

Pramod Kumar and anr. Vs. the Presiding Officer and anr.

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Court : Delhi

Decided On : Sep-09-2005

Reported in : 123(2005)DLT509; 2005(84)DRJ584

Judge : Mukundakam Sharma and; Sanjiv Khanna, JJ.

Acts : Letters Patent Act; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 1; [Industrial Disputes Act, 1947](#) - Sections 25B and 25F

Appeal No. : LPA 692/2002

Appellant : Pramod Kumar and anr.

Respondent : The Presiding Officer and anr.

Advocate for Def. : Sushant Kumar, Adv.

Advocate for Pet/Ap. : Sanjoy Ghose, Adv

Judgement :

Sanjiv Khanna, J.

1. The two appellants, Mr. Pramod Kumar and Mr. Ramamoorthy have preferred the present appeal under Clause 10 of the Letters Patent Act read with Order 41 Rule 1 of the Code of Civil Procedure, 1908 against the judgment and order dated 29.5.2002 in Civil Writ No. 1337/1996 passed by the learned single Judge. The

learned single Judge allowed the writ petition filed by the two appellants, inter alia, holding that Section 25F read with Section 25B of the [Industrial Disputes Act, 1947](#) (hereinafter referred as the Act, for short) was applicable to them and therefore the termination of their services by the respondent- Municipal Corporation of Delhi, was illegal.

2. The appellants are, however, aggrieved by the direction given by the learned single Judge that instead of reinstatement with back wages, the said appellants be paid compensation of Rs. 50,000/- each.

3. The learned single Judge while awarding compensation in lieu of back wages and re-instatement referred to the fact that the appellants had ceased to be in employment since 1986 and held that after a passage of 16 years it may not be appropriate to order reinstatement with back wages and the ends of justice would be met if compensation of Rs. 50,000/- is paid to both of them.

4. The learned counsel appearing for the appellant workmen submitted that the learned single Judge having allowed the writ petition and having held that the provisions of Section 25F read with Section 25B of the Act were violated and termination of the two workmen was illegal, should have directed reinstatement with back wages instead of awarding compensation of Rs. 50,000/- each in lieu thereof. It is submitted that compensation with full back wages is a normal rule and the learned single Judge has referring merely awarding Rs. 50,000/- as compensation. In the alternative he also made a prayer for enhancement of compensation.

5. At the very outset it may be stated that no appeal or cross-objection has been preferred by the respondent employer, namely Municipal Corporation of Delhi, and therefore we are not required to go into the question whether the services of the appellants were rightly or wrongly terminated or whether there is any violation of Section 25F read with Section 25B of the Act. No arguments were also addressed in this regard by the learned counsel for the respondent. The judgment of the learned single Judge holding that the termination was illegal has become final and binding between the parties. The only issue in question is whether the appellant-workmen are entitled to reinstatement with full back wages or the order granting

them compensation of Rs. 50,000/in lieu thereof, is justified and legal and/or compensation should be enhanced.

6. We have considered the facts of the case and examined the arguments of both the parties.

7. The appellants were employed in the year 1984 and had worked for about two years when their services were terminated in 1986. During this period the appellant Nos. 1 and 2 had worked with the respondent for a period of 581 and 569 days respectively. Thereafter, the matter was taken to the Labour Court and award dated 1.12.1994 was passed holding that the appellants herein are not entitled to protection of Section 25F of the Act.

8. In March 1996, a writ petition was filed by the appellants herein challenging the Award dated 1.12.1994 and the same was allowed on 29.5.2002 by the learned single Judge, inter alia, holding that the two appellants were entitled to protection under Section 25F read with Section 25B of the Act. However, as already stated above, they were granted compensation of Rs. 50,000/- each instead of reinstatement and back wages.

