

IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on : July 3, 2013*

+ **W.P.(C) 3305/2005**

SUB DIVISIONAL OFFICER, PHONES Petitioner
Through: Mr. Shiv Prakash Pandey with
Mr. Raghav Pandey, Advocates
versus

BABU LAL & ORS. Respondents
Through: Mr. Anuj Aggarwal with Mr. Sachin

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of this writ petition challenge has been made to impugned award dated 21.06.2004 in I.D. No.103/1998 passed by Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi (hereinafter referred to as the Tribunal by which the respondent Nos.1 to 6/workmen have been given reinstatement with effect from 01.06.1988 with 20% back wages.

2. The factual background is as under:-

The respondents had worked as casual labourers under the petitioner/management till 31st May, 1988. As per respondents, they had continuously worked for 3 years i.e. 1985, 1986 and 1987 for at least 242 days in each year. After their termination they had raised an industrial dispute which was referred by Ministry of Labour vide its letter No.L-40011/15/88/D-2(B) Central Government dated 05.10.1989 to the Tribunal for adjudication with following terms of reference:-

“Whether the action of the Sub-Divisional Officer-phones, Ajmer in terminating the services of s/Shri Dinesh Kumar, Babulal, Gopal Singh, Rattan Singh, Budha Baghwan, Babu Singh, Ramdhan, Jitender Kumar and Pushkar Singh, Casual workman w.e.f. 01.06.1988 is legal and justified. If not to what relief are the workman entitled to?”

3. Pursuant thereto the respondents had filed statement of claims before the Tribunal alleging therein that they had worked as casual labourers under the petitioner/management for about 3 years i.e. in 1985, 1986 and 1987 for at least 240 days in each year. On 30.04.1988 they were shocked to receive the notice dated 30.04.1988 stating that their services would be terminated w.e.f. 01.06.1988 because the cable work was over. They had alleged that their termination was illegal as the junior to them were allowed to work by the petitioner/management even after 1st June 1988. They had alleged that their termination was arbitrary and violative of provisions of Section 25F (a) (b) and (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act). About nine workers filed the statement of claim.

4. The petitioner/management filed written statement opposing the claim of the respondents. The stand of the management was that respondents were assigned specific job for laying down cables and they were working as temporary casual labourers as the job of laying down of cable was complete and there was no work left for them as such they were not entitled for any relief. It was specific stand of the petitioner/management that the respondents were appointed only for a specific work and they were not entitled for any relief. The petitioner/management also took a stand that there was no reference for three workers, as such, claim against them was

not maintainable.

5. The respondents had filed the rejoinder wherein they reiterated the stand taken in the statement of claim and submitted that the statement of claim was confined only to 6 workmen i.e. Sh.Budh Bhagwan, Sh. Babu Lal, Sh. Gopal Singh, Sh. Babu Singh, Sh. Rattan Singh and Sh. Jitender Kumar.

6. After hearing the parties learned the Tribunal held that the respondents had worked for 240 days and their termination was in violation of Section 25-F of the I.D. Act. The Tribunal also observed that the work for which they were employed was of perennial nature and they were entitled for regularisation as such the Tribunal ordered for their reinstatement with effect from 01.06.1988 with 20% back wages.

7. Aggrieved with the same the petitioner/management has filed the present writ petition.

8. Ld. counsel for petitioner has contended that the award of reinstatement with 20% back wages in the facts and circumstances of the case was unjustified as the respondents were only daily wagers and they had worked for a short duration. In support of his contention learned counsel for petitioner has relied upon judgment of Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr.: (2009) 15 SCC 327 and Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Others: (2010) 6 SCC 773. It is submitted that during the pendency of present petition the respondents had moved an application under Section 17B of the Act which was disposed of vide order dated 22.02.2012 and in compliance of said order the petitioner/management has already paid almost

₹ 3 lakhs to each of the respondents. It is stated that in the facts and circumstances of the case respondents are only entitled for compensation and that too only to the tune of ₹40,000 or ₹50,000/- each in lieu of reinstatement and 20% back wages.

