
(2002) 02 DEL CK 0023
In the Delhi High Court
Case No : CWP No. 7273 of 2000

Pal Singh

APPELLANT

Vs

National Thermal Power Corporation Limited

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Citation : (2002) 3 AD 1059 : (2002) 96 DLT 877 : (2002) 65 DRJ 88 : (2003) 1 SLJ 62

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : M.R. Malhotra, for the Appellant; Dinesh Dwivedi V.K. Diwan and Poonam Singh, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In this writ petition under Article 226 of the Constitution the Award of Labour Court No. IX, Delhi has been assailed by the Workman. The Labour Court had come to the conclusion that the Workman had worked for a period of 242 days. If further found that he had not been served with any retrenchment notice or pay in lieu thereof. Following the decision of the Hon''ble Supreme Court in Management of M.C.D. v. Prem Chand Gupta and Anr., 1999 10 A.D. (SC) 371 in which it has been opined that artificial breaks are not to be recognized and the worker should be treated to be in continuous service, it was held in the impugned Award that the termination was contrary to law. Despite concluding that the Workman was entitled to reinstatement with back wages, the Labour Court followed the decision of a Division Bench of this Court in Delhi Transport Corporation v. Presiding Officer and Anr., 2000 LLR 136, and granted compensation at the rate of Rs. 5000/- per year, aggregating Rs. 75,000/-. The Management has not challenged the said Award.

2. In the Delhi Transport Corporation's case (supra) the Division Bench has opined as under:

"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 now 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 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 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".

3. Mr. M.R. Malhotra, learned counsel appearing on behalf of Petitioner/Workman has contended that the above observations are not in consonance with numerous judgments of the Hon"ble Supreme Court. It is his argument that the Delhi Transport Corporation (*supra*) judgment being per incuriam, the impugned Award calls to be set aside. It is his submission that the law continues to be that laid down in the Hindustan Tin Works case (*infra*) viz. that if the termination of a workman is found to be illegal, the normal rule is that he should be reinstated with full back wages. It is his contention that it is always open to the Court to reduce the quantum of back wages in the event that the Management prays and establishes that the circumstances of the case do not merit the grant of entire back wages. It is also his argument that whereas grant of compensation on yearly basis may be awardable this is the extraordinary exception and certainly not the rule. Mr. Malhotra has vehemently highlighted the fact that the Management's pleadings are entirely reticent on any possible circumstances which would justify a departure from the normal rule of reinstatement with full back wages.

4. Since the Division Bench in Delhi Transport Corporation's case (*supra*) has relied heavily on the decision of the Hon"ble Constitution Bench of the Supreme Court in The Punjab Land Development & Reclamation Corporation Ltd., Chandigarh v. The Presiding Officer, Labour Court and Ors., 1990 (4) SLR 154, it would be appropriate to at once advert to this decision. The question that had been debated before the Hon"ble Constitution Bench pertained to the meaning

that should be given to "retrenchment" as defined in Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act"). The Constitution Bench observed that its predecessor had, in *Hariprasad Shivshankar Shukla Vs. A.D. Divikar*, , accepted the ordinary contextual meaning of retrenchment, namely, termination of surplus labour as the major premise. After a careful consideration of all the views expressed by smaller Benches, the Hon"ble Constitution Bench enlarged upon the meaning given by it earlier and held that retrenchment means the termination by the employer of the services of a workman for any reason whatsoever, except those expressly excluded in the Section. This is the ratio decidendi of *Punjab Land Development case* (supra). No doubt the Constitution Bench ordered the payment of compensation of Rs. 1.25 lakhs to the two workmen, but it needs to be carefully borne in mind that while doing so it did not intend to convey and proclaim that payment of compensation should normally be granted in lieu of reinstatement with full back wages or even that it was optional for the Labour Court to adopt any of these orders. Judicial propriety dictates that a Single Bench must follow the judgment delivered by a Division Bench of the same Court. The law of the land, however, as enunciated by Article 141 of the Constitution, is what is declared by the Supreme Court, including its obiter dicta, which is binding on all Courts within the territory of India. If a Single Bench, Therefore, finds that the decision of the Division Bench is per incuriam, namely, is irreconcilable with the pronouncement of the Supreme Court, the Single Bench is constitutionally bound to implement the views of the Supreme Court. However, it will presently be clear that the opinion of the Division Bench in the *Delhi Transport Corporation case* (supra) is not incongruous with the views of the Hon"ble Supreme Court, but only expresses a preference for one of the reliefs frequently granted by the Apex Court.

