

**Ved Kumar Vs. Institution of Electronics and Telecommunication E**

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**SooperKanoon Citation :** [sooperkanoon.com/1028362](http://sooperkanoon.com/1028362)

**Court :** Delhi

**Decided On :** Sep-18-2013

**Judge :** V. Kameswar Rao

**Appellant :** Ved Kumar

**Respondent :** institution of Electronics and Telecommunication E

**Judgement :**

\*IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on September 02, 2013 Judgment Delivered on September 18, 2013 + LPA 637/2013 VED KUMAR ..... Petitioner Represented by: Mr.Yashvardhan, Adv. versus INSTITUTION OF ELECTRONICS AND TELECOMMUNICATION ENGINEERS & OTHERS ..... Respondents Represented by: Mr.N.L.Bareja, Adv. for R-1 Ms.Raavi Birbal, Adv. for R-2 and R-3 CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V.KAMESWAR RAO V.KAMESWAR RAO, J.

1. The instant appeal is directed against the judgment and order dated May 22, 2013 passed by the learned Single Judge of this Court in W.P. (C) No. 7647 of 2002 whereby the award passed by the Labour Court No. III, Karkardooma Courts, Delhi, for reinstatement of the appellant was set aside and it was declared that he shall be entitled to 75% back wages along with compensation in `4,00,000/- (Four Lacs only).

2. The appellant was appointed as a clerk on temporary basis against a regular vacancy by the respondent No. 1 in February 1989 and he continued to serve the respondent till May 04, 1990. On May 05, 1990 when the appellant reported for work he was not allowed to serve and his services were terminated by respondent No.1. The appellant was neither served with any notice of termination nor paid any compensation by the respondents in terms of section 25 F and section 25 G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. The appellant raised an industrial dispute before the Assistant Labour Commissioner and the same was subsequently referred to the said Labour Court for adjudication with the terms of reference as under: Whether the termination of services of Sh. Ved Kumar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

4. The defence of the respondent No.1 before the Labour Court was twofold. Firstly, that it was not an industry within the meaning of the definition provided in Section 2(j) of the Act. Secondly, that the appellant was not a workman within the meaning provided in the said Act. The Labour Court rejected both contentions of the respondent No.1 and while deciding the dispute in favour of the appellant, held that the respondent No.1 had terminated the services of the appellant not only illegally but also unjustifiably and therefore the appellant is entitled for reinstatement in service with back wages. The Labour Court also, inter alia, directed the appropriate government to direct the respondent to reinstate the appellant at the post of clerk and pay him 75% of back wages or 75% of minimum wages for the post of clerk as fixed by the appropriate government from time to time whichever is higher since May 04, 1990 till the date of reinstatement of service.

5. Aggrieved by the aforesaid award of the Labour Court, the respondent No.1 challenged the same by filing a Writ Petition Being No. 7647 of 2002 before a learned Single Judge of this Court and the operation of the impugned order of the Labour Court was stayed vide order dated November 29, 2002. Relying upon the definition of industry in the Act the respondent No.1 submitted before the learned Single Judge that it was not an industry. The learned Single Judge found no merit

in this submission and rejected the same. Next it was submitted by the respondent No. 1 that the appellant did not render continuous service for 240 days. However, on perusal of the records the learned Single Judge was satisfied that the appellant has rendered 255 days service in the year preceding his termination and therefore rejected the aforesaid submission as well. The last submission of the respondent No. 1 was that the appellant was appointed only on ad hoc basis and was not issued any appointment letter. The learned Single Judge found some force in this argument in relation to the relief granted to the appellant by the Labour Court. After perusing a catena of decisions the learned Single Judge opined that 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 wages has not been found to be proper by this Court and thus awarded compensation in lieu of reinstatement.

6. While the aforesaid lis between the parties was being adjudicated upon by the Court, the appellant moved an application under section 17 B of the Act which and the same was allowed vide order dated July 29, 2005 and the respondent No.1 was directed to make payment of wages at the rate at which the wages were last drawn or at the minimum wages prevalent from time to time whichever was higher. However, on September 18, 2007, the respondent No. 1 required the appellant to work in lieu of wages to which he agreed and re-joined the services on September 25, 2007. He was being paid wages at the rate of `3,492/- per month and the same were his last drawn wages. Thereafter, the appellant again moved an application being C.M. No. 17358 of 2012 raising a complaint that he was being paid a paltry amount whereas others carrying on the same work were paid much higher emoluments. The learned Single Judge while disposing of the aforesaid application vide order dated April 23, 2013 directed that the respondent No.1 shall be liable to pay the appellant the same wages as were being paid to others in the same category.

