

**Naresh Kumar and Ors Vs. M/S Lancer Convent Senior Secondary School**

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**Court :** Delhi

**Decided On :** Dec-18-2014

**Judge :** Suresh Kait

**Appellant :** Naresh Kumar and Ors

**Respondent :** M/S Lancer Convent Senior Secondary School

**Judgement :**

\$~ \* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

18. h December,2014 % + W.P. (C) No.1254/2014 NARESH KUMAR & ORS .....  
Petitioners Represented by: Mr.Arun K.Yadav, Adv. Versus M/S LANCER  
CONVENT SENIOR SECONDARY SCHOOL ..... Respondent Represented by:  
Mr. S.N.Gupta, Adv. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH  
KAIT, J.

1. Vide the present petition, petitioners seek setting aside the relief part of the award dated 13.01.2014, whereby the respondent / Management was directed to pay Rs.50,000/- each in favour of the petitioners as lump sum compensation in lieu of reinstatement and retrenchment compensation.

2. The petitioners seek parity with other similar employees who settled their claims before this court and the respondent / Management paid them up to Rs.7,00,000/-. In one case, an employee namely Raj Bala, who was employed as Aya has received an amount of Rs.2,50,000/- towards arrears of back wages and later on

settled the matter for Rs.4,50,000/-. Thus, the respondent paid her more than Rs.7,00,000/- before this Court in W.P.(C) 6280/2011.

3. Similarly, the respondent / Management paid an amount of Rs.3,00,000/- towards arrears of back wages with the other employee, namely, Bhagat Singh, who was driver and later on settled for an amount of Rs.4,50,000/-. Thus, he received an amount of Rs.8,00,000/- in W.P.(C) 6278/2011.

4. Mr. Arun K. Yadav, Id. Counsel for the petitioner has relied upon a case of Bhuvnesh Kr. Dwivedi v. Hindalco Industries Ltd. VIII (2014) SLT392 wherein held as under:

33. In the present case, the Respondent has made a vague submission to the extent that:

The conduct of the workman throughout the proceedings before the High Court during 2002 to 2011 shows that he is continuously gainfully employed somewhere. Admittedly even in the counter affidavit in the said Writ Petition, it has not been stated that the workman was not employed.

Therefore, on the basis of the legal principle laid down by this Court in the Deepali Gundu Surwase case (supra), the submission of the Respondent that the Appellant did not aver in his plaint of not being employed, does not hold since the burden of proof that the Appellant is gainfully employed post termination of his service is on the Respondent. The claim of the Respondent that the Appellant is gainfully employed somewhere is vague and cannot be considered and accepted. Therefore, we hold that the Appellant is entitled to full back wages from the date of termination of his service till the date of his reinstatement.

5. The case of the petitioners before the Labour Court was that they filed a case for their general demand before the labour department and later on, during the course of pendency of general demand, the Management had obtained ex-parte injunction order, thus, misused the process of law against the petitioners. The respondent / Management also forced the workmen to withdraw the case of general demand. When the workmen had gone to attend their duties, the

respondent / Management did not allow them to join the duty, which tantamount to the termination of services of the petitioners in violation of Sections 25(D), 25(U), 31 and 33 of Industrial Disputes Act, 1947.

6. Moreover, while terminating the services of the workmen, the Management had neither served show cause notice or charge sheet nor conducted domestic enquiry, which was also in violation of Section 25 (F) of the Act. Thus, the petitioners raised the industrial disputes qua the alleged illegal termination.

7. The respondent / Management filed written statement stating therein that the petitioners / workers were not their employees. Moreover, the drivers / mechanics of the school are covered under definition of employees as defined under Section 2 (H) of Delhi School Education Act and Rules, 1973. Therefore, the claim of the petitioners is not maintainable under the Industrial Disputes Act, 1947.

8. Based upon the pleadings, the Id. Tribunal framed the issues as under:

1. Whether the workman had been working with the management since 2003 at the post of (Driver / Mechanic) drawing his last wages (@ Rs. 8803) per month?.