5. A number of decisions have been cited by the learned counsel for the Workman to persuade me not to follow the opinion of the Division Bench. These are - *The State Bank of India Vs. Shri N. Sundara Money*, , *Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd.*, 37 FLR 240 , *Gujarat Steel Tubes Ltd. etc. etc. v. Gujarat Steel Tubes Mazdoor Sabha and Ors.*, 1980 LAB.I.C. 1004, *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, , *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, , *D.K. Yadav v. J.M.A. Industrial Ltd.*, 1993 LLR 584, *General Manager, Telecom v. Srinivasa Rao S. and Ors.*, 1998 1 LLJ 255, *Samishta Dube v. City Board, Etawah and Anr.*, 1992 (2) SC 357, *Management of M.C.D. v. Prem Chand Gupta and Anr.*, 1999 (10) SC 457, *M/s. Scooters India Ltd. v. M. Mohammad Yaqub and Anr.*, 2000 (7) SC 613, *G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital v. State of Uttar Pradesh and Ors.*, 2000 LLR 1189, *Vikramaditya Pandey v. Industrial Tribunal*, 2001 LLR 193, *Deep Chandra v. State of Uttar Pradesh and Anr.*, 2001 LLR 312, *Management of Delhi Transport Corporation Indraprastha Estate, New Delhi v. Ram Kumar and Anr.*, 44 FLR 356, *The Kapurthala Central Co-operative Bank Ltd. Kapurthala v. The Presiding Officer, Labour Court, Jullundur and Ors.*, 1984 LAB.

I.C. 974, Harish Kumar v. The Registrar and Anr., Delhi High Court, 61 FLR 196, Avdesh Pratap Singh v. State of U.P. and Ors., 1998 3 LLJ 550, Delhi Consumer Co-op. Wholesale Store Ltd. v. S.L. Thakural and Ors., 1999 LLR 644, Bhagwati Prasad Vs. Union of India, , Piara Lal v. Lt. Governor and Ors. , 2000 LLR 1263, The Management of Horticulture Department of Delhi Admn. v. Trilok Chand and Anr. 2000 LLR 130, M.K. Agarwal v. Gurgaon Gramin Bank and Ors., 1988 LAB I.C. 380, Sunder Dass Vs. Asthetic Exports Pvt. Ltd. and Others, , Veeramani v. The Management of Tamil Nadu Electricity Board and Anr., 1992 LAB. I.C. 2265, Concerned Workmen of Sahni Industries v. B.D. Gupta and Anr., 1984 LAB. I.C. 70 , Suresh Chandra Barad v. State of Orissa and Ors., 1982 LAB. I.C. 748, Hari Palace, Ambala City v. The Presiding Officer, Labour Court, Rohtak and Anr., 1980 LAB. I.C. 123, Management of Hotel Oberoi and Ors. v. R.K. Baweja and Ors. , 30 FLR 70, Mercantile Bank Ltd. v. Presiding Officer, Central Government Industrial Tribunal and Ors. , 1982 LAB. I.C. 203, Gurmail Singh Vs. Principal, Govt. College of Education and Others, , Madan Singh Rawat v. Ajmer Central Co-operative Bank and Ors., 2000 (84) FLR 619, State of Haryana and Anr. v. Presiding Officer, Labour Court, Rohtak and Anr. 2000 1 LLJ 66, ANZ Grindlays Bank v. General Secretary, Grindlays Bank Employees Union and Ors., 2001 LLR 428, Ishwar Singh v. Delhi Transport Corporation, 1999 LLR 130, Madan Lal Arora v. Management/Director, All India Institute of Medical Sciences and Ors., 1999 LLR 1050, Coal India Ltd. v. Presiding Officer, Labour Court No. 3 and Ors., 2001 LLR 460, Malkhan Singh Vs. Union of India and others, . I shall, however, refer only to some of these with a view to avoid needless prolixity.