9. Since the decision of the Federal Court in the case of Western India Automobiles Association v. Industrial Tribunal reported in is a settled law that an Industrial Tribunal has jurisdiction to direct re-instatement and in a case of wrongful dismissal, re-instatement is the normal rule. However, there are exceptions to this rule and these exceptions have been recognised in various judgments. Re-instatement has not been considered desirable in cases where there have been strained relationship between employer and employee or there is lack of trust or loss of confidence. Reinstatement is also denied when an employee has been found to be guilty of subversive activity or acting prejudicial to the interest of the industry. Courts have also denied reinstatement with back wages in cases where long time has lapsed. Reference in this regard may be made to the judgment of the Supreme Court in cases of Rattan Singh v. Union of India and Anr. : (1997)11SCC396 , Rolston John v. Central Government Industrial Tribunal-cum-Labour Court and Ors : AIR 1994 SC131 , Gujarat State Road Transport Corporation and Anr v. Mulu Amra : (1994)11LLJ552SC and MP

Shikshak Sangh and Ors. v. State of MP and Ors. .

10. In the case of Haryana Tourism Corporation Ltd. v. Fakir Chand and Ors. : (2004)ILLJ195SC , Supreme Court directed payment of compensation of Rs. 70,000/-, instead of reinstatement with 25% back wages taking into consideration factors like (a) workers were dailywagers (b) workers were not recruited through employment exchange or regular mode of selection (c) services of the workers were terminated long back and (d) considering nature of work, the workers must have done similar work at least intermittently.

11. In a number of matters, this Court has also examined the same issue and it has been repeatedly held that where a long period has lapsed since the date of termination, compensation should be paid in lieu of re-instatement and back wages. Reference in this regard may be made to the judgments in the cases of Murari Lal Sharma v. Nehru Yuva Kendra Sangathan : 96(2002)DLT412 (DB) and K.H. Pandhi v. The Presiding Officer, Addl.Labour Court and Anr, : (2004)IILLJ877Del and Pal Singh v. NTPC Ltd. : 96(2002)DLT877 .

12. In the present matter also the services of the appellant workmen were terminated way back in September, 1986. Their termination was upheld by the Labour Court in its award made on 1.12.1994. The appellant workmen succeeded before the learned single Judge, who in his judgment and order dated 29.5.2002 held that their services were protected under Section 25F read with Section 25B of the Act. Following the ratio laid down in the above judgments, we feel that in view of the long passage of time it will not be appropriate to issue direction for re-instatement with back wages and the learned single Judge was right in holding that compensation should be paid to the appellants herein. In this regard it may also be noted that that the two appellants had worked only for the period of 581 and 569 days during the period 1984 to 1986 with the respondent-Corporation.

13. Regarding the quantum of compensation, the learned single Judge after having examined the above facts and also noticing that the two appellants herein had worked for 581 and 569 days awarded compensation of Rs. 50,000/- each to both of them. Keeping in view the facts stated above, we feel that quantum of compensation awarded is reasonable. The question of computation of

compensation in such cases has been examined by the Supreme Court in the case of Workmen v. Bharat Fritz, Werner (P) Ltd and Anr. reported in : (1990)ILLJ226SC . In the said judgment, after referring to another decision of the Supreme Court in the case of O.P. Bhandari v. India Tourism Development Corporation Limited reported in : (1986)ILLJ509SC , certain broad parameters have been laid down for computation and payment of compensation in lieu of reinstatement and back wages. On examining the said judgment we find that the Hon'ble Supreme Court had also taken into consideration interest payable on the compensation which was made payable from the date of the Order passed by the appellate Court. We, therefore, following the said judgment feel that in the present case equity and justice demands that the respondent No. 2 should pay interest on Rs. 50,000/- at the rate of 8% per annum from the date of the award i.e. 1.12.1994 till the sum of Rs. 50,000/- was paid to the appellants. The respondent Corporation is therefore directed to compute the said interest from the date of the award i.e. 1.12.1994 till the date of Rs. 50,000/- was paid to the appellant-workmen and pay the same within a period of two months from the date of this order.

14. In terms of the above directions the above appeal stands disposed of, with no order as to costs.