

(2014) 01 DEL CK 0086
In the Delhi High Court
Case No : Writ Petition (C) 5820 of 2011

Vinod Kumar and Others

APPELLANT

Vs

Salwan Public School and Another

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Constitution of India, 1950 — Article 12

Uttar Pradesh Industrial Disputes Act, 1947 — Section 11-A 6-N

Citation : (2014) LLR 239

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Madhusudan Sharma Shastri, for the Appellant; Vinay Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—Three out of five claimants have approached this Court through this writ petition challenging the award dated August 13, 2010 passed in I.D. No. 98 of 2010 (new) and 434 of 2008 (old), whereby the Labour Court has granted a compensation of Rs. 75000/- in favour of Vinod Kumar and Santosh Kumar, petitioner Nos. 1 and 2 respectively, and Rs. 50,000/- in favour of Bhagwat, petitioner No. 3 against the respondent in lieu of reinstatement in service with back wages. The case of the petitioners was that they have been appointed on December 26, 1995, October 5, 1995 and January 3, 1999 as "Safai Karamchari" on a salary of Rs. 2419/-. They would also state that their services were terminated on January 30, 2001 and March 25, 2001 respectively. According to them, the termination of their services was illegal, unjustifiable and arbitrary, which forced them to send a demand notice dated March 30, 2001 to the respondent.

2. That since the respondent did not respond to the demand notice, they filed a complaint before the Asstt. Commissioner, New Delhi. Despite intervention by the Labour Inspector, the respondent did not reinstate the petitioners in service.

They accordingly filed a claim petition before the Conciliation Officer. In sum and substance, the relief sought by the petitioners was reinstatement with full back wages and continuity of service with all consequential benefits.

3. The case of the respondent was that the petitioners were engaged on purely temporary and adhoc basis and not on regular basis. The respondent denied the completion of 240 days by the petitioners. The respondent also stated that keeping in view health, hygiene, and standard of management, the management engaged a housekeeping agency for maintaining the cleanliness of the school situated in the area of 8 acres. The services of the petitioner were placed at the disposal of the contractor namely Sainik Security Services. The arrangement with the security services were discontinued in May, 2000 and the petitioners were taken on duty purely on casual basis. According to the respondent, the petitioners were being paid minimum wages. They denied the services of the workmen were terminated.

4. Two issues were framed by the Labour Court to the extent; (1) To what relief if any, are the workmen entitled against the management in terms of reference (2) Whether services of the workmen were temporary and adhoc.

5. Insofar as the issue No. 1 is concerned, the Tribunal has come to a finding that the petitioners have been working with the respondent for a continuous period of more than 240 days in one calendar year preceding the date of termination of their services. It is not the case of the respondent that they had committed any misconduct or any charge sheet was issued to the petitioners. The Labour Court also held that no seniority list was being maintained by the respondent while placing the services at the disposal of the contractor so as to adhere to the principle of "last come first go". Based on such a finding, the issue No. 1 was decided in favour of the petitioners.

6. Insofar as the issue No. 2 is concerned, the Labour Court has come to a finding that the petitioners had been in service with the respondent for a considerable long time. Insofar as the relief is concerned, the Labour Court after relying upon the judgments of this Court in *Kishan Swaroop Vs. Project and Equipment Corporation of India Ltd.*, , " *Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another*, and *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, , has granted compensation in lieu of reinstatement with full back wages. It was directed to be paid within 30 days otherwise, the workmen were to be entitled to get future interest @ 8% from the date of award till realization of the said amount.

7. Mr. Vinay Sabharwal, learned counsel appearing for the respondent would state that the petitioners have been paid pursuant to the award dated August 13, 2010.

8. The grievance of the petitioners primarily is that the Labour Court, has not granted them the relief of reinstatement. The learned counsel appearing for the petitioners would pray that such a relief be granted to the petitioners herein. In

support of this relief, he would state that the petitioners have worked with the respondent for a long time and the Labour Court could not have denied such a relief.

9. Mr. Vinay Sabharwal, learned counsel for the respondent on the other hand, would submit that the Labour Court is within its discretion to award, in the facts of a case, compensation in lieu of reinstatement with full back wages. He would also submit that when a discretion has been exercised by the Labour Court awarding compensation, this Court would not like to sit over such a direction.

10. Having considered the rival submissions of the counsels for the parties, I do not find any infirmity in the order of the Labour Court. It is a settled position of law that even if termination has been held to be illegal, reinstatement with full back wages is not to be granted automatically. The Labour Court is within its right to mould the relief by granting a lump-sum compensation. In fact, I note that the Labour Court has relied upon three judgments propounding the law that the Labour Court can mould a relief by granting lump sum compensation; the Labour Court is entitled to grant relief having regard to facts and circumstances of each case.

11. Further, the Supreme Court in the following judgments held as under:

(a) In the matter reported as Jaipur Development Authority Vs. Ram Sahai and Another, , the court has stated:

However, even assuming that there had been a violation of Sections 25-G and 25-H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement with entire back wages. This Court time and again has held that the jurisdiction u/s 11-A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The respondent had not regularly served the appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs. 75,000 is awarded to the respondent by way of compensation as has been done by this Court in a number of its judgments.

(b) In the matter reported as Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, , the court has stated:

23. Non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, although, may lead to the grant of a relief of reinstatement with full back wages and continuity of service in favour of the retrenched workmen,

the same would not mean that such a relief is to be granted automatically or as a matter of course.

25 ... The appellant herein has clearly stated that the appointments of the respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of the Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money. Appointments of the respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefor having come to an end. It, therefore, in our considered view, is not a case where the relief of reinstatement should have been granted.

(c) In the matter reported as Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, , the court has stated:

8. Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power u/s 11-A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment viz. whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned, etc., should be taken into consideration.

(d) In the matter reported as Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, , the court has stated:

7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure....

14. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

In view of the above, I do not see any merit in the writ petition. The same is dismissed.