Yuva Kendra Sangathan and also illustrative list of activities undertaken by Nehru Yuva Kendra, it becomes clear that all the tests given in Bangalore Water Supply case (supra) are fulfilled to declare Nehru Yuva Kendra Sangathan an "industry" u/s 2(j) of the I.D. Act, 1947. It was also submitted that the petitioner had not raised the contention that petitioner was doing sovereign function before the CGIT and in any case the function being discharged by the petitioner cannot be treated as sovereign function.

6. Obviously Bangalore Water Supply case (supra) which is 7 Judge Bench Judgment rendered by the Apex Court still holds the field. This does not need any clarification or detailed discussion. Still one may refer to observations of the Supreme Court judgment in the case of General Manager, Telecom Vs. S. Srinivas Rao (supra) wherein three judges Bench judgment specifically stated that the aforesaid judgment continues to be enforced and is a binding precedent. In this

case Supreme Court laid down triple elements to determine as to whether a particular establishment would be industry within the meaning of Section 2(j) of the I.D. Act. Discussion on this aspect can be found in para -140 of the Bangalore Water Supply case (supra), which reads as under:

140. "Industry" as defined in Section 2(j) and explained in Banerji (supra), has a wide import.

(a) Where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale prasada or food), prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Further in para-142 of the judgment, Supreme Court observed that even professions, clubs, educational institutions, cooperatives, research institutes, charitable projects and other kindred adventures would fall in the definition of industry if they fulfill the aforesaid triple tests. The particular establishments may qualify for exemption in the following cases:

"142

(a)

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt - not other generosity, compassion, developmental passion or project".

Thereafter the Court proceeded to lay down the dominant nature test in para-143, which reads as under:

"143. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (supra), will be the true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby".

7. The case of the petitioner is to be adjudged on the basis of aforesaid triple tests laid down by the Supreme Court. From the arguments advanced by learned counsel for the petitioner one can say that petitioner was registered as a Society with laudable and altruist objectives in mind. However, that by itself would not qualify for exemption inasmuch as absence of profit motive or gainful objective is irrelevant. Likewise even educational institutions, charitable projects and other kindred adventures would be industry, if they fulfill triple tests. It cannot be denied that there is a systematic activity which is organized by cooperation between employer and employees and services are rendered to satisfy human wants and wishes. Triple test is, Therefore, satisfied in this case.

8. In fact it was mainly emphasised by the learned counsel for the petitioner that the function being discharged by the petitioner was a sovereign function and, Therefore, it would qualify for exemption. However, the function being discharged by the petitioner cannot be treated as sovereign function which would take it outside the scope of Section 2(j) of the Industrial Disputes Act.

In Subparas (b) & (c) of Para-143 of Bangalore Water Supply case (supra), already reproduced above, the Supreme Court had clarified that-

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

9. Thus as per this para only those sovereign functions which are strictly understood as such would qualify for exemption and not the welfare activities or economic adventures undertaken by the Government or statutory bodies. The activity of the petitioner may be welfare activity but it is not sovereign function *stricto sensu*.

10. Mr. Parikh, learned counsel for the workman is right in contenting that even Telecom Department of Union of India as well as Department of Posts were held to be an "Industry" and contrary view taken by two Judges Bench of Supreme Court was overruled in the case of General Manager, Telecom Vs. S. Srinivas Rao (supra). In this case J.S. Verma, Chief Justice, speaking for the Court referred to Para-143 of the Bangalore Water Supply case (supra) and held that these Departments were not engaged in discharging of the sovereign function of the State. As far as judgment of the Supreme Court in Physical Research Laboratory case (supra) is concerned, it is clearly distinguishable. In that case the Court clearly found that triple test as laid down in Bangalore Water Supply case (supra) was not fulfilled. For this, one may usefully refer to discussion contained in para 12 of this judgment, which is as follows:

12. "PRL is an institution under the Government of India's Department of Space. It is engaged in pure research in space science. What is the nature of its research work is already stated earlier. The purpose of the research is to acquire knowledge about the formation and evolution of the universe but the knowledge thus acquired is not intended for sale. The Labour Court has recorded a categorical finding that the research work carried on by PRL is not connected with production, supply or distribution of material goods or services. The material on record further discloses that PRL is conducting research not for the benefit or use of others. Though the results of the research work done by it are occasionally published they have never been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. It has not been pointed out how the knowledge acquired by PRL or the results of the research occasionally published by it will be useful to persons other than those engaged in such type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does so except in an indirect manner".

