

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 8th September, 2010

+ W.P.(C) 7021/2007

Raj Bahadur Singh & Ors Petitioners
Through : Mr.H.K.Chaturvedi, Adv.

-versus-

The Management of M/s Sawhney Gas Agency Respondent
Through: Mr.N.K.Jha, Adv.

CORAM:-

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

Veena Birbal, J.

1. An industrial dispute raised by petitioners was referred by Secretary (Labour), Govt. of NCT of Delhi for adjudication to Labour Court, Delhi vide order dated 15.11.2000 with the following terms of reference:-

“Whether the services of Sh.Rajbahadur Singh, Puran Singh, Jagdish Singh, Ayodhya Prasad, and Ram Prakash, have been terminated illegally and/or unjustifiably by the management and if so, to what relief is they entitled, and what directions are necessary in this aspect.”

2. Pursuant thereto, petitioners had filed a statement of claim before the concerned Labour Court, Delhi wherein they had alleged that they had been in the employment of respondent since January, 1989 as Delivery Men. They had alleged that at the time of appointment, respondent-management got signed some blank papers, vouchers, appointments letter etc without giving any copy

to them. They were also not paid minimum wages fixed under the law. When petitioners demanded minimum wages as per law, their services were terminated on 28th September, 1999. They had alleged that they were not paid retrenchment benefits nor any notice was served upon them. Petitioners made efforts for settlement through Labour Inspector but their efforts failed. Petitioners served a demand notice on respondent/management. Their further stand was that they had not been employed since the day of termination and had prayed for reinstatement with continuity in service with back wages along with interest. Respondent/management had filed a written statement contending therein that petitioners had resigned voluntarily after taking their entire dues and other benefits. Respondent/management had denied the allegations of taking petitioners' signatures on blank papers as is alleged. It is further alleged that all the workmen are gainfully employed and they have no claim of any nature against respondent/management. The Ld. Labour Court had framed the issue as per terms of reference stated above.

3. In support of their case, workmen filed their respective affidavits. They were also subjected to cross-examination. Thereafter, respondent/ management filed evidence by way of affidavits of four witnesses. Out of which only two witnesses were tendered for cross-examination. The affidavits of remaining two witnesses MW Dhanbir Singh Yadav and Kuldip Singh was read in evidence by the Labour Court as they did not appear for cross examination. After hearing the counsel for the parties, the Labour Court did not grant any relief to the workman Puran Singh as he had denied his signatures on the claim petition as well as on his affidavit in cross examination. Workman Puran Singh

has not challenged the impugned award. For the remaining workers, the Labour Court has held that their termination was illegal and unjustified. Considering that termination was in September, 1999 and about seven and half years had passed since then as such awarded compensation of Rs.80,000/- each in lieu of reinstatement and back wages to Raj Bahadur Singh, Ayodhya Prasad, Ram Prakash and Jagdish Singh i.e petitioners vide impugned award dated 07.07.2007.

4. Aggrieved with the same, the aforesaid petitioners/workmen have filed the present petition.

5. It is contended that finding of illegal termination of petitioners/workmen have not been challenged by the respondent/management till date, as such, the said finding has attained finality. It is contended that as the petitioners/workmen have categorically stated in their evidence that they were unemployed since their illegal termination and could not find job despite their best efforts, the Labour Court ought to have awarded them relief of reinstatement with continuity of service and full back wages. In support of the above contention, learned counsel for the petitioner has relied upon the decision of the Division Bench of this court in Kamla Vs Directorate of Social Welfare dated 2nd April, 2009 passed in LPA No. 85/2009. Counsel for petitioner has contended that it is a fit case for grant of reinstatement with full back wages to the petitioners.

6. On the other hand, learned counsel appearing for respondent has submitted that Labour Court has discretion to award compensation instead of reinstatement and back wages. It is contended that even if termination is held

illegal, it is not always mandatory to order reinstatement. Learned counsel for respondent has contended that considering the facts and circumstances of the case, the Labour Court has awarded compensation of Rs. 80,000/- each to the petitioners and the relief of reinstatement has been rightly denied to them. It is further contended that there is no perversity or illegality in the impugned order and it is not a fit case for this court to exercise its jurisdiction under Article 226 of the Constitution of India.

