

(2009) 05 DEL CK 0193

In the Delhi High Court

Case No : Writ Petition (C) No. 8904 of 2005

U.P. Export Corporation Ltd.

APPELLANT

Vs

Vinod Kumar Mishra

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25F

Citation : (2009) 05 DEL CK 0193

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

Bench : Single Bench

Advocate : Puneet Parihar, for the Appellant; K. Prabhakar Rao, for the Respondent

Judgement

V.K. Shali, J.—The present writ petition has challenged the award dated 15th March, 2004 passed by learned Labour Court No. VII in ID No. 173/1997 in case titled Vinod Kumar Mishra v. Gangotri U.P. Export Corporation Ltd. By virtue of the aforesaid award the learned Labour Court held that the petitioner/management had illegally and unjustifiably terminated the services of the respondent/workman on 21st May, 1996, and accordingly, ordered his reinstatement and payment of full back wages. The petitioner/management feeling aggrieved by the award has challenged the same.

2. I have heard the learned Counsel for the petitioner and have also gone through the record. The learned Labour Court after recording the evidence of the respondent/workman had given an opportunity to the petitioner/management to cross examine the workman and to adduce his evidence, however, despite this the petitioner/management did not appear. They had been proceeded ex-parte on account of their absence as a consequence of which the testimony of the respondent/workman with regard to the relationship of employer and employee between the parties is completely unrebutted. The learned Labour Court had accordingly held that on the basis of the unrebutted testimony of the respondent/workman the services of the said workman were terminated on 21st May, 1996

without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, and accordingly, directed the reinstatement and the payment of full back wages.

3. In the entire writ petition, there is not an iota of averment as to why the petitioner/management did not appear either or even thereafter till the time the award was passed and thus there is no ground for setting aside ex parte award as "sufficient cause" is not proved.

4. The learned Counsel for the petitioner has contended that the order regarding the reinstatement and the payment of full back wages which has been passed by the learned Labour Court may be modified on account of the fact that in 1999 a circular was issued by the Government of U.P. that all the Public Sector Undertakings Corporations to downsize the permanent staff strength as a measure of reducing the expenses of the Government. It is contended that so far as the petitioner/corporation is concerned, its staff strength had been fixed at 130 and consequently in order to give effect to the said circular the petitioner/corporation had to downsize the staff in category of class IV of the Corporation.

5. It has been now laid down by the Apex Court in number of judgments that merely on account of the fact that the termination of a workman is held to be illegal and unjustified does not ipso facto or automatically result in passing the order of reinstatement and the payment of back wages. Reliance in this regard is placed on the following judgments:

(a) P.V.K. Distillery Ltd. Vs. Mahendra Ram,

(b) Rajasthan Lalit Kala Academy Vs. Radhey Shyam,

6. Keeping in view the aforesaid legal position that the petitioner/corporation was required to downsize the staff strength, therefore, this Court feels that instead of directing the reinstatement and the payment of full back wages a onetime compensation of Rs. 2.00 lakh is to be directed to be paid to the respondent/workman. The aforesaid amount is directed to be paid keeping in view the last drawn wages, length of service which has put in by the respondent/workman with the petitioner/corporation. Needless to point that the aforesaid amount shall be in addition to amount which is to be paid by the petitioner/corporation in compliance to the order dated 23rd November, 2006 passed u/s 17-B of the Industrial Disputes Act, 1947. It is also made clear that the aforesaid amount shall be paid within a period of six weeks from today, failing which entire amount shall carry an interest @7% from the date of the award till the actual payment.

7. With these directions, the ex parte award dated 15.3.2004 is modified to the extent that instead of reinstatement and payment of back wages, the respondent is paid one time compensation towards the full and final settlement of his entire claim. With these modifications, the writ petition is partially allowed.

No order as to costs.