

Piara Lal Vs. Lt. Governor and Others

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Court : Delhi

Decided On : May-26-2000

Reported in : 2000IVAD(Delhi)804; [2001(88)FLR329]; (2001)ILLJ24Del

Judge : A.K. Sikri, J.

Acts : Industrial Dispute Act, 1947 - Sections 33C(1)

Appeal No. : CWP. No. 3810 of 1997

Appellant : Piara Lal

Respondent : Lt. Governor and Others

Advocate for Def. : Mr. S. Chakraborty, Adv.

Advocate for Pet/Ap. : Mr. G.K. Sharma, Adv

Judgement :

ORDER

A.K. Sikri, J.

1. The petitioner who was working as a Conductor with DTC-Respondent No.3 was removed from service by order dated 20.12.1985. He challenged the removal by raising Industrial Dispute which was referred to the Labour Court and was registered as I.D.No.437/95. After adjudication, Labour Court rendered Award

dated 31.10.1995 declaring dismissal of the petitioner from service as illegal and unjustified and held that petitioner was entitled to reinstatement to his job and was also entitled to continue in service along with full back wages. The Respondent-DTC did not implement the aforesaid Award even after its publication on 10.1.1996. Under these circumstances, petitioner moved an application under Section 33C(1) of the Industrial Disputes Act before the Labour Commissioner on 14.12.1996 claiming a sum of Rs.5,51,000/- as back wages in terms of the aforesaid Award. The details of aforesaid amount claimed by the petitioner as given in his application before the Labour Commissioner are as under:

1. Wages at the rate of Rs.1600/-p.m.

from 21.12.1985 to 31.12.85 400.00

2. Wages for 1.1.1986 to 31.12.1986

at the rate of Rs.2000/-p.m. 24,000.00

3. Wages from 1.1.1987 to 31.12.87

at the rate of Rs.2250/-per month 27,000.00

4. Wages from 1.1.1988 to 31.12.1988

at the rate of Rs.2,500/-p.m. 30,000.00

5. Wages from 1.1.1989 to 31.12.89

at the rate of Rs.2700/-p.m. 32,400.00

6. Wages from 1.1.90 to 31.12.1990

at the rate of Rs.3,000/- per month 36,000.00

7. Wages from 1.1.91 to 31.12.1991

at the rate of Rs.3250/-per month 39,000.00

8. Wages from 1.1.92 to 31.12.1992

at the rate of Rs.3400/-per month 40,800.00

9. Wages from 1.1.1993 to 31.12.1993

at the rate of Rs.3600/-per month 43,200.00

10. Wages from 1.1.1994 to 31.12.1994

at the rate of Rs.3800/-per month 45,600.00

11. Wages from 1.1.1995 to 31.12.1995

at the rate of Rs.4000/-per month 48,000.00

12. Wages from 1.1.1996 to 10.1.1996

i.e. till the date on which the

award became enforceable. 600.00

13. Bonus for the years 1985 to 1996

i.e. 12 years worked out on an

average of Rs.3000/-per annum. 36,000.00

14. Leave encashment 36,000.00

15. P.F.Contributions for the entire

period 40,000.00

16. Computation of perks like monthly

pass, uniforms, shoes etc. for

12 years. 36,000.00

Total 5,51,000.00

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2. The Respondent-DTC appeared and filed its objection to the aforesaid computation and submitted that amount payable was not Rs.5,51,000/- and in fact it was Rs.1,92,916/-. The Labour Commissioner issued Recovery Certificate dated 25.4.1997 in the sum of Rs.1,93,000/- and pursuant thereto this amount was recovered from the DTC on 28.7.1997. Petitioner being not satisfied with the computation of the amount by the Labour Commissioner has filed the instant petition and his grievance is that the Recovery Certificate in the sum of Rs.5,51,000/- should have been issued instead of Recovery Certificate of Rs.1,93,000/-. In support of this contention, petitioner submits that once reinstatement was ordered with full back wages and continuity of service, petitioner was entitled to increment, revision in D.A. and other allowances, revision on account of Pay Commission as well as bonus, Provident Fund etc. He submits that he had made this calculation taking into consideration these aspects. However, while computing the sum of Rs.1,93,000/-, the Labour Commissioner has calculated the sum at the rate of Rs.1,600/- per month as the salary/wages which the petitioner was drawing as on 21.12.1985 when he was dismissed from service and no regard to the increments, revision in D.A., H.R.A., pay-scale etc. is given by the Labour Commissioner.

3. Counter-affidavit was filed by Respondent No.3 in this writ petition and along with the counter-affidavit the details of computation as per DTC has been given. A perusal thereof confirms that the back wages are calculated w.e.f. 21.12.1985 to 10.1.1996 at the rate of Rs.1,600/- per month taking into consideration Basic Pay of Rs.324/- which the petitioner was drawing as on 21.12.1985 and adding D.A. and other allowances to that Basic Pay. In fact in the counter-affidavit Respondent-DTC has stated that the calculation which was given to Labour Commissioner of petitioner's Basic Pay at the rate of Rs.1,600/- per month was also wrong inasmuch as the monthly pay of the petitioner as on 21.12.1985 was Rs.1,387.14p. as per which the total amount payable by the TC comes to Rs.1,55,106/- as against which the petitioner has received a sum of Rs.1,93,000/-

and thus petitioner has already been paid Rs.37,894/- in excess.

4. The approach adopted by the Respondent-DTC in giving the details is obviously wrong. The services of the petitioner were terminated on 21.12.1985. Once this termination is found to be illegal and unjustified and the petitioner is directed to be reinstated in service with continuity of service with full back wages, the petitioner would obviously be entitled to his pay and allowances which he would have drawn from time to time but for his termination. Back wages cannot be calculated for the entire period from 21.12.1985 to 10.1.1996 on the basis of the salary and allowances which the petitioner was drawing as on 21.12.1985. Petitioner is entitled to the increments, DA and revision in pay scale etc. as was granted to other employees from time to time in the category of the petitioner, namely., in the cadre of Conductor. In the Award of the Labour Court, the Labour had clearly held that 'petitioner was entitled to continue in service along with full back wages' and back wages have to be computed which the petitioner would have drawn from time to time but for his dismissal from service. For entire period from 21.12.1985 to 10.1.1996, it cannot be at the rate of salary which the petitioner was drawing as on the date of termination i.e. 21.12.1985.

5. However, from the calculations given by the petitioner, it is seen that he has also claimed benefits other than wages i.e. Bonus, Leave Encashment, P.F. contribution, Perks etc. Whether the petitioner would be entitled to any or all these benefits in terms of Award and whether application for this purpose is maintainable under Section 33C(1) of the Industrial Disputes Act would be doubtful. However, I do not express any final opinion on this. Moreover, although the petitioner has given his own computation but DTC has not given any computation stating the salary and allowances which the petitioner would have drawn, had he been in service or the salary and allowances which are being given to such employees for the period in question. Thus it would be appropriate to remand back the matter to the Labour Commissioner. The Labour Commissioner would give an opportunity to both the parties including DTC to give their calculations in the manner mentioned above and thereafter decide as to what is the 'money due' to which the petitioner is entitled to as per award when calculated in the manner indicated above, so far as wages are concerned. He shall also decide other entitlements claimed by the

petitioner.

6. This petition, accordingly, succeeds. Rule is made absolute. The Labour Commissioner should undertake necessary exercise within a period of two months from today and direct the DTC to pay the amount found due, after adjusting the sum of Rs.1,93,000/- already paid. If DTC does not pay the said sum, he will issue necessary Recovery Certificate.

There shall be no orders as to costs.

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