

(2008) 02 DEL CK 0235

In the Delhi High Court

Case No : Civil Writ Petition No. : 950 of 2008

Prem Chand

APPELLANT

Vs

The Management of M/s. The Joint Director, Information and
Public Relations

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(4), 10(4A), 11A, 25F

Citation : (2008) 7 ILR Delhi 33 Supp

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Puneet Verma, for the Appellant; Sat Narain, Joint Director, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The petitioner is a workman. He has come to this Court under Article 226 of the Constitution of India praying that the award of the Labour Court announced on 14th August, 2007 whereby he has been awarded compensation of Rs. 20,000/- for illegal termination of his services by the respondent be set aside, and that the relief of reinstatement sought by him before the Labour Court be granted instead. Counsel for the petitioner bases his challenge on two grounds. His first contention is that since the petitioner had only sought reinstatement with full back wages and continuity of service, and had not prayed for any compensation in lieu thereof; therefore, once the Labour Court concluded that his termination was illegal, the only option for the Labour Court was to reinstate the petitioner. He states that in view of the fact that he had only sought reinstatement, the same ought to have been granted to him for another reason, which is that his right to livelihood as conceived in ground (a) of the grounds mentioned in the petition would otherwise stand violated. For his second challenge, he relies on ground (c) mentioned in the writ petition. Ground (c) is as follows:

(c) Because the Hon"ble Tribunal also failed to appreciate that, without prejudice to the contention of the petitioner that he was in fact a full time employee of the respondent, the petitioner could be very well adjusted on any of the forth class post of the respondent management as if he was only a part time employee, there is no need of a regular or a sanctioned post and the petitioner by way of this writ petition only demanding the reinstatement that can be given even without back wages.

2. A perusal of the impugned award would show that, as analysed by the learned Labour Court, the petitioner had himself relied on Exhibit WW 1/1 where he was shown as a Sweeper working for two hours everyday @ of Rs. 500/-per month. Similarly, the management had also placed a number of documents on the record showing the petitioner as a part time employee working for two hours daily at a monthly salary of Rs. 500/- per month ever since 1998. It is on this basis that the learned Labour Court has concluded that the petitioner was in fact a part time employee who was working for two hours a day at a monthly salary of Rs. 500/- per month. Before the Labour Court, the petitioner had also tried to urge that in fact he was a full time employee. In view of the fact that the document Exhibit WW1/1 placed on the record by the petitioner himself clearly showed that he was a Sweeper working for two hours in a day @ of Rs. 500/- per month, and also taking into consideration documents placed by the management on the record which showed that the petitioner had been a part time employee since 1998, the claim that the petitioner was in fact a full time employee did not find favour with the learned Labour Court. Before this Court also, petitioner"s counsel has not attempted to urge anything to the contrary.

3. Next question that was considered by the learned Labour Court is whether the petitioner had himself left the employment or was not interested in his job, in other words, whether he had abandoned his employment. In this regard, the learned Tribunal has concluded that in fact the claim of abandonment has not been proved by the management. Since the learned Labour Court had concluded that despite being a part time employee, the petitioner was in fact a "workman" under the Industrial Disputes Act, and that the management had failed to prove abandonment; therefore, the termination of his service was illegal and unjustified and served to be set aside.

4. The learned Labour Court thereafter examined the question as to the nature of the relief to be granted to the workman. The power & jurisdiction of the Labour Court to grant appropriate relief in the event termination being set aside, for not following the provisions of Section 25-F of the Industrial Disputes Act, is well recognized through a catena of judgments on this issue. It has been repeatedly stated that reinstatement is not the rule. It may be useful at this juncture to set down a brief background of the trend of judicial pronouncements on this aspect. Till the years 1980-85, the general trend was of reinstatement in the event termination is found illegal. The power of Industrial Tribunal to direct reinstatement was recognised in AIR 1949 111 (Federal Court) Exceptions to this

rule are also recognised in various judgments and reinstatement can be validly denied for many reasons including, inter alia, the nature of job, the workman not being a regular worker or not recruited through employment exchange or other regularly prescribed mode of selection. Such exceptions were also noted by the Supreme Court in the case of Haryana Tourism Corporation Ltd. Vs. Fakir Chand, etc. etc., . To decide this matter, the Labour Court has examined a number of authorities, and in particular, the decision of this Court in Nehru Yuva Kendra Sangathan Vs. Union of India and Others, wherein this Court had dealt with the question of reinstatement and back wages. It is noticed in paragraphs 27 and 28 thereof that although in the 1970s and 1980s, reinstatement with back wages was the norm in all cases where termination was found to be illegal, the trend of later decisions of the Supreme Court seems to suggest that now the award of compensation in lieu of reinstatement and back wages is the norm. This Court therefore held that;

reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

The learned Labour Court also adverted to the decision of the Supreme Court in M.L. Binjolkar Vs. State of Madhya Pradesh, , to the same effect where, in paragraph 7, the Supreme Court has referred to a number of earlier decisions of that Court and concluded that"

The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.....