6. In Management of M.C.D. case (supra) it has been held that the termination of services was null and void as it violated Section 25-F of the I.D. Act. Thereafter the Hon"ble Supreme Court observed that "once it is held that termination of the respondent-workman on 29.4.1966 was null and void being vocative of Section 25-F of the I.D. Act, the logical consequence would be that he would be entitled to be re-instated in service with continuity and in normal course would be entitled to full back wages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full back-wages to the respondent-workman even though he will be entitled to be re-instated in service of the appellant-Corporation with continuity and all further consequential benefits on the score, save and except the grant of full back wages, as indicated herein below". In Samishta Dube's case (supra) the question to be answered was whether the "last come first go" principle in connection with retrenchment would be efficacious even in the case of a daily-wager; the answer was in favor of the daily-wager/temporary employee. The Hon"ble Supreme Court carved out the only exception to be that of lack of efficiency or loss of confidence. However, it is relevant for the present purposes to note that despite the fact that the temporary workman had been in employment for the short duration of less than four months, the Hon"ble Supreme Court ordered re-appointment with all consequential benefits and back wages from January 1993. Similarly, in M/s. Scooters India's case (supra) another coordinate Bench of the Hon"ble Supreme

Court upheld the Order of re-instatement with continuity of services and full wages. This very Bench observed in Deep Chandra's case (supra) that the High Court had "lost sight of the point in issue that is, when an employee had put in service for more than 240 days in each year for several years whether his services can be put an end to without following the procedure prescribed u/s 25-F of the Industrial Disputes Act. If there has been violation thereof such an employee will have to be reinstated in his original service on the same terms and conditions in which he was working earlier. If this is the opinion in law, we fail to understand as to how the High Court could have interfered with the award made by the Labour Court". In Vikramaditya Pandey's case (supra) the Hon"ble Supreme Court, in the context of claim of an ad hoc employee, has categorically held as follows:

"The only issue before the High Court was whether the appellant was entitled to reinstatement in service with back wages, once the termination of his services had been held to be illegal and more so when the same was not challenged. Ordinarily, once the termination of service of an employee is held to be wrongful or illegal the normal relief of reinstatement with full back wages shall be available to an employee; it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of back wages. In this case we do not find any such pleading of special circumstances either before the Tribunal or before the High Court. Since Regulation 103 of the Regulations is referred to in the order of the Tribunal as well as in the High Court and it has bearing in deciding the controversy the focus is needed on it.

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The Tribunal felt difficulty in ordering reinstatement as the appellant was not a regular employee. The appellant ought to have been ordered to be reinstated in service once it was found that the services were illegally terminated in the post he was holding including its nature. Thus, in our opinion both the Tribunal as well as the High Court were not right and justified on facts in law in refusing the relief of reinstatement of the appellant in service with back wages."

7. On a plain reading of these judgments, pronounced in the last three years, it would be clear that the grant of compensation has not replaced and substituted the principle of reinstatement with full back wages as enunciated in the Hindustan Tin Works case supra) over a quarter century ago. But all these principles have coexisted, leaving their choice and application to the Court's discretion. Therefore, in my view, if the illegal termination/retranchment appears to the Court to be mala fide or with the intent to throttle legitimate trade union activity, reinstatement with full back wages should be the norm. Otherwise the very objective of the labour legislation would be thwarted. It is essential to recall that even in the abovementioned case the Court did not lay down the reinstatement with full back wages as the inflexible rule. It preserved the Courts discretion to grant appropriate relief. This was despite the Hon"ble Supreme

Court making these pithy observations - "More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman could be subjected to a sort of penalty for no fault of his and it is wholly underserved. Ordinarily, Therefore, workman whose service has been illegally terminated would be entitled full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz, to resist the workman's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages".