11. Thus, the Court found that Physical Research Laboratory has engaged in pure research in space science. It was not intended for sale meaning there by no production, supply of material goods or services were involved as research was not for the benefit or use of the others. Thus third test laid down in Bangalore Water Supply case (supra) was clearly missing. Therefore, this judgment is of no help to the petitioner.

12. In view of the aforesaid discussions, I agree with the findings of the CGIT that petitioner is Industry within the meaning of Section 2(j) of the Industrial Disputes Act.

13. Validity of Workman's termination:

The relevant discussion holding termination of the workman's services to be bad in law is found in Paras 9 and 10 of the impugned Award which may be reproduced to understand the reasoning adopted by CGIT in the impugned Award, which read as under:

9. "It has been admitted by the management that the concerned workman has joined as Accounts Clerk at Nehru Yuva Kendra, Agra on and from 4.4.88 and his services were terminated w.e.f. 1.12.1988. Thus, the concerned workman had worked for over 240 days during preceding 12 consecutive months, counting backwards from 30.11.88 to 4.4.88. It is an undisputed fact on record that at the time of termination of his services, the concerned workman had not been paid any retrenchment compensation nor given one month's notice or pay in lieu thereof, in compliance of Section 25F of the I.D. Act, 1947. On this score alone, the action of the management in terminating the services of the concerned worker w.e.f. 1.12.88 is not tenable same being in violation of the mandatory provisions of Section 25F of the I.D. Act, 1947.

10. The plea of the management that the termination of the services of the concerned workman was actuated by his misbehaviour with his superiors or that his work was not satisfactory, is of no use, because no disciplinary action has been taken against the concerned workman, of course, complying with the principles of natural justice".

Counsel for the petitioner submitted that workman had not worked for 240 days as erroneously mentioned in the impugned Award inasmuch as period of service from 4.4.1988 to 30.11.1988 would not be 240 days. Petitioner is not correct in saying so as it makes exactly 240 days period from 4.4.1988 to 30.11.1988. Therefore, I agree with the conclusion of the CGIT that termination of petitioner's services is bad in law.

This leaves us to decide the question of relief to which the workman would be entitled to. CGIT has held that workman is entitled to reinstatement with full back wages or all other benefits which would have accrued to him. No doubt, normally when the termination is held to be illegal, relief would be reinstatement with back wages. However, in specific cases, going by the peculiar facts and circumstances of that case, this relief can be moulded. In the present case, following aspects would have bearing on the question of relief to be granted to the workman:

1. Workman was employed as Accounts Clerk on purely ad hoc basis and in this capacity, he worked only for 240 days.

2. It was the case of the petitioner before CGIT as well as this Court that after

becoming the Accounts Clerk at Nehru Yuva Kendra, Agra the petitioner with manipulation and his influence got his wife, Smt. Amita Sharma and his mother-in-law, Smt. Bimla Devi as part-time Instructors at Cutting & Tailoring Centre at Vidya Nagar, Agra and at Village respectively under the Nehru Yuva Kendra, Agra. The petitioner concealed the fact that Dwarika Parsad is his real younger brother and Smt. Amita Sharma is his wife and Smt. Bimla Devi is his mother-in-law.

3. Workman who was appointed on ad hoc basis, requested for regularisation, which request was turned down by giving the following reason in letter dated 30.11.1988:

"I am directed to inform you that the request to regularise the ad hoc services of Shri Murari Lal Sharma was considered but keeping in view his work and conduct during the period on ad hoc service, his request cannot be acceded to".

While refusing to regularise the workman by same letter, services of the workman were terminated who was working on ad hoc basis.

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 Accounts 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 bona fide view that such provisions are not applicable to it as it is not "industry" within the meaning of Industrial Disputes Act.