7. I have considered the submissions made.

8. The question for consideration is whether in a case where the termination of petitioners was in contravention of Section 25 (F) of the Industrial Disputes Act, the Labour Court was justified in awarding compensation to them instead of directing reinstatement with full back wages.

9. In Allahabad Jal Sansthan Vs. Daya Shankar Rai & anr (2005) 5 SCC 124, the Supreme Court has held as under:-

“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 that the usual result. But now with the passage of time, it has come to be realized 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.”

In Employers, Management of Central P & D Inst. Ltd Vs. Union of India & anr AIR 2005 SC 673, the Supreme Court has observed that it is not always mandatory for the courts to order reinstatement in cases where there has been violation of section 25F of the Act which can be substituted for good

reasons by awarding compensation.

In *M.P. Administration vs. Tribhuvan; 2007 AIR SCW 2357*, the Supreme Court reversed the High Court's order directing reinstatement with full back wages and instead awarded compensation. The relevant portion of the judgment is as under:-

“12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.”

In *Pramod Kumar & anr vs Presiding Officer & anr 123 (2005) DLT 509*, the Division Bench of this court has also examined the same issue, as has been raised in the present case and it has been held that so long as there has been long passage of time since the date of termination, it was decided to grant compensation in lieu of reinstatement and backwages.

In *M/s Lords Homeopathic Lab. Pvt. Ltd Vs. Ms.Lissy Unnikunju & ors 2006(4) AD(Delhi) 739*, it has been held that there is no hard and fast rule that when termination order is set aside, reinstatement with full back wages has to be granted and it all depends on the facts of the case. In large number of cases, this court has granted compensation instead of reinstatement and back wages. Whether compensation should be awarded or reinstatement is to be given is the discretion of the Tribunal.

Further, the Division Bench of this court in *Babu Ram Sagar Vs.*

Presiding Officer, Labour Court, Delhi & Anr. 2009 (109) DRJ 328 (DB),

wherein the management had failed to prove the allegations of misconduct against the workman, the Labour Court did not grant reinstatement. The Labour Court had granted compensation of Rs.40,000/- to him in lieu of reinstatement and back wages. The award was challenged before the Single Judge of this court by filing a petition under Article 226 of the Constitution of India. The Single Judge did not interfere with the decision of grant of compensation to workman. The Division Bench upheld the view of the learned Single Judge after referring to various judgments of the Apex Court as well as this court. The relevant para of the same is as under:-

“9. We might only add that there has been sufficient application of mind to the appropriate relief that should be granted to the appellant and the reasons given by the Learned Single Judge in declining to exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India to direct reinstatement in lieu of compensation do not suffer from any infirmity that would warrant interference by this Court in the exercise of our appellate jurisdiction under Letters Patent keeping in mind the observations of a Division Bench of this Court in **Nehru Yuva Kendra Sangathan** (supra) that, “compensation in lieu of reinstatement and back wages is now the norm ...” and that “reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.”

10. In the present case, there are allegations against the petitioners that they used to engage themselves in theft activities which were prejudicial to the interest of respondent/management. There are also allegations that complaints of customers were pending against them. In view of the allegations against them, management had lost confidence in them. Further, no material has been placed on record to show as to how before the Ld. Labour Court they had been supporting themselves and their families. Petitioners were Delivery Men in the

Gas Agency. Keeping in view the nature of job, it is difficult to believe that they could not get a job in a place like Delhi. It may be noted that the respondent/management is a small Gas Agency and is not a big business house. After considering the relevant facts and circumstances, Labour Court has exercised its discretionary jurisdiction by giving compensation of Rs. 80,000/- in lieu of reinstatement, back wages, other dues, etc. The Labour Court has further ordered that same be paid from the date of publication of award failing which petitioners/workmen shall be entitled to interest @ 8% on the aforesaid amount till payment/realisation of the amount. There is nothing on record to show that discretion has been exercised in a capricious manner. Rather, the same is exercised in a reasonable manner.

I do not find any illegality in the impugned order.

Considering the totality of facts and circumstances, I am not inclined to exercise discretionary jurisdiction under Article 226 of the Constitution of India in the instant case.

The writ petition stands dismissed. There is no order as to costs.

VEENA BIRBAL, J.

September 8th, 2010
ssb/kks