5. The same position has been reiterated by the Supreme Court in paragraph 56 of its decision in U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey,). Reference may also be made to a decision of a Division Bench of this Court in Pramod Kumar and Another Vs. The Presiding Officer and Another, where also a plea taken by the petitioner that the learned Single Judge ought to have directed reinstatement instead of merely awarding compensation to the workman, was considered only to be rejected. It is in the light of these pronouncements that the learned Labour Court has looked at the circumstances of the petitioner's case. A reading of paragraphs 26 and 27 of the impugned award shows that in deciding to award compensation instead of reinstatement, while the learned Labour Court was conscious of the fact that compensation in lieu of reinstatement and back wages is now the norm, at the same time, it has also considered the fact that the petitioner had worked with the management on a part time basis for two hours on monthly wages of Rs. 500/-per month for about six years. The Labour Court has felt that since the petitioner was only a part time employee, working for only two hours in a day with the management, therefore instead of reinstatement, compensation would be a better alternative.

It has therefore decided to award compensation of Rs. 20,000/- to be paid to the petitioner within one month of publication of the award failing which interest @ of 10% would be payable to the workman. According to the Labour Court, this amount would be sufficient to meet the ends of justice. A rough calculation will show that the Labour Court has in fact directed payment of compensation equivalent to 40 months of earnings. To put it differently, it has given him compensation amounting to the salary drawn over a period of three years, which is also more than half of his tenure with his employer. It is noteworthy that Supreme Court in the case of O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, held that compensation equivalent to 3.33 years' salary (including allowances) as admissible on the basis of last pay and allowances would be a reasonable amount to award in lieu of reinstatement. In that case, the Court has taken into consideration the fact that the corpus, if invested at prevailing rate of interest, will yield 50% of the annual salary and allowances and the workman would get 50% of what he would have earned by way of salary and allowances with four additional advantages:

- (i) He will be getting this amount without working
- (ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.
- (iii) If he had been reinstated, he would have earned the salary upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this, he would be getting the aforesaid 50% annually till he dies, regardless of his superannuation, after his demise, his heirs would keep getting it in perpetuity.
- (iv) The corpus of lump sum compensation would remain intact, in any event.

This was also reiterated in the case of Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, Thus, I do not find that the decision taken by the Labour Court in this regard is in any way perverse or arbitrary nor do I feel that it has occasioned any failure of justice. A Writ Court is not exercising appellate jurisdiction and the scope for interference is very limited. Reference in this regard may also be had to the cases of Syed Yakoob Vs. K.S. Radhakrishnan and Others, where it was observed that;

There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings.

In the case of State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma, the Supreme Court held that the High Court cannot sit in appeal over the award of the Labour Court, but jurisdictional errors can be corrected while exercising power of judicial review. Similarly, in Apparel Export Promotion Council Vs. A.K.

Chopra, it was observed that

since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent for that of the departmental authorities.

Furthermore, in the case of Govt. of A.P. and Others Vs. Mohd. Narsullah Khan, states as follows:

11. By now it is well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of Natural Justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority.

6. Lastly Learned counsel for the petitioner has also sought to urge that his client is hopeful of getting some regular employment with the respondent. He has suggested that this Court keep this matter on board on the plea that pendency of this writ petition will assist his client in securing favourable consideration from the respondent in this regard. In conjunction with this suggestion, the petitioner has sought to link ground (c) of his writ petition, which has been reproduced above, to state that it was entirely within the powers of the respondent to recruit the petitioner in any 4th class post as part time employee without even the necessity for a regular or sanctioned post. I do not think such a plea can be of any avail to the petitioner. In my opinion the statute does not vest the Labour Court with any power to direct the employer to "adjust" the petitioner in any other Class IV employment, "as if he was only a part-time employee," as sought to be contended by petitioner's counsel, reinstatement can only be granted in the same employment and not in any other employment with the employer. The tactic of filing such a petition in this Court, and then using the very fact of its pendency to create some sort of pressure on the respondent to give the petitioner further employment, has only to be deprecated. To my mind, it would be wholly unethical for this Court to lend itself to such tactics on the part of a litigant.