9. On the other hand learned counsel appearing for respondents had contended that since in the present case finding has come that the termination of the respondents was in breach of Section 25F of the Act, the Tribunal has rightly granted the relief of reinstatement with 20% back wages. It is further contended that if the court is inclined to mould the relief to that of compensation in that event the good amount of compensation be awarded to the respondents. In support of his contention learned counsel for respondent has placed reliance on Management of Garrison Engineer v. Bachhu Singh: 2010 (115) DRJ 576. and Sunder Singh v. P.P. Industrial Tribunal-I & Anr.: MANU/DE/0391/2013.

10. I have considered the submissions made.

11. It is admitted position that the respondents were employed with the petitioner/management as daily wagers.

12. The main question is whether the relief of reinstatement and 20% back wages granted to the respondents who worked as daily wagers and their termination had been held to be in violation of Section 25F of the Act was justified.

13. It is admitted position that the respondent Nos.1 to 6 had worked for about 3 years with the petitioner/management. The finding of the Tribunal that their termination was in violation of Section 25F of the Act has not been challenged by the petitioner/management. The only grievance of the

petitioner/management is that the Tribunal ought to have given the relief in the form of monetary compensation instead of reinstatement with 20% back wages.

14. On the other hand learned counsel for respondents has argued to the contrary.

15. In the catena of decisions of the Supreme Court for the last few years it has been consistently held that the relief by way of reinstatement with back wages is not automatic even if termination of an employee is found illegal or is in contravention of prescribed procedure.

16. In *U.P. Brassware Corporation Ltd. v. Uday Narain Pandey: (2006) 1 SCC 479*, the question for consideration before the Supreme Court was that whether direction to pay back wages consequent upon declaration that a workman has been retrenched in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25-F of “the 1947 Act”) as a rule was proper exercise of discretion. The Apex Court considered a large number of cases and observed as under:-

“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.

43. The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evidence.

44. * * *

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.”

17. In Talwara Co-operative Credit and Service Society Limited v. Sushil Kumar: (2008) 9 SCC 486, the Supreme Court held as under:-

“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 under Section 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.”

18. In Jagbir Singh v. Haryana State Agriculture Marketing Board & Another: 2009 15 SCC 327 while dealing with a case where the termination was found in contravention of Section 25F of the I.D. Act, the Supreme Court ordered compensation of ₹50,000/- to be paid by the employer to the workman. The relevant portion of the said judgment is as under:-

“It would be, thus, seen that by a catena of decisions in recent time, this court has clearly laid down that an order of

retrenchment passed in violation of Section 25-F although maybe 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.”

19. The other relevant cases are State of M.P. & Anr. v. Lalit Kumar Verma: (2007) 1 SCC 575 and Madhya Pradesh Administration v. Tribhuvan reported in (2007) 9 SCC 748.

20. In Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta: (2009) 16 SCC 562, the Supreme Court held as under:-

“....now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation”.

21. In Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Others: (supra), while dealing with a case of workmen who were engaged as daily wagers about 25 years back and had hardly worked for two or three years, the Supreme Court held that the reinstatement with back wages could not be said to be justified and instead monetary compensation would subserve the ends of justice. It was held that compensation of ₹40,000/- to each of the workmen would meet the ends of justice.

21. As discussed above, it has been clearly laid down in number of decisions of Supreme Court that the order of retrenchment in violation of

Section 25F of the Act, may be set aside but an award of reinstatement should not be passed. In the present case, the Tribunal was also not justified in ordering the regularisation of respondents in view of the judgment of State of Karnataka v. Uma Devi: (2006) 4 SCC 1, wherein no daily wager/muster roll employee can be said to have any vested right of regularisation.

22. In view of the aforementioned legal position and the fact that the respondents were only daily wager and had worked for about 3 years, the relief of reinstatement with 20% of back wages is not justified and the grant of monetary compensation to them would meet the ends of justice. Accordingly, the petitioner is directed to pay ₹1 lakh to each of the respondent in lieu of the reinstatement and 20% back wages. In case the payment is not made within the period of 6 weeks from today the amount shall carry interest @ 9% per annum.

The writ petition stands disposed of.

The parties to bear their own costs.

VEENA BIRBAL, J

July 3, 2013

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