

(2008) 02 DEL CK 0303
In the Delhi High Court
Case No : LPA No. 154 of 2007

Smt. Kishni Devi and Another	Vs	APPELLANT
Indian Hydraulic Industries Pvt. Ltd. and Another		RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2008) 02 DEL CK 0303

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Manish Malhotra, for the Appellant; P.K. Malik, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The present appeal is directed against the judgment and order passed by the learned Single Judge on 3rd January, 2008 whereby the learned Single Judge has partly modified the award passed by the Labour Court.

2. The appellants herein alleged that while they were working as helpers at the monthly salary of Rs. 750/- per month each, their services were terminated by the management illegally and unjustifiably and without following the procedure u/s 25F of the Industrial Disputes Act. They also sought for a reference from the appropriate Government to adjudicate upon the aforesaid aspect regarding their illegal and unjustified termination. The appropriate Government referred the following issue to the Labour Court:

Whether the services of Smt.Kishan Devi and Smt.Bhagwati Devi have been terminated illegally and/or unjustifiably by the management, if so, to what relief are they entitled and what directions are necessary in this respect.

3. Before the Labour Court the management took up a stand that there was no woman labour in their factory and that the appellants herein were working as part time Sweepers. Their job was to sweep the floors only for two hours a day at the time of opening of the factory and after finishing their work, they used to

go back and that they did not work under the supervision of any one. It was also the stand of the management that both the said part time Sweepers stopped coming to office on their own and that they were not employees of the management inasmuch as no appointment letter was issued to them and that they were not even covered by EPF and ESI, although all other employees of the management were covered under such beneficial legislation like Employees Provident Fund and Employees State Insurance Scheme. It was, Therefore, contended that there was no termination of service as alleged.

4. The learned Labour Court after receiving the aforesaid pleadings, fixed the matter for recording evidence, and after recording the same, heard arguments and thereafter passed the award on 24th September, 2001. In the said award it was held that even if the employees were part time employees and were working as Sweepers, they were workmen within the definition of Section 2(s) of the Industrial Disputes Act, for they were not obliged to work for the whole day for becoming a workman within the definition of Section 2(s) of the Industrial Disputes Act. The learned Labour Court proceeded to hold that since they were workmen, their services were terminated without following the due procedure u/s 25F and, Therefore, their termination was illegal. It was held that even assuming that the workmen had absented from duty without any intimation, the management was required to conduct a departmental inquiry against the said employees and since no inquiry was conducted, the abandonment of service cannot be inferred and, Therefore, the Tribunal directed reinstatement with 50% back wages.

5. Being aggrieved by the aforesaid order, the management filed a writ petition in this Court, which was heard by the learned Single Judge and by the impugned order the writ petition was disposed of with the following modification in the award. It was held that even if the termination is held to be illegal, it was not mandatory for the Labour Court to direct reinstatement along with full back wages and that relief should have been moulded according to the facts and circumstances of the case. It was held that there are number of decisions of the Supreme Court that the Labour Court instead of directing for reinstatement of service can allow payment of compensation to a workman. The learned Single Judge after referring to the decisions of the Supreme Court in *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, ; *H.U.D.A. Vs. Jagmal Singh*, ; *Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another*, ; *K.C. Sharma Vs. Delhi Stock Exchange and Others*, held that in view of the facts of the present case, it was established that the appellants were part time employees working only for two hours a day and that they absented from duty on their own and, Therefore, payment of compensation should be adequate relief. In terms of the said findings an order was passed directing for payment of compensation of Rs. 36,000/- to each workman, stating that the same would meet the ends of justice.

6. The aforesaid judgment and order is under challenge in this appeal on which we have heard learned Counsel for the parties.

7. There is no doubt regarding the findings of fact recorded by the Labour Court, which are also affirmed by the learned Single Judge, that the appellants were part time employees and were working as Sweepers only. It is also an admitted fact that the appellants used to go to the office of the management for sweeping floors only for two hours i.e. at the time of opening of the factory and before the closure of factory i.e. after finishing of the work in the factory. As they were part time employees, there was no appointment letter issued to them. It is also established from the records as also admitted by the appellants themselves that there is no other female helper in the entire factory and the office of the management. Therefore, on the face of it the claim of the appellants that they were helpers cannot be accepted and was rightly rejected by the learned Labour Court as also by the learned Single Judge, holding that they were part time employees and were working only for two hours as Sweepers.

8. The findings of fact that they were workmen and that their services were terminated without following due process of law are also final and binding. The management has not challenged the said findings. The present appeal is thus directed against the quantum of compensation only and, Therefore, we are required to examine only the aforesaid issue in this appeal. Since the learned Single Judge has upheld the award of compensation, Therefore, it is deduced that he has also held the order to be illegal and unjustifiable.

9. The said findings of the learned Single Judge are not challenged by the management and, Therefore, we are not required to enter into the legality of the said order. What we are required to examine is as to whether the award of payment of an amount of Rs. 36,000/- each as compensation could be said to be adequate compensation in the facts and circumstances of the case. The learned Single Judge was definitely justified in holding that in such cases where a person has worked only for two hours a day and that also on a part time basis, there should not be an order of reinstatement of service and compensation would be the adequate relief in the back drop of the facts and circumstances of the present case.

10. In paragraph 17 of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , the Supreme Court has held as follows:

17. Before advertng to the decisions relied upon by the learned Counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court Realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

11. In paragraph 22 of the said judgment, the Supreme Court held in the

following manner:

22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

12. In the said decision after referring to a number of earlier decisions of the Supreme Court, it was held that payment of back wages having a discretionary element involved in it has to be dealt with in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

13. In paragraphs 41 and 42 of the decision in U.P. State Brassware Corpn. Ltd. and Anr. (supra), the Supreme Court held thus:

41. The Industrial Courts while adjudicating on disputes between the management and the workmen, Therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of their significance.

14. In paragraph 50 of the said judgment the Supreme Court referred to its earlier decisions in Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra, and Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, and held that before granting reinstatement, the court must weigh all the facts and exercise discretion whether to grant reinstatement or to award compensation.

15. In Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, , the Supreme Court held as under:

16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

16. In the instant case, the Labour Court directed reinstatement of the appellants with 50% of the back wages, but finally the learned Single Judge modified the said order and directed for payment of compensation of a total amount of Rs. 36,000/- each in lieu of reinstatement.

17. We have considered the ratio of the aforesaid judgments in the light of the stand taken by the appellants. Our attention was drawn to the order dated 13th September, 2004 passed in Writ Petition (Civil) No. 14932/2004 wherein the respondent - management stated that they were prepared to make payment to the appellants - workmen and that there were also interested in giving work to the workmen. However, the workmen stated that they had no interest in working with the management. Since the appellants are not interested to be reinstated in service, it is presumed that they are working elsewhere to earn their livelihood. The total awarded amount comes to about Rs. 72,000/-, as recorded in the order dated 13th September, 2004. The learned Single Judge has awarded 50% of the said amount as adequate compensation to the appellants.

18. In that view of the matter, we find no merit in this appeal, which is dismissed.