I am supported by Division Bench Judgment of this Court in the case of Delhi Transport Corporation Vs. Presiding Officer & Another 2000 LLR 136 wherein after dismissing and relying upon number of judgments of Supreme Court, the Division Bench decided to give compensation in lieu of reinstatement and back wages. It would be apt to quote the following portions of the said judgment:

"17. However, in the case of Coimbatore Pioneer `B" Mills Ltd. Vs. Labour Court Coimbatore & Ors. (1979) 54 FJR 236, a Division Bench of the Madras High Court was of the view that where there was non-compliance with the provisions of

Section 25F of the Act, the termination was bona fide, then reinstatement can be declined and compensation in lieu of reinstatement can be awarded. This decision was followed by another Division Bench of the High Court in the case of Mount Mettur Pharmaceuticals Ltd. Vs. Second Additional Labour Court, Madras & Anr. 1985 67 FJR 60, wherein it was contested that it is not the law that reinstatement follows in every where the termination order is quashed for having been made without complying with the provision of Section 25F of the Act.

18. The earlier decision of the Madras High Court, namely, Coimbatore Pioneer Mills was considered by the Supreme Court. A perusal of the decision of the Supreme Court in the case of Workmen of Coimbatore "B" Mills Ltd. Vs. Labour Court & Ors. (1982) 61 FJR 180 shows that the Supreme Court declined to grant Special Leave to Appeal on the question of reinstatement. The Supreme Court granted leave only on the question of the amount of compensation to be awarded.

19. There are now two recent decisions of the Supreme Court, namely, Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, , and Rattan Singh v. Union of India, (1997) 11 SCC 396 , wherein reinstatement was declined to the workman who was instead awarded compensation in lieu thereof.

20. In Rolston John, the Supreme Court was dealing with the Award of the Central Government Industrial Tribunalcum-Labour Court, Jabalpur, Madhya Pradesh dated 19th December, 1977. The Supreme Court rendered its decision on 28th January, 1992 that is, about 14 years later. Even though the Supreme Court held the retrenchment to be void and ineffective since the provisions of Section 25F of the Act had not been complied with by the employer, the Supreme Court considered the "long lapse of time" between the date of the Award and the date of its decision and awarded lumpsum compensation of Rs. 50,000 to the workman.

21. Similarly, in Rattan Singh, the termination of the workman took place in 1976 and the Supreme Court rendered its decision in 1996. The Supreme Court was of the view that because of the lapse of nearly 20 years since the termination it was not a fit case for directing reinstatement. The Supreme Court accordingly awarded Rs. 25,000/- to the workman in lieu of compensation for back wages and reinstatement.

22. However, on the other hand, learned counsel for the workman relied upon the decision of the Supreme Court in the case of Gammon India Ltd. Vs. Niranjan Dass (1984) 64 FJR 60, where the termination of the workman was in October, 1967 and by a judgment and order rendered in December, 1983, the Supreme Court set aside his termination. It was pointed out to the Supreme Court that during the pendency of the appeal, the workman had reached the age of superannuation. Notwithstanding this, the Supreme Court directed his reinstatement with all back wages and other service benefits.

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 decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh 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 workman. The reasons are that if the workman is to be reinstated then 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 fee that it may be unfair to the appellant if the workman is thrust upon it, especially when the workman can be given adequate compensation.

In this case the Division Bench had granted compensation at the rate of Rs. 5,000/- per annum from the date of termination till the date of decision by the Court. Although it noticed that in some of the earlier cases, various Division Benches of this Court had granted compensation at the rate of Rs. 2,000/- per annum, however, that figure was found to be quite low and it was thought fit to make it Rs. 5,000/- per annum keeping in view the increase in cost of living with the passage of time. I adopt the same yardstick and Award a sum of Rs. 60,000/- to be given to the work- man by the petitioner in lieu of reinstatement and back wages. In addition, the workman shall also be entitled to a sum of Rs. 10,000/- towards litigation expenses. The award of the Labour Court is modified to the aforesaid extent and the writ petition is disposed of accordingly.