
(2009) 05 DEL CK 0472

In the Delhi High Court

Case No : Writ Petition (Civil) No. 22852 of 2005

Punjab National Bank

APPELLANT

Vs

Neeraj Kumar

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A), 17B, 25(F), 25(N)

Citation : (2009) 05 DEL CK 0472

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Rajat Arora, for the Appellant; Om Prakash Aneja, for the Respondent

Judgement

V.K. Shali, J.—The petitioner/Bank has challenged the award dated 08.8.2005 passed by the Industrial Tribunal cum Labour Court-II in ID No. 7/2000 in case titled Sh. Neeraj Kumar v. Punjab National Bank.

2. By virtue of the aforesaid award, the reference made by the appropriate Government to the learned Tribunal as to whether the services of Sh. Neeraj Kumar Water Boy/Peon were terminated illegally and unjustifiably w.e.f. 12.4.1999 was an issue. It was also referred to the learned Tribunal as to what relief the said workman was entitled to. The respondent/workman filed his statement of claim in response to the notice issued by the learned Tribunal and the petitioner/Bank also filed its written statement contesting the claim of the respondent/workman. The parties have adduced their evidence before the learned Tribunal and thereafter the Tribunal gave a finding that the termination of the respondent's services was in violation of provisions laid down u/s 25(N) and 25(F) of the Industrial Disputes Act, 1947 and accordingly, the said termination was held to be illegal and unjustified.

3. The learned Tribunal while holding the termination illegal, directed the reinstatement of the respondent/workman and granted the benefit of continuity of service along with 20% of back wages to be paid to the respondent/workman.

4. The petitioner feeling aggrieved by the aforesaid impugned award has preferred the present writ petition. The counsel for the petitioner has very fairly confined the challenge only to the question of the award by virtue of which the learned Tribunal has directed reinstatement and payment of back wages to the extent of 20% to the respondent/workman. It has been contended by the learned Counsel for the petitioner that the respondent/workman's own case is that he has worked with the petitioner/Bank only from 1st August, 1998 to 11th April, 1999 as a Water boy/Peon. The aforesaid period which happens to be just over 240 days so as to meet the requirement of law to entitle the respondent/workman the requisite relief under the Industrial Disputes Act. It has been contended keeping in view the facts the respondent/workman had been engaged with the petitioner only for a short duration of approximately 8½ months and the fact that he was employed as a Water Boy/Peon and paid a mere wages of Rs. 500/- per month, therefore, it would be a fit case where the learned Tribunal instead of directing the reinstatement and payment of back wages it ought to have ordered the payment of one time lump sum compensation to the respondent/workman.

5. This submission is further sought to be fortified by the fact that more than a decade has gone by when the services of the respondent/workman have not been availed by the petitioner/Bank and keeping in view the fact that when the bank is trying to reduce the number of persons as urged by the learned Counsel, it would be just and fair to grant one time compensation to the respondent/workman.

6. The learned Counsel for the respondent on the contrary raised submissions with regard to the factum that the respondent/workman had admittedly rendered service with the petitioner/Bank for 251 days. It was urged that the petitioner/Bank was taking a contradictory stand inasmuch as at one place they say that the respondent/Bank was employed on daily wages and paid a sum of Rs. 50/- while as in the testimony of the witness examined by the petitioner, it has been stated that the respondent/workman was being paid the wages on the completion of a month. On the question of modification of the award passed by the learned Tribunal the counsel vehemently opposed the same and contended that since the termination of the services of the respondent/workman has been held to be illegal and unjustified, therefore, the learned Tribunal has rightly granted the benefit of reinstatement to the respondent/workman which is the normal relief which ought to be granted in such an eventuality.

7. To buttress his submission, the learned Counsel has placed reliance on two judgments titled *Vikramaditya Pandey Vs. Industrial Tribunal and Another*, and *Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari*,

8. I have carefully considered the submission made by the counsel and perused the authorities cited by counsel for the respondent. So far as the authorities which are cited by the counsel for the respondent are concerned, in *Bank of Baroda* 's case (supra) the Apex Court came to a conclusion that it was not

necessary for the workman to prove his letter of appointment to show the relationship of the employer and employee and the same could be shown otherwise also that he is an employee in case it is established that he has rendered 240 days service with the employer. The said judgment is not applicable to the facts of the case as the counsel for the petitioner has not contested the finding given by the learned Tribunal with regard to the factum of the respondent/workman having worked for more than 240 days and thereby establishing the relationship of the employer and employee.

9. So far as the second judgment in Vikramaditya Pandey's case is concerned, no doubt in the facts of the said case relief of reinstatement and the payment of back wages was held to be in proper but there is no general proposition of law laid down by the Apex Court that the reinstatement is necessary consequence of all the findings given by the learned Tribunal where termination is held to be illegal. As a matter of fact there are string of authorities which now specially laying down that merely on account of the fact the termination of a workman is held to be illegal and unjustified, it does not ipso facto warrant that an order of reinstatement ought to be passed in each and every case. The learned Tribunal in exercise of its power u/s 11(A) of the Industrial Disputes Act, 1947 can pass an appropriate order keeping in view the peculiar facts and circumstances of each case and grant appropriate quantum of one time compensation to the workman in lieu of benefit of reinstatement and payment of back wages. Reliance in this regard can be placed on the authorities: P.V.K. Distillery Ltd. Vs. Mahendra Ram, and U.P. State Electricity Board Vs. Laxmi Kant Gupta,

10. So far as the present case is concerned, no doubt the learned Counsel for the petitioner has not challenged the finding of fact handed down by the Tribunal with regard to the factum of respondent/workman having rendered 240 days service with the petitioner/Management but that period of duration of service having been rendered by the respondent/workman with the petitioner is very decisive which warrant that it is a fit case where instead of directing reinstatement, the learned Tribunal ought to have granted the benefit of one time lump sum compensation. In addition to this, there are two more factors which this Court feels ought to have been taken into consideration for the purpose of moulding the relief u/s 11(A) of the Act in favour of the petitioner/Bank by permitting them to grant one time compensation rather than the benefit of reinstatement. These two factors are quantum of wages and the nature of duties which the respondent/workman was performing with the petitioner/Bank as he was engaged basically as a Water Boy. In addition to this, there has been a time gap of more than ten years from the date of the alleged termination and therefore, that should also be a ground weighing in favour of the bank to permit them to grant one time compensation.

11. For the reasons mentioned above, I feel that this is a fit case where instead of granting the benefit of reinstatement and payment of back wages, the respondent/workman ought to have given one time lump sum compensation in

lieu of reinstatement of back wages.

12. Now the question would arise as to what would be the just, fair and reasonable compensation to be paid to the petitioner. The aforesaid four factors would also govern the quantum of compensation also. It is today that a cheque of Rs. 1,34,958/- has been paid to the respondent/workman on account of the order passed u/s 17B of the Act on 09.8.2008. Therefore, today itself that substantial amount of money has been paid to the respondent/workman. I therefore, feel that another sum of Rs. 50,000/- if paid to the respondent/workman by the petitioner should meet the ends of justice so far as the payment of compensation to the respondent/workman is concerned.

13. I, accordingly direct that the award dated 08.8.2005 passed by the learned Labour Court-II in ID No. 7/2000 to be modified. So far as the portion directing the reinstatement and payment of back wages to 20% are concerned, the same shall be substituted with one time lump sum compensation of Rs. 50,000/- and the additional amount of Rs. 1,34,958/- paid today in the Court.

14. Needless to say that the award to the extent stands modified. The respondent/workman shall also be entitled to costs of Rs. 20,000/- apart from the aforesaid amount.