7. The contention of the petitioner to the effect that since his client had only claimed reinstatement without any claim for back wages or compensation, therefore its decision to award compensation in lieu of reinstatement, demonstrates that the impugned award is perverse and occasioned a failure of justice, since it did not have any jurisdiction to do so, is also devoid of merit. An examination of Section 10(4) of the Industrial Disputes Act shows clearly that the Labour Court is required to confine its adjudication to the points of dispute referred & "matters incidental thereto". In this case the workman had applied directly to the Labour Court u/s 10(4A) as amended vide Delhi Act 9 of 2003

which came into effect from 22.8.2003. This states as follows:

(4A) Notwithstanding anything contained in Section 9C & this section, in the case of dispute falling within the scope of Section 2A, the individual workman concerned may, within twelve months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Dispute (Delhi Amendment) Act, 2003, whichever, is later, apply in the prescribed manner, to the Labour Court or the Tribunal, as the case may be, for adjudication of the dispute & the Labour Court or Tribunal, as the case may be, shall dispose of such application in the same manner as a dispute referred under subsection (1).

What is noteworthy is that in the case of any application moved to the Labour Court under this provision, the Labour Court is enjoined to, "dispose off such application in the same manner as a dispute referred to in sub-section (1)." It follows therefore, that the Learned Labour Court was bound to dispose off this application in the same manner as any other dispute that might have been referred to it. From this, it can be concluded that the provisions of Section 10(4) which apply to all other references and spells out the nature of the Labour Court's jurisdiction, as well as the scope of its adjudicatory powers whilst disposing off such references, would be equally applicable while deciding an application made directly to the Labour Court u/s 10(4A). To my mind, the expression "shall dispose of such application in the same manner", can only mean that while deciding this application, it will apply the same principles and shall have same powers as are available to the Labour Court and be subjected to the same restrictions by which Labour Court is bound in case of references made to it in the ordinary course u/s 10.

8. It is settled law that if the Labour Court is of the opinion that the award of said compensation would meet the ends of justice in a particular case, then keeping in mind the relevant facts and circumstances of that case, the Labour Court has the power to award compensation even though there may be no claim for back wages or reinstatement made by the workman. This power is derived from Section 11-A of Industrial Disputes Act which deals with power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of Discharge or Dismissal of workmen. In *Anglo-American Direct Tea Trading Company Ltd. Vs. Workmen of Nahortoli Tea Estate* (1961) 2 LLJ 625 (SC), the Supreme Court through Justice Wanchoo held that Section 11-A vests the industrial adjudicators with the discretionary jurisdiction to give "such other relief to the workmen... in lieu of discharge or dismissal as the circumstances of the case may require," where for some valid reason it considers that reinstatement with or without conditions will not be fair or proper. Compensation in such a case is the solatium for unjustified and premature termination of employment. In this case also, the same has been done. The relief of compensation is clearly incidental to any adjudication that goes into the question of unlawful termination of service of an employee. Even going by the general principles of Industrial Adjudication, it

would be incorrect to conclude that compensation in lieu of reinstatement is not incidental to a dispute relating to dismissal or discharge of a workman. As already stated above, it is unquestionable that even after finding that termination is illegal, the Labour Court has the power to decline reinstatement if it is of the view that compensation will suffice.

9. The counsel for the petitioner has repeatedly tried to say that he was entitled to reinstatement because of his right to livelihood, which is recognized by the courts as an extension of the right to life guaranteed by the State under Part III of the Constitution of India, relating to Fundamental Rights. Such an argument needs to be noticed only to be rejected peremptorily. Right to livelihood, or any other Fundamental Right, is subject to reasonable restrictions that may be imposed by the State or by any other Constitutionally valid Statute enacted by the Parliament. The Industrial Disputes Act is one such legislation that indeed provides for the investigation & settlement of industrial disputes and provides, inter-alia, a degree of protection against exploitation and oppression of labour. It must however be kept in mind that even this protection is subject to the rule of law, which is equally applicable to all, whether management or labour. It is within the province of the Labour Court to decide whether on an overall conspectus of the surrounding circumstances an award of compensation will suffice and if it does arrive at that conclusion on a rational and sustainable basis, the workman cannot insist that if he is not put back in his part time job in which he rendered 2 hours service everyday, his right to livelihood enshrined in the Constitution is unjustly taken away.

10. I might add that Mr. Sat Narain, Joint Director, Information and Public Relations, Punjab Govt., Punjab Bhawan, New Delhi who has appeared in response to the advance notice served upon the respondent by the petitioner, has denied any further offers being made to the petitioner as has been claimed by the counsel for the petitioner at the bar for giving the petitioner any further employment. In addition, he has also stated that the petitioner is refusing to accept the tender of compensation from the respondent as awarded by the Labour Court. Be that as it may, I am satisfied that there is no infirmity with the impugned award. It suffers from no error of jurisdiction or perversity, nor had it occasioned any failure of justice. For all the aforesaid reasons, the matter does not call for interference in the exercise of writ jurisdiction under Article 226 of the Constitution. The petition is dismissed.