2. Whether the present claim filed directly by the workman before this court is not maintainable in view of the preliminary objection No.2 of the written statement?.

4. Whether the services of the workman had been terminated illegally and / or unjustifiably by the management?.

5. Relief

9. Issue nos. 1 and 2 were decided in favour of the petitioners / workmen for the reason that they were the employees of the respondent / Management since the date of their employment. The respondent / Management did not raise any objection that the claimants were not their employees, moreover, never raised any dispute whether they were permanent or daily wager or regular employees.

10. So far as the direct claim filed by the workmen in the year 2007-2008 is concerned, as per the provisions of Section 104 (A) of the ID Act, which came in force by way of amendment made in the Act in September, 2010 in Section 2-A of

the Act, the workmen can straightway raise the industrial disputes before the Labour Court.

11. As regards issues No.3 and 4, the Management alleged that the workmen had resigned from the services after settling their full and final accounts with the Management, thus, not entitled for any relief.

12. However, petitioners / workmen contended that their services were terminated illegally and unjustifiably by the Management.

13. Admittedly, neither any termination letter in writing or any show cause notice was issued by the respondent / Management, nor any domestic enquiry was conducted against the petitioners / workmen. It is also admitted fact that the case for general demand was pending for adjudication.

14. The petitioners also admitted that they accepted the amount by cash and cheque. They did not dispute the signatures on the document of full and final settlement executed by the Management, however, the procedures for settlement adopted by the Management was contrary to the Industrial Disputes Act, 1947 and Rule 58 of the Industrial Disputes Act (Central) Rules, 1957.

15. The legal position to this effect has been clarified in case of M/s. Delhi Cloth General Mills Ltd. v. the Management of M/s. Delhi Cloth and General Mills Ltd. decided on 17.10.1968 in Civil Appeal No.2006/1966, whereby held that the settlement, if any, arrived at between the parties has to be executed before the competent authority.

16. Keeping the facts recorded above into view and the evidence on record, Id. Tribunal came to the conclusion that Rs.50,000/- each are sufficient to be paid as compensation in favour of each of the petitioners.

17. It is relevant to note here that during the hearing of this case, respondent / Management had offered Rs.50,000/- each to be paid in favour of the petitioners, which the petitioners refused to accept.

18. The service details of the petitioners are as under: -

DIDs	No.	Workers Name	Fathers Name	Designation & salary
1/13	3/13	Naresh Kumar	Suresh Kumar	
Mahipal	4/13	Ram Niwas	5/13 Mukesh Tara Chand	Sher Singh Kirpa Ram Jai Chandra Sher Singh
6/13	Surender	9/13 Mehtab Singh	Sheikh	DriverRs.4,400/DriverRs.8,443/MechanicRs.8,700/DriverRs.8,400/Motor MechanicRs.8,600/DriverRs.8,473/DriverRs.8,803/-

2/13 19. Harpal Singh Jumma  
Date of appointment / termination August2003/ 19.01.2007 1994/ 16.06.2008 1995/ 17.07.2008 2000/ 17.06.2008 5 years / 17.07.2008 Date of institution of DID2291.2002/ 24.03.2008 2003 29.02.2008 02.04.2008 31.05.2007 09.07.2008 27.07.2008 09.07.2008 27.08.2008 04.03.2008 The present case is under the judicial review and the evidence need not to be appreciated. However, keeping in view the facts that respondents in above noted cases have settled the disputes by paying even up to Rs.8,00,000/-. Therefore, I am of the considered view that the justice would be met by granting Rs.2,00,000/- each in favour of the petitioners in addition to Rs.50,000/- already received by them pursuant to award dated 13.01.2014.

20. Accordingly, the respondent School is directed to pay an amount of Rs.2,00,000/- each in favour of the petitioners within four weeks from today, failing which the petitioners shall be entitled for interest @ 9% per annum on account of delayed payment.

21. In view of above, instant petition is allowed. SURESH KAIT, J DECEMBER18 2014 jg

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