

(2010) 08 DEL CK 0139

In the Delhi High Court

Case No : Writ Petition (C) No. 997 of 2008

Shri Mahabir Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 171 DLT 637 : (2011) 1 LLJ 658

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Mohd. Nayeemuddin, for the Appellant; Bhakti Pasrija, for the Respondent

Judgement

Manmohan Singh, J.—The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for a writ thereby to call upon the order of the Ld. Labour Court No. XXI (Fast Track) vide I.D. No. 676/06/95 and after examining it to modify the award dated 13.11.2007 to the effect that the petitioner may be granted reliefs of reinstatement in the service of the respondent and with full back wages and continuity of service and all consequential benefits.

2. Brief facts of the case are that the petitioner was appointed by the Delhi Transport Corporation/ respondent as a fitter in the year 1974. On 14.06.1988, he was put under suspension on the basis of allegation of instigation against the powers of ATS and for refusal to collect the attendance register.

3. He was served with the charge sheet whereby charges of questioning the powers of ATS and using unwarranted language were leveled against him. The petitioner demanded for supply of four documents i.e. copy of report of Asstt. Foreman, copy of work fleet, copy of DRTA service rules and copy of standing orders. The respondent supplied a copy of statement of some other Asstt. Foreman and denied supply of the remaining documents. After refusal of the supply of the said documents, the petitioner replied to the charge sheet on

22.07.1988 denying all the charges. Enquiry was commenced against the petitioner on 29.08.1988 and concluded on the same day which was decided against the petitioner.

4. On receipt of the enquiry report the petitioner made his representation by challenging the report. The petitioner filed a Suit for declaration before the Sub-Judge, Delhi however, the said suit was dismissed as withdrawn being not maintainable.

5. In January, 1994 the petitioner filed statement of claim before the Conciliation Officer and raised industrial dispute. Thereafter the petitioner filed statement of claim before the Labour Court however, the management/respondent did not appear and was proceeded ex parte. The petitioner also amended the statement of claim and later on the respondent filed the written statement of the said amended statement of claim made by the petitioner. On 20.04.2004 issues were framed before the labour court.

6. On 03.08.2004, the labour court decided the matter in favour of the petitioner holding thereby that the enquiry conducted by the management was not fair and proper. The respondent was given opportunity to prove the charges against the workman. After the hearing on 13.11.2007 the labour court held that the removal of services of the petitioner is illegal and unjustified. However, the labour court declined the reinstatement and payment of back wages to the workman and awarded compensation to the tune of Rs. 75,000/- in lieu of the reinstatement and back wages.

7. The workman/petitioner has challenged the said order by filing of the present writ petition inter alia on the following grounds:

I. That the labour court had committed error in not granting the relief of back wages and reinstatement to the petitioner/workman and the finding of the labour court in this regard is contrary to the law laid down by the Apex Court.

II. The finding of the labour court was incorrect. It was held that no order for reinstatement can be passed as the petitioner has almost reached the age of superannuation.

8. I have heard the learned Counsel for the parties and have carefully and meticulously gone through the record.

9. The fact of the matter is that the date of birth of the petitioner is 15.04.1955. When the award was passed the petitioner/workman attained the age of about 52 years. As per the admitted position he had still eight years to reach the age of superannuation. It is an admitted fact that the labour court while passing the order has clearly come to the conclusion that the termination of the services of the petitioner/workman is wrong and illegal as observed in para 7 and 8 of the impugned order. The operative portion of the aforesaid paragraphs reads as under:

7. ...There is no sufficient evidence produced before the court which could have proved that on 14.06.1988, the workman challenged the power of ATS and used unwarranted language against him when the attendance register was demanded by Shri Raj Singh. In view of the aforesaid observations, I hold that the management has not been able to prove that the workman challenged the powers of ATS or used unwarranted language against him. I, accordingly hold that the removal from services of Shri Mahabir Singh is illegal and unjustified.

8. ...Therefore, there is a gap of 7 years between the date of removal and the present reference which was made in the year 1995. There can be no order for reinstatement as the workman has almost reached the age of superannuation, he is not entitled for full back wages in view of the delay caused in raising the dispute before the appropriate forum. The workman has categorically stated in his testimony before the court that he is unemployed since the date of his dismissal. In his cross-examination, there is no suggestion that he is gainfully employed, nor the management witness has proved that he is gainfully employed. Keeping in view the long gap between the date of termination of services of the workman and the date of conclusion of the proceedings, I am of the view that it would be appropriate if he is awarded compensation in lieu of reinstatement with back wages. I am fortified in my opinion by 2005 (I) LLN 391 Arjun Singh and Anr. v. Labour Court Jodhpur and Ors.