8. What falls for consideration is whether the aforementioned decisions of the Hon"ble Supreme Court lay down a legal proposition which is contrary to the conclusion arrived at by the Division Bench of this Court in the Delhi Transport Corporation's case (supra). The said Bench had relied on the decision of the Constitution Bench of the Apex Court in Punjab Land Development's case (supra) as also of smaller Benches in Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, , in which, noting the long lapse of 14 years between the date of the Award and the date of its decision, the Apex Court had awarded a lumpsum compensation of Rs. 50,000/-. The Division Bench further took note of the decision of the Hon"ble Supreme Court in Rattan Singh v. Union of India, (1997) 11 SCC 396 , where, owing to two decades having elapsed since the termination, Rs. 25,000/- was awarded to the Workman in lieu of compensation for back wages and reinstatement. It would be advantageous to mention that the Constitution Bench of the Hon"ble Supreme Court in Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik, , reduced the lumpsum amount of compensation granted by the Labour Court from Rs. 96,000/- to Rs. 4800/- in lieu of her reinstatement. In similar vein a Three-Judge Bench of the Apex Court in Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra, , following the immediately preceding decision as well as Assam Oil Company Vs. Its Workmen, , had set aside the order of reinstatement and ordered payment of compensation equivalent to 12 months salary. The Three-Judge Bench had likewise directed that in lieu of reinstatement compensation should be granted. In Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, a three-Judge Bench had set aside reinstatement and granted lumpsum compensation.

9. In the conspectus of the decisions of the Hon"ble Supreme Court including even those cases which had not been cited before the Hon"ble Division Bench in the Delhi Transport Corporation case (supra) it would be fair to perceive more than one current in the stream of decisions of the Apex Court; one of these currents is the grant of compensation in place of reinstatement. The Court is free

to adopt any of the reliefs, as it considers expedient in the facts of the case.

10. In the *The State Bank of India Vs. Shri N. Sundara Money*, , the question which has troubled and vexed me has been articulated thus - "had the said Bank known the law and acted on it, half a month's pay would have concluded the story but that did not happen. And now, some years have passed and Bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows". The same apprehension was articulated in the extracted portion from the *Hindustan Tin Works* case (supra). My concern is the consequence of the fact that Management invariably protract litigation, and after several years have elapsed plead that reinstatement with full back wages may well drive the Management into bankruptcy. Courts are thus pressurised by pecuniary considerations to depart from granting complete restitution and status quo ante which should be the natural consequence of an act that is found to be illegal. I had preferred the view that if, because of its intransigence and recalcitrance, the Management had failed to take appropriate legal steps at the inception of the litigation, its alleged financial plight should not be taken into consideration by the Court at a later stage. In granting compensation, however, what the Court achieves is the balancing of interests. Labour is also not expected to use beneficial labour legislation as a device to get a windfall. Where several years have passed after the termination of services it would be sanguine to assume that the Workman has in fact remained unemployed. Therefore, where the Management has been imprudent or has negligently not followed the procedure laid down in law it will suffer the consequences that, in place of a comparatively small retrenchment package, it would have to pay a larger amount of compensation. The frequency and regularity of decisions in which the Hon'ble Supreme Court has granted compensation in place of reinstatement with back wages (full or partial) is indicative of the emergence of the very pragmatic approach of granting compensation. This subserves the interests of all concerned. Mr. Dinesh Dwivedi, learned Senior counsel appearing on behalf of respondent had contended, with obvious relevance, that consequent upon the engrafting of Section 11A into the Industrial Disputes Act, in 1971, the strength of reinstatement with back wages rule has been drastically diluted. It cannot be ignored that both Constitution Benches in the *Punjab Land Development* case (supra) and in the *Utkal Machinery* case (supra) have granted compensation and not reinstatement with back wages.

11. In these circumstances I find no merit in the arguments of Mr. Malhotra that the decision of the Division Bench of this Court, specifically followed by the Labour Court, is in variance with the decisions of the Hon'ble Supreme Court. The principle of granting compensation is of equal antiquity when compared with reinstatement with full or partial back-wages and continuity of service. All of them have been applied by the Apex Court with equal frequency. The opinion of the Division Bench in the *Delhi Transport Corporation's* case (supra) which expresses the current though should Therefore be applied. There is no error in

the impugned Award as this is exactly what the Labour Court has done.

12. The writ petition is without merit and is dismissed. There shall be no order as to costs.