7. The learned Single Judge, while being aware of the fact the respondent No. 1 was not in position to offer any work to the appellant, passed the following order:

14. Considering the fact that the services of the respondent were terminated in May 1990, and he was litigating since then, which has continued till date, and he is nearly 50 years of age would therefore, find it difficult to obtain any other employment at this age, as also the fact that the petitioner himself offered emolument of `15,000/per month for the post of Data Entry Operators in the year December 2011, in my view, the following amounts should be paid to the respondent in lieu of reinstatement awarded by the Labour Court; i) The respondent shall be entitled to 75% back wages as awarded in the impugned award; ii) The respondent shall be entitled to wages for the period 25.09.2007 till 30.11.2011 at the rates at which they were paid to the other Data Entry Operators by the petitioner and from 01.12.2011 till 31.05.2013 at the rate of `15,000/- per month. The amount already paid shall be adjusted. To this extent, the order dated 23.04.2013 shall stand modified. iii) The petitioner shall pay compensation of Rs.4 lacs to the respondent, considering the fact that he was about eight years of service left with the petitioner.

8. Being aggrieved by the aforesaid order, the appellant filed the instant appeal.

9. We have considered the respective submissions and carefully perused the records. The learned counsel for the appellant seeks to fortify his arguments by relying on the judgments of the Supreme Court reported as Harjinder Singh Vs. Punjab State Warehouse Corporation (2010) 3 SCC 19.and Devinder Singh Vs. Municipal Council, Sanaur AIR 201.SC 2532.In both the aforesaid judgments the Supreme Court had set aside the impugned judgments of the respective High Courts and the award of reinstatement of the appellant passed by the Tribunals were restored.

10. On a careful perusal of the aforesaid cases, it becomes amply clear that the Supreme Court had set aside the impugned orders of the respective High Courts mainly on the ground that the High Courts had erroneously exercised their powers while functioning as writ courts. In both the cases, the Supreme Court, while setting aside the impugned judgments observed that the High Courts had interfered with the award of the Labour Court in spite of the fact that neither the awards were vitiated by any error of law apparent on the face of the record nor

was there violation of rules of natural justice. The Supreme Court in the cases reported as Syed Yakoob v. K.S. Radhakrishnan and Ors. AIR 196.SC 477.Surya Dev Rai v. Ram Chander Rai and Ors 2003 (6) SCC 67.and Swaran Singh Vs. State of Punjab AIR 197.SC 23.has culled out the extent of the powers exercised by a writ court, which can be summarized as below: (i) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. (ii) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court. (iii) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. (iv) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. (v) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. (vi) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process' of reasoning, Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or

patent. (vii) The power to issue a writ of certiorari and the supervisor/ jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis. (viii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. (ix) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

11. The facts of the instant matter at hand at first blush seem to be fairly similar to that of the facts of Harjinders case (supra) and Devinder Singhs case (supra) but with an important dissimilarity. In the matter at hand as well as in the aforesaid cases, the case of the appellants was that they were retrenched from service in

violation of the provisions of the Act. The Labour Court had awarded the reinstatement of the appellant and the respective High Courts had set aside the award of reinstatement while acting as a writ court. However, what distinguished the instant matter from Harjinders case (supra) and Devinder Singhs case (supra) is that the respondent in the instant case is in no position to reinstate the appellant in service. It was specifically brought to the notice of the learned Single Judge by the respondent that its business itself is in doldrums and it is not at all in a position to offer any employment to the appellant. Thus, the learned Single Judge on learning this particular fact was influenced to pass an order of compensation in lieu of reinstatement.

12. It is true that the order of the Labour Court dated April 30, 2002 was neither vitiated by any error of law apparent on the face of the record nor did it violate any of the rules of natural justice. However, taking note of the fact that the respondents business was in doldrums, as the certificate which is being granted by the respondent is no longer recognised for purposes of the Government employment, which decision has been challenged in this Court, because of which it is facing the prospect of shutting down its operation and further, the appellant was taken in service because of the order under Section 17B, even though there is no work for the appellant and the respondents work would not suffer as it already has sufficient hands available with it. The learned Single Judge has granted apart from back wages till reinstatement in 2007, equal wages for the work done for the period thereafter and also compensation for future period instead of reinstatement which amount comes to `9,66,212.15/- as final settlement up to May 31, 2013.

13. This amount to some extent covers what he could have earned till his retirement. We do not feel that it is a fit case for us to interfere with the impugned order of the learned Single Judge. We dismiss the appeal.

14. No costs. (V.KAMESWAR RAO) JUDGE (PRADEEP NANDRAJOG) JUDGE  
SEPTEMBER 18 2013 mm