10. It is a settled law that once the termination of the services of the workman is proved wrong and illegal, the relief of reinstatement with full back wages may be available to the workman. In the case of Vikramaditya Pandey Vs. Industrial Tribunal and Another, the Apex Court held as under:

2. The appellant was employed on 4.12.1981 as a clerk on ad hoc basis by respondent No. 2 - U.P. Rajya Sahkari Bhumi Vikas Bank Ltd. (for short "the Bank"). He was serving as such till 19.7.1985 continuously with small motivated breaks in between to ensure that the appellant did not have continuous service of more than 89 days. His services were terminated by an oral order dated 19.7.1985. He raised an industrial dispute challenging termination of his services. Respondent No. 1 - Industrial Tribunal - after holding inquiry and on the basis of the evidence held that termination of the services of the appellant was clearly "retrenchment" as defined in Section 2(S) of the U.P. Industrial Disputes Act, 1947 and was also contrary to Section 6(N) of the said Act (hereinafter referred to as "the State Act"). The Tribunal refused to grant relief of reinstatement on the ground that the regular appointment to the post held by the appellant could only be made by the U.P. Cooperative Institutional Service Board as per U.P. Cooperative Institutional Service Board as per U.P. Cooperative Societies Employees Service Regulations, 1975 (for short "the Regulations") and as such he could not be reinstated in service as a regular employee. However, the Tribunal granted benefits of retrenchment with 12% interest for the relevant period. Since the Tribunal denied the relief of reinstatement and full back wages the appellant filed the writ petition aggrieved by that part of the order of the

Tribunal. It may be stated here itself that the respondent No. 2 did not challenge the Award of the Tribunal.

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7. In the result for what is stated above, we set aside the Award of the Tribunal and order of the High Court in regard to denial of relief of reinstatement of the appellant with back wages and direct his re- instatement in service as he then was on the date of termination of his services, with 50% back wages. This appeal is allowed accordingly in the terms stated above. The parties to bear their own costs.

11. The burden of proof to show that the workman was gainfully employed during the said period is upon the employer. The petitioner in the present case is entitled to back wages and consequential benefits also as the respondent failed to establish that the petitioner was gainfully employed having alternative sources of income.

12. The labour court has specifically come to the conclusion that the workman in his testimony before the court has established that he is unemployed since the date of dismissal and in cross-examination there was no suggestion that he was gainfully employed nor the respondent witness has proved that he was gainfully employed from the date of dismissal till the date of passing of the award, the grant of merely a compensation to the tune of Rs. 75,000/- in lieu of reinstatement and back wages are not correct.

13. As regards the finding on the other aspects of the matter whereby it was held by the labour court that the workman has almost reached the age of superannuation, therefore, the petitioner is denied for relief of reinstatement.

It is settled law that the management has to prove the factum of superannuation. I agree with the learned Counsel for the petitioner that if the factum of superannuation is established then the workman shall be deemed to continue in services from the date of termination till the date of superannuation and he would be entitled to all the back wages and consequential benefits.

14. In the present case despite of positive findings by the labour court that the respondent was not able to establish that the petitioner was gainfully employed, the petitioner was not granted back wages. The said benefit was refused by the labour court by granting the lump sum compensation of Rs. 75,000/-. I am of the view that the said finding is contrary to law laid down in the case of Bishamber Lal Kapur Vs. Allahabad Bank and Others, The labour court ought to have granted the relief of back wages with continuing services with all other benefits available to the petitioner.

15. For the aforesaid reasons, the present writ petition is allowed. The impugned award dated 13.11.2007 is set-aside. The petitioner is entitled for the relief of

reinstatement in service as then was on the date of termination of his services with the respondent, with 50% back wages and all benefits within a period of two months. However it is made clear that the amount already received by the petitioner as compensation in view of the impugned award shall be adjusted from the back wages which are to be paid to the petitioner.

16. The writ petition is disposed of accordingly. No costs.